IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO. 12 OF 2025
WITH
INTERIM APPLICATION NO. 7347 OF 2025

Shri Sant Damaji Sahakari Sakhar Karkhana
Ltd. through its Directors Shivanand Y. Patil … Appellant/Applicant

V/s.

New Phaltan Sugar Works Distillery
Division Ltd. Through Authorized
Person Ravi K. Chug and Ors. … Respondents

Mr. Surel Shah, Senior Advocate i/b. Ajay Joshi for the Appellant
Mr. Sanjeev Gorwadkar, Senior Advocate with Mr. Kamlesh Y. Mali and Ms. Akanksha Helaskar for the Respondent Nos. 1 and 2

CORAM : ALOK ARADHE, CJ. AND
M.S. KARNIK, J.

DATE : 22nd APRIL 2025

Order (Per Chief Justice) :

1. This Appeal, under Section 13 (1A) of the Commercial Courts Act, 2015 has been filed against an order dated 25th March 2025 passed by the Commercial Court by which an application filed by the Respondents seeking interim relief for restraining the Appellant from creating third party interest in respect of “A” Grade Molasses and to direct the Appellant to start supplying “A” Grade Molasses to Respondent No.2 as per agreement dated 22nd June 2022, has been allowed. In order to appreciate the grievance of the Appellant, the relevant facts need mention.

2. Respondent Nos.1 and 2 are the companies registered under the provisions of Companies Act, 2013 and deal in the business of processing Potable Grade Rectified Spirit and manufacturing alcohol product including liquor. The Respondents require an assured guaranteed supply of raw material that is Potable Grade Rectified Spirit and specified grade molasses for manufacture of various products. The Appellant is a sugar factory engaged in the business of manufacturing and sale of sugar and its allied products. The Respondents and the Appellant No.1 entered into two agreements on 22nd June 2022. Under the aforesaid agreements, the Appellant No.1 agreed to supply 20,000 MT "A" Grade Molasses at the rate of Rs.5,250/- per MT to the Respondents. The Respondents thereupon made payment of a sum of Rs.10,00,00,000/- (Ten Crores) under the agreement in respect of advance payment of entire amount under the aforesaid agreement. However, the Appellant committed breach in supply of the "A" Grade Molasses under the said agreement.

3. Thereupon, the Respondents filed a Suit seeking relief of specific performance of the agreement dated 22nd June 2022. Along with the Suit, the Respondents filed an application seeking temporary injunction restraining the Appellant from creating any third party interest in respect of subject matter of the agreement and to direct it to start supply of "A" Grade Molasses to the Respondents under the agreements dated 22nd June 2022.

The learned Judge of the Commercial Court, by an order dated 25th March 2025, has granted the interim injunction as prayed for by the Respondents. The said order is under challenge in this Appeal.

4. The learned Senior Advocate for the Appellant submitted that the Commercial Court erred in granting the temporary injunction which amounts to virtually decreeing the Suit. It is further submitted that the Commercial Court ought to have appreciated that in case the Suit filed by the Respondents/Plaintiffs is decreed, the Respondents/Plaintiffs can be compensated in terms of money. It is therefore urged that the impugned order be set aside.

5. On the other hand, the learned Senior Advocate for the Respondents submitted that the order passed by the Commercial Court does not call for any interference in this Appeal as the prayer to deal with the discretionary power for grant of injunction has been exercised on sound principles of law.

6. We have considered the rival submissions made on behalf of both the sides and have perused the record.

7. The Supreme Court in the case of ***Wander Limited v/s. Antox India Pvt. Ltd.***[1] while dealing with the prayer for grant of injunction has held

1 (1990) Supp. SCC 727

thus :-

*“**9**. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated*

“...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the ‘balance of convenience’ lies.”

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

***13.** On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.*

> ***14.*** *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*
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> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."*
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> *The appellate judgment does not seem to defer to this principle."*

8. In the backdrop of aforesaid well settled legal principles, in the case of ***Wander Ltd. (supra),*** reiterated by the Supreme Court in ***Shyam Sel and Power Ltd. and Anr. v/s. Shyam Steel Industries Ltd.***[2] and ***Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and Ors.***[3] , we may advert to the

2 (2023) 1 SCC 634
3 (2024) SCC OnLine SC 3538

facts of the case in hand.

9. In the instant case admittedly the parties have entered into the agreement dated 22nd June 2022. Under the aforesaid agreement, the Respondents have paid the entire amount of Rs.10,00,00,000/- (Rs. Ten Crores) as advance to the Appellant No.1 for supply of 10,000 MT of “A” Grade Molasses at the fixed rate of Rs.5,250/- per MT. It is pertinent to note that neither the execution of the agreement nor the receipt of sum of Rs.10,00,00,000/- has been disputed by the Appellant. In other words, there is a serious question to be tried in the Suit i.e. *prima facie* case is in favour of the Respondents. In case of supply of “A” Grade Molasses, the Appellant having received the entire amount of consideration is under an obligation to provide “A” Grade Molasses to the Respondents. Thus, the balance of convenience also lies in favour of the Respondents. In case, the “A” Grade Molasses is not supplied to the Respondents, the Respondents would not be able to carry on its commercial operation as it is an essential ingredient i.e. raw material for the production of the factories run by the Respondents. Thus, in case injunction as prayed for, would not have been granted, the Respondents would suffer an irreparable injury.

10. The scope of interference in an Appeal arising out of an order granting temporary injunction is well settled. The Appellate Court in

exercise of powers in an Appeal would interfere against an order granting injunction only when the discretion to deal with the prayer for grant of injunction is shown to be either exercised erroneously or arbitrarily.

11. In the instant case, the power to deal with the prayer for injunction has been exercised on sound principles of law which does not call for any interference in this Appeal.

12. However, we find that the learned Commercial Court has granted injunction during the pendency of the Suit. We, therefore, deem it appropriate to modify the order passed by the learned Single Judge and to direct the Appellant No.1 to supply "A" Grand Molasses to the Respondents in accordance with the terms and conditions of the agreements dated 22nd June 2022 for a total agreed quantity of 10,000 MT in respect of an amount of Rs.10,00,00,000/- (Rs.Ten Crores) which has already been paid by the Respondents. To the aforesaid extent, the order passed by the Commercial Court is modified.

13. In the result, the Appeal is disposed of.

14. Interim Application(s), if any, shall stand disposed of.

(M.S. KARNIK, J.) **(CHIEF JUSTICE)**