



Order below Exh.69 in
Special Darkhast No.30/2019

(M/s. C.R. Constructions etc. Vs. Maharashtra Jeevan Pradhikaran etc.)

Perused the application, say of other side. Heard D.H. in person and learned counsel for J.Ds'. Gone through the whole record carefully.

(2). In short, it is the contention of D.H. in this application that this Darkhast was for an order below Exh.33, at that time Hon'ble Bombay High Court has passed an order staying this Darkhast on 07/04/2021. A stipulation was mentioned in it directing J.Ds' to furnish a Bank Guarantee of Rs.24,06,100/- within eight weeks in Trial Court and if J.Ds' do not furnish it, then the Second Appeal would be dismissed automatically and stay would be vacated.

(3). It is further assertion of D.H. that, the J.Ds' have not furnished the Bank Guarantee within the above time limit and it was furnished with delay and with insufficient stamp too. As per Maharashtra Stamp Act the said Bank Guarantee become inadmissible. For the said Bank Guarantee, stamp of Rs.4,900/- is necessary, but the Bank Guarantee furnished by the J.Ds' is on stamp of Rs.500/- He had filed an applications at Exh.59 and Exh.61, those are rejected by 7th Jt.C.J.S.D., Sangli.

(4). It is further assertion of D.H. that the said Court was not competent to conduct the proceedings in this case under Commercial Courts Act, so this Darkhast is transferred to this Court. For the justice, the applications at Exh.33, 59 and 61 are necessary to be heard and decided again.

(5). It is further assertion of D.H. that, the stay order of Hon'ble Bombay High Court was till 30/06/2021, the status report of the said appeal shows the date as 30/06/2021. The stay order extended from time to time due to decisions taken by Hon'ble Bombay High Court for all the suits after 30/06/2021. After control of COVID-19 situation Hon'ble Bombay High Court by order dated 08/10/2021, the stay order is vacated.

(6). It is further assertion of D.H. that, there was stay from 07/04/2021 to 07/10/2021. The Hon'ble Bombay High Court had given time for eight weeks from 07/04/2021. The J.Ds' have not obeyed the stay order *in toto*. After passing an order dated 07/04/2021, the J.Ds' could have complied the order before May Vacation and the said appeal is dismissed as J.Ds' not complied the order of Hon'ble Bombay High Court.

(7). It is further assertion of D.H. that, J.Ds' have not took efforts to extend the stay in Hon'ble Bombay High Court from 30/06/2021. After 08/10/2021 about one and half months are elapsed from the order of vacating the stay order, nevertheless J.Ds' have not taken steps in Hon'ble Bombay High Court. Hence, D.H. prayed that Exh.59, Exh.61 and Exh.33 are be heard and decided.

(8). J.Ds' filed their say at Exh.71 and strongly objected to this application. They contended that, they have complied the stipulations laid down by Hon'ble Bombay High Court and also those are complied within time and they have given Bank Guarantee of proper amount within time. So, as per order of Hon'ble Bombay High Court, this Darkhast is presently stayed. Earlier D.H. had raised this issue and on that the C.J.S.D. has rejected the said objection by passing order in depth.

(9). It is further assertion of J.Ds' that if there is any objection regarding the order of Hon'ble Bombay High Court, the D.H. has to submit it before Hon'ble High Court, it do not come within the jurisdiction of this Court. So, this Court cannot taken-into-consideration this issue.

(10). It is further assertion of J.Ds' that the Hon'ble Bombay High Court had not given the stay in respect of COVID-19 as per contention of D.H., but it was given on the stipulations of furnishing the Bank Guarantee by J.Ds'. D.H. has knowledge of the said stipulations and J.Ds' have complied it completely, so D.H. cannot take objection now in respect of it. So, this Darkhast is stayed as per order of Hon'ble Bombay High Court. Therefore, any order or hearing by this Court will not be proper.

(11). It is further assertion of J.Ds' that the D.H. has to seek the relief in Hon'ble High Court about his any demand or in respect of stay. Earlier orders are passed on Exh.59 and Exh.61 and Exh.33, again it is not proper to raise issue in this respect. So, J.Ds' prayed to reject the application.

(12). First of all, we have to consider whether there is a necessity to decide the applications at Exh.59 and Exh.61 again ! I have gone through the Exh.59 and Exh.61 and orders passed on them by 7th Jt.C.J.S.D., Sangli.

(13). As far as, Exh.59 is concerned, main grievance of D.H. in it was regarding non compliance of order of Hon'ble Bombay High Court by J.Ds' within stipulated time and requirement of more stamp on Bank Guarantee. The same was considered by Court of 7th Jt.C.J.S.D., Sangli in depth and has passed the order on it. Further, D.H. had filed an application at Exh.61 about insufficient stamp duty affixed on Bank

Guarantee. The same was also considered by the Court of 7th Jt.C.J.S.D., Sangli in depth. I do not think to go into the questions raised in Exh.59 and Exh.61 by D.H., again. I believe that the orders have been passed properly, so even if it is taken that the Court of 7th Jt.C.J.S.D., Sangli had no jurisdiction to pass order below Exh.59 and Exh.61. Nevertheless, I do not deem proper to decide those applications again as the said Court has in depth considered the contentions of D.H. and decided those applications.

(14). As far as the order below Exh.33 is concerned, before transfer of this Darkhast from this Court to the Court of 7th Jt.C.J.S.D., Sangli I had heard the arguments of D.H. and counsel for J.Ds' on that application. So, there is no necessity to hear the arguments again on Exh.33 from D.H. and J.Ds'.

(15). Now, the question is whether there is a stay to this Darkhast from Hon'ble Bombay High Court today. On perusal of record, it is seen that the Hon'ble Bombay High Court had given stay to this Darkhast by passing an order on 7th April, , 2021 in Second Appeal No.149/2021. In the said order the Hon'ble Bombay High Court had given stay only upto 30/06/2021. In the said order in Para (3) the words specifically "till the next date" are used, that means the stay to this Darkhast was only upto 30/06/2021. On perusal of record, it is seen that, the J.Ds' have not get extended the said stay order from Hon'ble Bombay High Court from 30/06/2021. Furthermore, there was stay of Hon'ble Bombay High Court in Suo moto Public Interest Litigation No.1/2021, but the protection given in the said P.I.L. was vacated on 08/10/2021. That can be seen from the document at list Exh.70/2, that means the J.Ds' ought to have brought the stay of Hon'ble Bombay High Court after 12/10/2021. Therefore, the J.Ds' have failed to get extend the stay to this Darkhast from Hon'ble Bombay

High Court, since 30/06/2021. Merely because the J.Ds' have furnished the Bank Guarantee, do not mean that there is a stay to this proceeding from Hon'ble Bombay High Court automatically.

(16). Now we will consider the some contentions of J.Ds' mentioned in their say about seeking the relief by D.H. before the Hon'ble Bombay High Court only. In short, in sum and substance the main assertion of J.Ds' in their say is that, as appeal is pending before the Hon'ble Bombay High Court, the D.H. has to make his all grievances before Hon'ble Bombay High Court and not before this Court. It is to be noted that, as there is no stay to this Darkhast from Hon'ble Bombay High Court today, then this Court can deal with this Darkhast and pass necessary orders for execution of the decree in this Darkhast. Therefore, the contention of the J.Ds' that D.H. has to put up all objections before Hon'ble Bombay High Court is not acceptable and sustainable.

(17). In view of above reasons and discussions this Court can pass an order below Exh.33, there is no hurdle to this Court to pass an order below Exh.33.

(18). In view of above reasons and discussions I proceed to pass the following order.

ORDER

- (1). The prayer of D.H. to decide Exh.59 and Exh.61 again, is hereby rejected.
- (2). This Court has passed order below Exh.33 today.
- (3). No order as to costs.

Sangli
Date : 06/01/2022.

Sd/xx
(L.D.Huli)
Civil Judge Sr.Dn., Sangli.

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word as per the original order.

Name of Stenographer : G.S.Parve

Court : Civil Judge Sr.Dn., Sangli

Date : 06/01/2022

Signed by the Presiding Officer : 06/01/2022
on

Uploaded on : 07/01/2022