

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12626 OF 2023

Gauri Spinning Mills Pvt. Ltd. & Ors.

.. Petitioners

Versus

Vikas Soni and Company & Anr.

.. Respondents

WITH

WRIT PETITION NO.12627 OF 2023

.....

- Mr. Prasad Pradeep Kulkarni, Advocate for Petitioner.
- Ms. Kshitija Govind Saragi, Advocate for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 04, 2024

P.C.:

1. I have heard Mr. Kulkarni, learned Advocate for Petitioner and Ms. Saragi, learned Advocate appearing for the Respondent.

2. The challenge in the present Petition is to the impugned order dated 11.08.2023 passed below Exhibit-62 in Special Civil Suit No.52 of 2017. By that Application the original Plaintiff sought release of the amount of Rs.41,38,900/- which was the secured amount of the transaction received after sale of the attached properties and stood deposited into the Bank account with Solapur Janta Sahakari Bank Limited.

3. Both the learned Advocates have been fair and are *ad idem* while making their respective submissions as also while interpreting the contents of the impugned orders dated 11.08.2023. By virtue of

the impugned order and more specifically clause 4 of the operative part of the said order, the learned Trial Court has allowed the Application with a caveat that the Plaintiff would be entitled to received the aforementioned amount only after furnishing a full Bank guarantee to that extent.

4. *Prima facie*, I find no fault in the adjudication and reasoning given by the learned Trial Court in the order dated 11.08.2023 and undoubtedly in the facts of the present case such an order deserves to be sustained, since the suit amount stands fully secured by way of a Bank guarantee to be deposited.

5. However Mr. Kulkarni has drawn my attention to the Application at page No.112 preferred by the Plaintiff in furtherance of the order dated 11.08.2023. It requires a little modification in so far as submission of the Bank guarantee is concerned. That Application, it is seen that, was allowed by the learned Trial Court in view of the grounds mentioned therein.

6. Mr. Kulkarni's grievance is that while considering the grounds and this Application, the Defendants were not heard. I do not still do not find anything unreasonable as stated in the said Application as also for allowing the said Application since the order dated 11.08.2023 does not stand varied or disturbed at all.

7. Mr. Kulkarni would further submit that in the present case

the original transaction amount i.e. principal amount is approximately Rs.19,00,000/- and alongwith interest which stands attached is approximately Rs.41,38,900/-. He would submit that this being a commercial transaction as also due to long pendency of the suit for the past 7 years, without prejudice to the rights and contentions of the parties Defendants are ready and willing to consider an amicable resolution and offer a settlement to the Plaintiff.

8. Undoubtedly the aforementioned submission of Mr. Kulkarni is without prejudice to the rights and contentions of both the parties. Considering that suit at present is at stage of witness action of the Plaintiff itself and the long impending trial proceedings, I have impressed upon the learned Advocate appearing for the Plaintiff i.e. Respondent before me to take instructions and consider an amicable resolution so as to put an end to the dispute finally between the parties.

9. At the joint request of parties, stand over to **09th January, 2024.**