IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO. 25 OF 2025

MAN Industries (India) Ltd. & Anr. … Appellants

V/s.

G. S. Kumbhar Construction Company & Anr. … Respondents

with

INTERIM APPLICATION NO. 11969 OF 2025
IN
COMMERCIAL APPEAL FROM ORDER NO. 25 OF 2025

MAN Industries (India) Ltd. & Anr. … Applicant

In the matter between
MAN Industries (India) Ltd. & Anr. … Appellants

V/s.

G. S. Kumbhar Construction Company & Anr. … Respondents

Mr. Ashish Kamat, senior counsel, *Mr. Harsh Moorujani* a/w *Mr. Jay Javeri*, *Ms. Tavleen Saini*, *Ms. Kshamaya Daniel*, *Mr. Suraj Agrawal* i/b. M/s. Crawford Bayley & Co. for the Appellants.

Mr. Tejas Dande a/w *Mr. Bharat Gadhvi* i/b Mr. Aniket Shitole for Respondent No. 1

CORAM : R.I. CHAGLA AND FARHAN P. DUBASH, JJ.

RESERVED ON : 24th SEPTEMBER 2025
PRONOUNCED ON : 1st OCTOBER 2025

JUDGMENT : (Per FARHAN P. DUBASH, J.)

1. This is an appeal filed under Section 13(1A) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 against the ex-parte injunction order dated 8th September 2025 **(impugned order)** passed in Commercial Suit No. 46 of 2025 by the District Judge (Commercial Court), Pune **(trial court)**. Appellant Nos. 2 to 5 are the officers of Appellant No. 1 with whom Respondent No. 1 has a contractual relationship for manufacture and supply of large diameter MS HSAUU quoted pipes. Respondent No. 2 is the bank who has issued the bank guarantee, the encashment of which is subject matter of the controversy in the trial court which passed the impugned order that is under challenge in the appeal before us.

2. By the impugned order, the trial court has *interalia* injuncted the encashment of the bank guarantee issued by Respondent No. 2 bank which has been challenged by the Appellants. In the premises and considering the nature of the challenge and the submissions made before this Court, we have proceeded to hear the appeal finally at this stage itself. The relevant factual position that is necessary to be considered by this Court for deciding this appeal is set out hereunder:

3. Respondent No. 1 - G. S. Kumbhar Construction Company, **(Kumbhar)** issued a purchase order dated 22nd February 2024 under which, Appellant No. 1 – MAN Industries (India) Ltd. **(MAN)** was required to manufacture and supply large diameter MS HSAUU quoted pipes to it, on the terms and conditions, more particularly contained therein. This purchase order came to be subsequently revised on 12th July 2024. The record reveals that pursuant to the said purchase orders, MAN manufactured the said pipes and also made some deliveries to Kumbhar from time to time. To that effect, there is also some *to and fro* communication between the said parties wherein, MAN has sought release of its pending payment and confirmation from Kumbhar, on the listing schedules of the balance stock of pipes whereas, on the other hand, Kumbhar has alleged that MAN failed to make the deliveries, as agreed under the said purchase orders. For the purposes of deciding the appeal before us, this Court is not going into the merits of the *inter-sé* allegations between the parties and the disputes between them, but is recording the factual position that has transpired till date, for completeness of the record.

4. On 13th December 2024, Kumbhar's bankers, Respondent No. 2 - HDFC Bank Ltd. **(HDFC)** issued an irrevocable

and unconditional bank guarantee in favour of MAN for a sum of Rs. 6 crores. Though this bank guarantee was scheduled to expire on 10th March 2025, the same was extended from time to time and it is now valid till 10th December 2025.

5. On 25th August 2025, MAN addressed a letter to HDFC invoking the bank guarantee and sought payment of the sum of Rs. 6 crores. However, by its subsequent correspondence dated 28th August 2025, which is stated to have been issued at the request of Kumbhar and with a view to enable the parties to explore a settlement between them, MAN instructed HDFC to hold the encashment of the bank guarantee, without prejudice to its rights.

6. Since no settlement was forthcoming, by a further letter dated 9th September 2025, MAN instructed HDFC to proceed with encashment and honoring the bank guarantee. However, by a letter addressed the following day viz. 10th September 2025, HDFC responded to MAN and informed them of the order dated 8th September 2025 passed by the District Judge, (Commercial Court) Pune, in Commercial Suit No. 46 of 2025 **(impugned order)**, whereunder it was restrained from encashing the said bank guarantee.

7. Mr. Ashish Kamat, learned senior counsel appearing on behalf of MAN invites our attention to the impugned order and submits that the same is not only *ex-facie* contrary to law and but it has been passed behind the back of his clients and also without any notice to them. He submits that neither did Kumbhar serve a copy of the plaint or any other papers filed in the trial court nor was any notice given to his clients that Kumbhar would be applying for any such urgent ad-interim reliefs before the impugned order came to be passed. In fact, he points out that this position is undisputed and has also been recorded in the impugned order itself and despite such position, the trial court has proceeded to hear Kumbhar's application and pass the impugned order which, he submits, is in the teeth of the most fundamental principles of natural justice.

8. Additionally, he submits that the impugned order which injuncts the encashment of the bank guarantee has been passed contrary to a catena of decisions of the Supreme Court, this Court and several other High Courts in the country which expressly deprecate interference of courts in this process and have laid down the twin test that is required to be satisfied before any injunction can be granted.

9. Mr. Kamat is at pains to submit that neither of the said two grounds were raised or satisfied by Respondent No. 1 in the suit filed in the trial court nor were they considered in the impugned order and the only point which appears to have weighed with the trial court in passing the impugned order was Kumbhar's willingness to deposit the amount of Rs. 6 crores in court which was the amount equivalent to the amount of the bank guarantee and which deposit is stated to have been subsequently made by Kumbhar in accordance with the impugned order.

10. Mr. Kamat also submits that the trial court viz. District Judge (Commercial Court) at Pune has no jurisdiction to entertain the suit filed by Kumbhar. In this connection, our attention is invited to paragraph 30 of the plaint which contains the jurisdiction clause basis which, Kumbhar has filed the said commercial suit in Pune. A perusal thereof reveals that the jurisdiction of the Pune Court has been invoked, relying on the jurisdiction clause contained in the purchase order issued by Kumbhar and on account of the fact that it carries on business within the jurisdiction of the said Pune Court.

11. Mr. Kamat submits that notwithstanding the insertion of this clause in the purchase order, a suit for injunction to restrain the encashment of a bank guarantee would be governed by the

terms of such bank guarantee and not the purchase order which otherwise governs the contractual relationship between the said parties. He submits that a bank guarantee is separate and independent contract between the parties thereto and a perusal of its terms and conditions of the said bank guarantee dated 13th December 2024 issued by HDFC reveals an express clause therein which confers exclusive jurisdiction to courts in Mumbai. He therefore submits that since the only reliefs sought in the suit relate to injunction on the encashment of the bank guarantee, such a suit could never have been filed before the Pune Court and the Courts in Mumbai would have exclusive jurisdiction to entertain and decide the same. For all these reasons, Mr. Kamat submits that the impugned order is liable to be forthwith set aside.

12. In support, Mr. Kamat relies on the decision of the Supreme Court in ***Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Anr.***[1] which in turn, considers several past decisions of the Apex Court spanning across two decades and lays down the twin test that has since been followed by courts across the country setting out the two exceptions which are required to be satisfied before a Court can injunct the encashment of a bank guarantee. He also relies on the

1 **(1997) 6 SCC 450**

decision of a Co-ordinate Bench of this Court in ***Kisan Sahakari Chini Mills Ltd. vs. Richardson and Krudas (1972) Ltd. and Anr***[2]***.*** which explains the second exception of "irretrievable injustice" (in the twin test) that is required to be considered by the Court.

13. Mr. Kamat then relies on the judgment of the Supreme Court in ***BSES Ltd. (now Reliance Energy Ltd.) vs. Fenner India Ltd. and Anr.***[3] wherein it has been held that whilst considering a prayer seeking injunction against encashment of a bank guarantee, the Court is required to consider the terms of the said bank guarantee itself, so as to decide as to when and for what reason, the bank guarantee should be encashed. Mr. Kamat, also relies on the Full Bench decision of the Supreme Court in ***Swastik Gases Pvt. Ltd. vs. Indian Oil Corporation Ltd.***[4] to contend that the Courts have consistently recognised and enforced the contractual agreement between parties when they have agreed to exclude the jurisdiction and/or conferred exclusive jurisdiction on a Court.

14. *Per contra*, Mr. Tejas Dande, learned counsel for Kumbhar has supported the impugned order by contending that

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2 **1996 (2)Mh.L.J.1010**
3 **(2006) 2 SCC 728**
4 **(2013) 9 SCC 32**

the same was passed in the peculiar facts and circumstances of the case. He further submits that by the impugned order, no prejudice whatsoever is caused to MAN, inasmuch as, his clients have immediately deposited the sum of Rs. 6 crores, which is the amount equivalent to the value of the bank guarantee in the trial court the very next day, in compliance. He further submits that since the impugned order was passed without hearing MAN, his client is agreeable to go back to the trial court and re-argue their application for injunction, restraining the encashment of the bank guarantee afresh, this time after giving an opportunity to MAN to file its response thereto and making oral submissions on the same, but till then, the impugned order ought not to be set aside. He argues that the claim of MAN is secured since the amount of Rs. 6 crores is lying deposited in the trial court and as a result, no prejudice would be caused to it if such a workable order is passed.

15. Mr. Dande, invited our attention to the recent decision of the Supreme Court in ***Jindal Steel and Power Ltd and Anr. vs. Bansal Infra Projects Pvt. Ltd. and Ors.***[5] to counter the submissions of Mr. Kamat and contends that in an appropriate case, even the Supreme Court has permitted an injunction restraining the encashment of a bank guarantee, pending

5 **(2025) SC 1045**

determination of the application in that regard being decided on merits.

16. We have heard both parties and with their able assistance, also perused the record. At a first blush, the suggestion made by Mr. Dande to send the matter back to the trial court to hear both the parties and then re-decide Kumbhar's application to restrain encashment of the bank guarantee seems fair. However, on a careful consideration of the well settled judicial pronouncements and in light of the facts in the present case, we are unable to accept it.

17. The law on injunctions restraining the encashment of bank guarantees is well settled by a plethora of decisions, not only by the Apex Court but also by several High Courts in the country including this Court. In all these decisions, the underlying factor that has weighed with the Courts is that bank guarantees are the life-blood of international commerce and must be honored free from interference by courts unless there is established '*fraud'* or '*irretrievable injustice*'. All the judgments on this topic have reiterated that courts should ordinarily restrict themselves from injuncting encashment of bank guarantees. It has been repeatedly held that the commitment of banks must be honoured, free from the interference of Courts and an irrevocable commitment in the

form of a confirmed bank guarantee ought not to be interfered with, otherwise trust in commerce, both internal and international would be irreparably damaged and if such injunctions are readily granted, the whole banking system in the country would fail.

18. In the cited Full Bench decision in **Dwarikesh Sugar Industries (supra),** the general principle that was laid down and summarized in ***UP State Sugar Corporation vs. Sumac International Ltd.***[6] was set out. The same is beneficially reproduced hereunder:

> ***"The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take the advantage, he can be restrained from***

6 **(1197) 1 SCC 568**

> ***doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country."***

19. Thus, there are two exceptions under which a court is permitted to restrain the encashment of a bank guarantee. The first exception is when there is an egregious *fraud* that has been shown to exist in connection with the bank guarantee itself which would vitiate its very foundation; whereas, the second exception relates to cases where allowing its encashment would result in *irretrievable injury* which has been further explained to mean such a circumstance which would make it impossible for the guarantor to recover the amount from the beneficiary through restitution, if the party ultimately succeeds and this position must be proved to the satisfaction of the Court. Now, if this twin test is applied to the facts of the present case, it is *ex-facie* evident that the same is not met. A bare perusal of the impugned order reveals that it neither

deals with nor considers, either of these two exceptions. This is naturally so because no such allegations of *fraud* and *irretrievable injury* have even been raised by Kumbhar in the suit filed before the trial court, which position is evident from a perusal of the plaint. The only dispute raised by Kumbhar therein, relates to the non-performance of the terms and conditions of the purchase orders by MAN and nothing more. The trial court failed to appreciate that the bank guarantee constitutes an independent contract between HDFC and MAN, completely divorced from the underlying commercial dispute between Kumbhar and MAN arising from the purchase orders. Mere contractual disputes or apprehension of loss cannot constitute the high threshold of '*egregious fraud*' required to vitiate the entire underlying transaction. '*Irretrievable injustice'* has also not been established to the standard required by judicial precedents. This Court is of the opinion that such judicial interference, as shown by the trial court in the present case, undermines commercial confidence and the very purpose for which bank guarantees serve as the backbone of commercial transactions. In the premises, this Court holds that the impugned order cannot be sustained and is liable to be set aside forthwith.

20. The reliance on the decision of **Jindal Steel (supra)** by

Mr. Dande is entirely misplaced inasmuch as, in the facts of that case, the order impugned before the Supreme Court was passed after hearing both the parties and with their consent. This is admittedly not so, in the present case and therefore, this judgment can be distinguished on the peculiar facts that existed in its case and the same will not be of any assistance to Kumbhar.

21. The impugned order appears to have been passed by the trial court on the basis of an erroneous presumption that since Kumbhar had voluntarily agreed to deposit the entire amount of Rs. 6 crores, being the amount equivalent to the value of bank guarantee, in Court the very next day, an injunction restraining the encashment of the bank guarantee would not prejudice MAN. In doing so, the trial court has lost sight of the very basic characteristic of an unconditional and irrevocable bank guarantee which is that the same can be invoked at the volition of the beneficiary thereto and dehors any contractual dispute that may be raised by the other contracting party thereto. In such a scenario, the beneficiary is entitled to the monies under the bank guarantee without any need and/or requirement of explaining and justifying such invocation in a court of law. By the impugned order, the trial court has necessarily required MAN to approach the Commercial Court at Pune and make out a case satisfying it as to

why the amount of Rs. 6 crores under the said bank guarantee should be paid over to it. This is wholly unique and unknown to law and not only entirely impermissible but also contrary to well settled judicial precedents.

22. We also find favour with the submission of Mr. Kamat that Kumbhar has deliberately obtained the impugned order behind his client's back. A perusal of the first paragraph of the impugned order reveals that, though the trial court had earlier passed an order of issuance of notices to all the Defendants therein, including MAN, Kumbhar had not served the papers and proceedings of the said suit on MAN. In fact, it is revealed that Kumbhar did not even apply for the service of the suit summons and notices to MAN by Registered Post A.D. (RPAD) or e-mail and an application for the same was made on the very same date on which the impugned order was passed. Hence, this position clearly reveals that Kumbhar has intentionally orchestrated a scenario where MAN is prevented from appearing before the trial court at the time when its application for injunction restraining the encashment of the bank guarantee is made and decided. The reason for such conduct appears to be obvious inasmuch as, if MAN had appeared before the trial court and urged the grounds that are raised before us today, the trial court might not have

passed the impugned order restraining the encashment of the bank guarantee.

23. Since the impugned order is vitiated on the two grounds recorded above, this Court is not inclined to comment upon the issue of jurisdiction (or lack thereof) of the trial court in deciding the suit and all rights and contentions of both parties are expressly kept open to be urged and decided in the trial court.

24. In these circumstances, the Appeal is allowed and the following order is passed:

:: <u>ORDER</u> ::

(i) Commercial Appeal No. 25 of 2025 is hereby allowed and the impugned order dated 8th September 2025 passed by the District Judge (Commercial Courts), Pune in Commercial Suit No. 46 of 2025 is hereby set aside.

(ii) As a result, Interim Application No. 11969 of 2025 is also disposed of in terms of the above order.

(iii) There shall be no order as to costs.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA J.)**