CNR No.MHAM020056742023
Spl.C.S.No.473/2023
Alim Khan Vs. M.S.E.T. Ltd.

Order Below Exh.5

The plaintiff has filed this application for interim injunction restraining the defendants from giving delivery of auctioned scrap without making measurement as per Order XXXIX Rule 1 and 2 read with Section 151 and 94 of the Code of Civil Procedure (for short 'the Code').

2. In short, it is application of the plaintiff that, defendant No.1 is Maharashtra State Electricity Transmission Company, Limited incorporated under Companies Act in June 2005. Defendant No.2 is company appointed by defendant No.1 to look for e-commerce and having e-auction portal for the purpose of e-auction sale of scrap of iron, aluminum conductor, GI, MS, AC, SR conductor, Copper, Brass etc. by floating the tender by e-auction. The scrap is auctioned in lot system and lot and weightment system. The plaintiff has submitted tender for 5 lots as described in paragraph No.5 of the application. On the basis of e-auction tender notice, it is represented that the proposed auction purchaser will purchase the lots after weightment of lots. Relying upon notice, the plaintiff submitted e-tender by depositing security deposit for purchase of lots mentioned in paragraph No.5.

3. The defendant has to deliver the scrap after weightment. But, later on the defendant made communication by E-mail as per paragraph No.7 of this application and directed to take delivery of purchased scrap on “as is where is basis” without any guarantee of weight. The said communication is arbitrary and against statutory

provision of law and fundamental procedure of Judicial Procedure. They have no right to change the condition. Hence, it is necessary to grant injunction restraining the defendants from delivering auctioned scrap material without weightment and prayed to allow the application.

4. The defendants filed say and written statement vide Exh.27 and contended that defendant No.1 is government undertaking company looking after transmission of electric energy from generation to institution. Metals arising out of the said project is being disposed of by defendant No.2 vide e-auction. According to clause 8 of selling agency agreement, defendant No.1 shall provide list of material with details which is published by defendant No.2 subject to inspection of the auction purchaser. It is responsibility of purchaser to inspect the scrap and then bid for auction of the scrap. There is no infrastructure for weightment and it is not represented that scrap will be delivered after weightment. Therefore, the plaintiff has to take delivery on "as is where is basis" and "lot basis" without weightment. The purchaser has to take inspection before bidding. Accordingly, lots were purchased by the plaintiff on lot basis. Therefore, he has no right to claim weightment. Other contentions in the suit and application are denied and prayed to reject the application.

5. The points for determination alongwith my findings thereon with reasons are as follows:-

Sr. No.	**POINTS**	**FINDINGS**
1.	Whether the plaintiff has prima-facie case?	No.
2.	Whether balance of convenience lie in favour of the plaintiff?	No.

3.	Whether the plaintiff will suffer irreparable loss in absence of injunction order?	No.
4.	What order?	The application is rejected.

<u>R E A S O N S.</u>

<u>AS TO POINT NOS. 1 TO 3</u> :-

6. Heard Learned Advocate for the parties. They argued to the tune of the application and the reply. I have gone through the pleadings and documents on record filed by the parties. Point Nos.1 to 3 are intermingled and interconnected with each other. Therefore, these are taken for decision simultaneously to avoid repetition of facts and evidence. Moreover, to precise the discussion, it will be legal and proper to mention the facts which are not in dispute. Hence, I opt to mention those facts prior to discussion of main points.

7. Defendant No.1 is Government undertaking company established under Companies Act. It is dealing with generation and transmission of electricity from its point of generation to its point of distribution. Defendant No.2 is company established under Companies Act to look for e-commerce and having its e-auction portal at internet. E-auction tender notice is published by defendant Nos. 1 and 2 for e-auction of scrap. The plaintiff submitted tender for purchase of five lots i.e. lot No.761, 769, 703, 713 and 717 for Rs.36,83,526/- by depositing security deposit of Rs.7,72,681/- are the facts which are not in dispute. Only it is contention of the plaintiff that the defendants have to give delivery after weightment but they made communication dated 06.10.2023 and retracted from their commitment of weightment. It is denied by the defendants and contended that the plaintiff has to take

delivery on the "lot basis" and "as is where is basis". Hence, there is no question of weightment. Hence, point Nos. 1 to 4 are before the court for determination.

8. The plaintiff contends that he has purchased scrap material on lot and weigthment basis. But there is no document in support of this contention. After perusal of tender of lot No.703, 713, 717, 761 and 769 in clause number 4, it is mentioned that the purchaser has to purchase the material in e-auction on "lot basis". Moreover, the material is offered for sale on "as is where is basis". The bidder has to inspect the material before bidding and it will be sold on lot basis. The wight mentioned is on approximation and quantity in actual may be less or more than estimated quantity. It simply means that there is no clause of delivery after weighment in the e-tender.

9. The defendants have kept specific date for inspection of material before bidding. In the present case, date of inspection is 04.09.2023 to 20.09.2023 and date of e-auction is 21.09.2023. In the inspection period, the bidder is expected to inspect the scrap to apprehend the weight and quantity of the material in the lots and then bid for the same. The clause of inspection presupposes that it is not on weightment base delivery. In the circumstances, it can not be said that the plaintiff has prima facie case. Therefore, there is no question of retraction from the commitment by the defendants.

10. The plaintiff relied upon ***Trupti Oil Industries and another Vs. State of Maharashtra and others, AIR 1984 BOMBAY 161*** and prayed to allow the application. I have gone through the said ruling in which government has announced scheme to give incentive for

establishing industrial unit in backward areas but, later on the State Government has not abide by the promise given through scheme announced. Hence, it is estopped by the principle of promissory estoppel as per Section 115 of the Indian Evidence Act. But, in the present suit, the plaintiff failed to show that the defendants have represented that scrap will be delivered after weightment. Hence, this ruling is not useful to the plaintiff.

11. The plaintiff is relied upon ***M/s. Manuelsons Hotel Private Limited Vs. State of Kerala and others AIR 2016 SUPREME COURT 2322***, I have gone through the said ruling also in which government has given exemption to the hotel declaring tourism as industry and given various concession including building tax. Hence, petitioner has constructed hotel building. But, government has denied relief of building tax and other exemptions to the petitioner contending that notification under Section 3A of the Kerala Building Tax Act is not issued by the Government. Hence, the Hon'ble Supreme Court held that it can be remedied by the application of doctrine of promissory estoppel vide Section 115 of the Indian Evidence Act. But, there is no clause of delivery of scrap after weightment in the tender published by the defendants. Hence, this ruling is not useful to the plaintiff.

12. The plaintiff contends that the defendants misrepresented that the scrap will be delivered after weightment. But, it has no foundation as per the documents filed on record. On the contrary, all the documents support the contention of the defendants that the scrap material is e-auctioned on lot basis and "as is where is basis". Even weight of lots mentioned is in approximation. The plaintiff has right to inspect the scrap and then he has to bid. Accordingly, he appears to

have purchased the scrap. Hence, balance of convenience does not appear in his favour and there is no question of irreparable loss in absence of injunction order. Hence, I answer point Nos. 1 to 3 in the negative.

<u>AS TO POINT NO. 4</u> :-

13. The plaintiff failed to establish his entitlement of injunction as prayed. He failed to establish prima-facie case, balance of convenience in his favour and irreparable loss in absence of injunction order. Hence, he is not entitled for injunction restraining the defendants from delivering the scrap without weightment. Hence, the application is liable to be rejected. Considering circumstances and facts of the case, it will not be proper to impose costs on any party at this stage. Hence, costs of application shall have to be directed to follow the event. Hence, I answer point Nos. 1 to 3 accordingly and in answer to point No. 4, I pass the following order:-

<u>ORDER</u>

1. The application Exh.5 for temporary injunction is rejected

2. The cost of the application to follow the event.

Digitally signed by PANDHARINATH D ZAMBRE
Date: 2023.11.28 17:20:00 +0530

Date 28.11.2023
Place:Amravati

(Pandharinath D. Zambre)
2nd Jt.Civil Judge (Sr.Dn.)
Amravati