

PURTI
PRASAD
PARAB

Digitally signed by
PURTI PRASAD
PARAB
Date: 2023.03.04
15:50:35 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 187 OF 2023
IN
WRIT PETITION NO. 4570 OF 2022

Harshelle Travels
Through its Proprietor
Praveen Bhaskar Rao and Anr.

....Applicants/
Original Petitioners

V/s.
Capri Global Capital Limited

...Respondent

Mr. B.G. Saraf a/w Mr. Dilip H. Shukla i/b Mr. Suhas G. Shetty for
Applicants/Original Petitioners.
Mr. R.L. Motwani for Respondent.

CORAM : K.R. SHRIRAM &
ARIF S. DOCTOR, JJ.
(IN CHAMBER)
DATED : 3rd MARCH 2023

P.C. :

1. The application is to extend the time granted on 19th October 2022 to petitioner to deposit the balance amount of Rs.15,00,000/-. Mr.Saraf states that Rs.5,00,000/- was deposited on the date fixed by the court, i.e., 21st October 2022 but the remaining Rs.10,00,000/- was not deposited. Petitioner wants that period extended.

2. The order passed on 19th October 2022 reads as under :

1 Petitioner is impugning order dated 05th September 2022 passed by Debts Recovery Appellate Tribunal, Mumbai whereby Petitioners' Appeal came to be dismissed for not making timely deposit of the mandatory deposit for filing Appeal.

2 According to Petitioners, the amount to be deposited was Rs.25,00,000/- (Rupees Twenty Five Lakhs only) out of which Rs.10,00,000/- (Rupees Ten Lakhs only) was paid on time. The second installment of Rs.5,00,000/- (Rupees Five Lakhs only) was to be deposited on 01st September 2022 but could not be deposited since there was bereavement in the family, i.e., a very close relative of Petitioner No.2 died on 18th August 2022.

3 Mr. Shukla states that the entire balance amount of Rs.15,00,000/- (Rupees Fifteen Thousand only) payable is available and will be deposited before the end of this week, i.e., 21st October 2022.

4 Subject to making this deposit, the Appeal stands restored, and consequently the impugned order dated 05th September 2022 will also stand quashed and set aside.

5 If the entire balance amount is not so deposited, this order passed by us will not come into effect and Petitioner will not be given any opportunity to seek any extension.

6 Petition disposed. No order as to costs.

7 We clarify that we have not made any observations on the merits of the matter.

8 All rights and contentions are kept open.

3. This application was moved before the bench that has the present assignment and that bench by an order dated 9th February 2023 observed that the application is in effect in the nature of review. Applicant therefore applied to the Hon'ble The Acting Chief Justice who reconstituted this bench only for this matter.

4. The petition had been filed impugning an order dated 12th August 2022 passed by the Debts Recovery Appellate Tribunal, Mumbai (DRAT) in which paragraph no.6 reads as under :

6. Considering the entire facts and circumstances, in this case, I find that the Appellants are entitled to indulgence considering the that they have attempted payments even after receiving notice under Sec. 13(2); and considering the impecunious situation of the Appellants, I do not insist on payment of 50% of the amount towards pre-deposit. Interests of justice would be met if the Appellants are directed to deposit a sum of Rs.25,00,000/- (Rs. Twenty Five Lakhs only) towards pre-deposit for entertaining this Appeal. The Appellants shall deposit a sum of Rs.10,00,000/- (Rs.Ten Lakhs only) on or before 18.08.2022 and the rest of the amount shall be deposited in three equal installments of Rs.5 Lakhs each within a gap of two weeks each. The second installment shall be paid on or before 01.09.2022, the third installment shall be paid on or before 15.09.2022, and the fourth installment shall be paid on or before 29.09.2022. In case of default in payment of any of the above referred installments, the Appeal stands dismissed automatically.

5. Thereafter, as petitioner failed to pay the installments granted by the DRAT, the appeal got dismissed by the self operative order. Hence, this Writ Petition was filed.

6. We showed indulgence to petitioner and allowed the Writ Petition on 19th October 2022 by granting time to pay only because petitioners' counsel made a statement to the court that the entire balance amount of Rs.15,00,000/- payable was available and will be deposited before 21st October 2022. In fact for that reason only we included paragraph no.5 in the said order dated 19th October 2022 and stated that the entire balance if not so deposited, the order passed by us will not come into effect and petitioner will not be given an opportunity to seek any extension. Still petitioner deposited only Rs.5,00,000/- and then until 30th

November 2022 sits quiet and takes out this Interim Application which is heard today. We find petitioner has only abused the indulgence given by this court. It was a blatantly false statement that was made to the court when Mr. Shukla stated on 19th October 2022 that amount of Rs.15,00,000/- was available and it will be paid on or before 21st October 2022. Mr. Saraf states that it was made on instructions, which means it is petitioner who had played the fraud. Even in this Interim Application no acceptable reason is given. Applicant states that due to demise of his father-in-law he could not concentrate and manage his business which resulted in tremendous financial difficulties. He does not state in the application the date on which his father-in-law died and even copy of the death certificate has not been annexed to the application. In our view, this was because, as recorded in our order dated 19th October 2022, Mr. Shukla had stated at the hearing there was bereavement in the family, i.e., a very close relative of Petitioner No.2 died on 18th August 2022. In the petition, by which applicant had sought extension to make the conditional deposit, the same excuse had been taken. It is stated father-in-law of Petitioner No.2 (the applicant herein) died on 18th August 2022. Therefore, this is a bogus excuse being taken once again now.

7. The second excuse given is thereafter it was Diwali festival and petitioner was unable to recover money from customers because Mr. Saraf states the customers were doing Chopadi Pujan. But Diwali was in the week

beginning 24th October 2022 and on 19th October 2022 petitioner through his counsel informed the court that Rs.15,00,000/- was available and will be paid on 21st October 2022.

8. Therefore, the entire attempt of petitioner is not only to mislead respondent but more seriously to mislead this court. Therefore, we are not inclined to entertain this Interim Application.

9. The observations of the Hon'ble Supreme Court in ***S.P Chengalvaraya Naidu V/s. Jagannath (Dead) by LRS¹*** are relevant in this context. The court observed :

“The Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation”.

The Apex Court and this Court have, on many occasions, stated that if a party comes to the Court with unclean hands, which in this case applicant has, the party should be dealt with very strongly and substantial costs also should be imposed on the party. The conduct of applicant intends to impede and prejudice the administration of justice. Judiciary is the bedrock and handmaid of orderly life and civilized society. In ***Sciemed Overseas Inc. V/s. BOC India Ltd.²*** the Apex Court has lamented about the unhealthy trend in filing of affidavits which are not truthful. Paragraph 2 of

1. (1994) 1 SCC 1

2. 2016 AII SCR 370

the said judgment reads as under :

“2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.”

Kuldip Singh, J. (as he then was) in *S.P. Chengalvaraya Naidu (Dead) by LRS* (Supra) in paragraph 5 observed :

“5. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, taxevaders, bank loandodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.”

10. Interim Application dismissed with costs in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) to be paid to respondent within one week from today. If this cost is not paid within one week to respondent, respondent may recover this cost from petitioner along with other debts which has to be recovered.

(ARIF S. DOCTOR, J.)

(K.R. SHRIRAM, J.)