

BANDEKAR BROTHERS PRIVATE LTD. ETC.

v.

M/S. V.G. QUENIM & ORS.

(Civil Appeal Nos. 3533-3540 of 2012)

APRIL 13, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Remand - Recovery suits as also various applications filed by appellant against respondent - Orders passed by trial court, High Court and Supreme Court in the matter on different occasions - Remand of the matter to the trial court for de novo consideration of the applications filed by the appellants, by the High Court - Interference with - Held: Considering the various disputes, orders passed by the courts and in order to shorten the litigation, taking note of the stand taken by the respondents in the form of an affidavit that the property which was the subject matter of the undertaking given by them, would not be encumbered in any manner in favour of any third party nor any interest would be created in favour of any third party, interference with the remand order passed by the High Court, not called for - Both parties permitted to clarify their stand briefly before the trial court and leave it to the court for passing appropriate orders, as directed by the High Court.

Appellants filed suits against respondents for recovery of money. Applications were also filed seeking ad-interim/interim reliefs. Thereafter, several disputes arose and several applications and petitions were filed. The trial court, the High Court and the Supreme Court on different occasion passed various orders. The respondents gave an undertaking that they would not part with the shares 'VP' company and the Mining Machinery, however, pursuant to the order passed by the

- A Supreme Court, the respondents demolished the said residential bungalow. Aggrieved, the appellants filed an application and the same was dismissed. The appellants then filed a writ petition. The respondents also filed a writ petition. The High Court disposed of the writ petitions by
- B remanding the matter to the trial court for de novo consideration of the applications filed by the appellants. Therefore, the appellants filed the instant appeals.

Disposing of the appeals, the Court

- C HELD: 1.1 Pursuant to the order of the High Court, the trial court proceeded to hear the arguments on the applications and, in fact, heard arguments on the said applications for a period of 11 days. It is seen from the records that the grievance of the plaintiff in all the
- D applications under consideration is that even though the defendants have given an undertaking that they would not part with the shares 'VP' company and the Mining Machinery on 13.05.2002 pursuant to the order of this Court dated 19.04.2002, the defendants demolished the
- E said residential bungalow, which was the subject matter of the undertaking given by them. In view of the long history of the case and various earlier orders passed by the High Court as well as by this Court, the matter is probed once again. [Para 6] [235-A-D]
- F 1.2 Respondents fairly stated that though the respondents demolished the bungalow, they have not encumbered or sold the same to anyone, on the other hand after demolition, a new bungalow was constructed. He also pointed out that the said plot was adjoining to
- G one which also belongs to them. In the form of an affidavit, respondent No.6 and his wife-respondent No.7 filed an undertaking. In both the affidavits, they highlighted that their ownership and entitlement of the property in question, construction of new bungalow and
- H the two plots. They also asserted that as on date both of

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them are the owners of the said new bungalow and the land on which the said bungalow is existing. They also made a specific undertaking that pending disposal of the suits pending in the Court of Civil Judge, Senior Division, they would not part with the possession of the said bungalow as also the land on which the said bungalow is existing nor the said bungalow and land on which the bungalow is existing shall be encumbered in any manner in favour of any third party nor any interest would be created in favour of any third party. It was prayed for recording of the said undertakings of respondent Nos.6 and 7. As far as the sale of iron ore and machinery etc. is concerned, it is claimed that the injunction order was not served on them on the date when the alleged disposal took place. It is a matter for verification and it is for the trial court to ascertain from the records. [Para 7] [235-E-H; 236-A-C]

1.3 Though the counsel for the appellants vehemently opposed the order of the remand and the conduct of the respondents, considering various disputes and orders passed by the trial court, the High Court and this Court on different occasion and in order to shorten the litigation, taking note of the stand taken by the respondents, particularly, respondent Nos. 6 and 7 in the form of affidavits, the impugned order of the High Court is not interfered with. On the other hand, both parties are permitted to clarify their stand briefly before the trial court and leave it to the court for passing appropriate orders, as directed by the High Court. Respondent Nos. 6 and 7 are permitted to file an affidavit in the form of an undertaking before the trial court as filed in this Court. The order of remand made by the High Court is confirmed and the trial court is directed to pass appropriate orders. [Para 8] [236-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3533-3540 of 2012.

A From the Judgment & Order dated 14.12.2009 of the High Court of Bombay at Goa in Writ Petition Nos. 558-561 of 2009.

Ranjit Kumar, Krishan Venugopal, B.V. Gadnis, A. Venayagam Balan for the Appellant.

B Mukul Rohtagi, Rajesh Kumar, Ragnath, Yogesh Nadankar, Sarwa Mitter (for Mitter & Mitter Co.) for the Respondents.

The Judgment of the Court was delivered by

C **P. SATHASIVAM, J.** 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 14.12.2009 passed by the High Court of Bombay at Goa in Writ Petition Nos. 558-561 of 2009 filed by the respondents herein and Writ Petition Nos. 600-603 of 2009 filed by the appellants herein wherein the High Court disposed of all the writ petitions remanding the matter back to the trial Court for de novo consideration of the applications being C.M.A. Nos. 26 of 2007 to 29/2007/A and C.M.A. Nos. 31/2007 to 34/2007/A filed by the appellants herein in Special Civil Suit Nos. 7, 8, 14 & 21/2000/A respectively.

3. Brief facts:

F a) M/s Bandekar Brothers Pvt. Ltd. filed three suits against the respondents herein for recovering money being Special Civil Suit No. 7/2000/A on 08.02.2000 for a suit claim of Rs.91,89,973.50 and for further interest against the hiring of services; Special Civil Suit No. 14/2000/A on 31.03.2000 for a suit claim of Rs.2,65,71,705/- and for further interest against the transactions of Iron Ore taken on loan/returnable basis by respondent No.1; Special Civil Suit No. 21/2000/A on 09.06.2000 for a net suit claim of Rs.2,98,58,668.49 for further interest being the dues against the transactions of exchange of Ore taken place between the parties. M/s Vasantram Mehta & Co. Private Limited, a sister concern of M/s Bandekar Bros.

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Private Limited filed a Civil Suit being Special Civil Suit No. 8/ 2000/A on 17.02.2000 against the respondents for a suit claim of Rs.7,40,405.83 and for further interest against the hiring of services. With the said four civil suits, the respective appellants also filed applications seeking ad-interim/interim reliefs being CMA Nos.19, 50, 26, 60, 99 and 160/2000/A respectively. A
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b) In C.M.A. No. 19/2000/A in Special Civil Suit No.7/2000/A, the Civil Judge by order dated 09.02.2000 restrained the respondent-Company from creating further interest in the iron ore lying at its Kudnem Stockyard at Kudnem. On 10.03.2000, the respondents, under the written statement, denied having had any transactions of loan and exchange of Ore with the appellants and in turn filed a counter claim by issuing a fabricated Debit Note dated 09.03.2000 for Rs.1,88,27,796/- claiming to have supplied 51416.800 WMT of Ore to them on sale basis until June 1999. C
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c) On 18.03.2000, the appellants filed another application being CMA No. 50/2000A applying for a temporary injunction on the ground that despite the order dated 09.02.2000 passed by the Civil Judge, the respondent-Company had sold iron Ore to its sister concern – M/s Kudnem Mineral Processing Company Private Ltd. By order dated 21.03.2000, the Civil Judge declined to grant ad interim relief to the appellants. E

d) Against the said order, the appellants preferred CRA No. 83 of 2000 before the High Court of Bombay, Panaji Bench at Goa. By order dated 31.03.2000, the High Court remanded the matter back to the trial Court by recording the statement made by the respondents that they would not dispose of or alienate the assets described in the schedule to the said order till the disposal of CMA No.50/2000/A by the trial Court. One of the assets included in the said Schedule was a residential bungalow. F
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e) On 13.07.2000, the respondent-Company filed written statement in Special Civil Suit No. 8/2000/A in which they H

A claimed to have supplied 27573.780 WMT of Ore to the sister concern of the appellants on sale basis from February, 1996 to June, 1997 and filed a counterclaim for the said sum. In Special Civil Suit Nos. 14 and 21/2000/A also, the respondents filed written statements and denied having had any transactions of loan/return and exchange of Ore between them during the period from February, 1996 to June, 1999.

C f) Despite the stay order passed by the High Court on 31.03.2000, the respondents removed one of the scheduled items. Against that action of the respondents, the appellants filed MCA No. 480 of 2000 in CRA No. 83 of 2000 before the High Court for contempt of the order dated 31.03.2000. By order dated 18.01.2001, the High Court directed the respondents not to take any of the scheduled items till the disposal of the applications filed by the appellants before the trial Court.

E g) By a common order dated 13.03.2001, the trial Court dismissed CMA No.19/2000/A filed for attachment before judgment whereas in CMA No.50/2000/A, it granted injunction only to the extent of machineries.

F h) Aggrieved by the said order, the appellants preferred Appeal Nos. 27 and 28 of 2001 before the High Court wherein the High Court by order dated 11.05.2001 again remanded the matter back to the trial Court to decide the applications afresh. In that order, the High Court recorded the undertaking given by the respondents that they would abide by order dated 18.01.2001 passed by it till the trial Court finally dispose of all the applications pending before it.

G i) On remand, the trial court, by its common order dated 05.09.2001, granted some reliefs in all the applications filed by the appellants in the said four suits.

H j) Aggrieved by the said order, the respondents filed appeals from Order Nos. 57 to 61 of 2001 before the High

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Court which were dismissed by the High Court by a common judgment dated 13.12.2001. A

k) Challenging the said order of the High Court, the respondents filed special leave petitions (converted to C.A. No.6102 of 2004) before this Court. This Court, by order dated 19.04.2002, modified the order dated 05.09.2001 passed by the trial Court to the extent setting aside the conditional attachment on the properties. This Court further directed the respondents to give an undertaking before the trial Court that they would not part with the shares of M/s Vilman Packaging Pvt. Ltd., the residential bungalow at No.436, Miramar, Panaji, Goa and the mining machinery. B C

l) On 29.01.2003 the respondent-Company filed a suit for recovery of money against the appellants. D

m) After completion of arguments in three suits (Civil Suit Nos. 7, 8 and 14/2000/A) judgments were reserved by the trial Court. The hearing was not completed in Civil Suit No. 21 of 2000/A. E

n) Respondent No.1 (e) submitted an application before the North Goa Planning and Development Authority to construct a new residential bungalow in his name on the plot on which H.No.436 existed and the adjacent plot owned by him and for the amalgamation of the said two plots. By order dated 13.12.2006, the Authority granted the said permission. F

o) For the reasons stated by the Civil Judge, this Court by order dated 27.04.2007 extended the time to decide the suit within three months. G

p) On 18.09.2007, the trial Court commenced the arguments in Special Civil Suit No.21/2000/A. The respondent filed an application dated 28.09.2007 to withdraw the special Civil Suit No.1 of 2003. By order dated 01.10.2007, the trial Court allowed the said application for withdrawal. H

A q) The appellant filed application being CMA No. 26/2007 before the trial Court on 30.11.2007 under Order XXXIX Rule 2A seeking to pass appropriate orders for disobedience of injunction granted by the trial Court and for striking off the defence for willful breach of the undertaking given to the trial Court under Rule 11.

B r) The appellant also filed C.M.A No. 31 of 2007 before the trial Court on 10.12.2007 under Order XXXIX Rules 2 and 7 for injunction against the respondents from carrying out any further work or damaging the property in question. In other three suits also, the appellant filed the similar applications.

C s) In the said applications, the respondent filed reply dated 10.04.2008 justifying the demolition and an additional affidavit tendering conditional apology.

D t) The Civil Judge, Senior Division, Panaji by order dated 06.06.2009 dismissed C.M.A. No.26/2007 and granted the relief prayed for in C.M.A. No.31/2007.

E u) Aggrieved by the order dated 06.06.2009, the appellants preferred W.P. Nos. 600 to 603 of 2009 and respondents preferred W.P. Nos. 558-561 of 2009 before the High Court. By the impugned final judgment and order dated 14.12.2009, the High Court disposed of the writ petitions by remanding the matter to the trial Court for de novo consideration of the applications filed by the appellants.

F v) Aggrieved by the said order, the appellants have filed these appeals by way of special leave petitions before this Court.

G 4. Heard Mr. Ranjit Kumar and Mr. Krishnan Venugopal, learned senior counsel for the appellants and Mr. Mukul Rohtagi, learned senior counsel for the respondents.

H 5. The only point for consideration in these appeals is whether the High Court is justified in remanding the matter to

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the trial Court for de novo consideration of the applications filed by the appellants herein? A

6. It is brought to our notice that pursuant to the order of the High Court dated 14.12.2009, the trial court has proceeded to hear the arguments on the applications and, in fact, heard arguments on the said applications for a period of 11 days commencing from 06.01.2010 ending on 20.02.2010. It is seen from the records that the grievance of the plaintiff in all the applications under consideration is that even though the defendants have given an undertaking that they will not part with the shares of M/s Vilman Packaging Private Limited, House No. 436 at Miramar, Panaji and the Mining Machinery on 13.05.2002 pursuant to the order of this Court dated 19.04.2002, the defendants have demolished the said residential bungalow, which was the subject matter of the undertaking given by them. In view of the long history of the case and various earlier orders passed by the High Court as well as by this Court, we are not inclined to go further and probe the matter once again. B
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7. Mr. Mukul Rohtagi, learned senior counsel for the respondents fairly stated that though the respondents have demolished the bungalow, they have not encumbered or sold the same to anyone, on the other hand after demolition, a new bungalow was constructed. He also pointed out that the said plot was adjoining to one which also belongs to them. In the form of an affidavit, Shri Prasad Vassudev Keni, respondent No.6 and his wife, Smt. Vini Prasad Keni, respondent No.7 filed an undertaking. In both the affidavits, they highlighted that their ownership and entitlement of the property in question, construction of new bungalow and the two plots, namely, Chalta Nos. 11 and 15 of P.T. Sheet No. 116, which bungalow has been allotted House No.13/436/A. They also asserted that as on date both of them are the owners of the said new bungalow and the land on which the said bungalow is existing. They also made a specific undertaking that pending disposal of the suits, E
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A viz., Special Civil Suit Nos. 7/2000, 8/2000, 14/2000 and 21/
 2000 pending in the Court of Civil Judge, Senior Division at
 Panaji, Goa, they shall not part with the possession of the said
 bungalow bearing House No.13/436/A as also the land on
 B land on which the bungalow is existing shall be encumbered in
 any manner in favour of any third party nor any interest will be
 created in favour of any third party. Mr. Rohtagi prayed for
 recording of the said undertakings of respondent Nos.6 and 7.
 As far as the sale of iron ore and machinery etc. is concerned,
 C it is claimed that the injunction order was not served on them
 on the date when the alleged disposal took place. It is a matter
 for verification and it is for the trial Court to ascertain from the
 records.

D 8. Though Mr. Ranjit Kumar and Mr. Krishnan Venugopal
 vehemently opposed the order of the remand and the conduct
 of the respondents herein, as observed earlier, considering
 various disputes and orders passed by the trial Court, the High
 Court and this Court on different occasion and in order to
 shorten the litigation, taking note of the stand taken by the
 E respondents, particularly, respondent Nos. 6 & 7 in the form of
 affidavits, we are not inclined to interfere with the impugned
 order of the High Court. On the other hand, we permit both
 parties to clarify their stand briefly before the trial Court and
 leave it to the Court for passing appropriate orders, as directed
 F by the High Court. Respondent Nos. 6 and 7 are permitted to
 file an affidavit in the form of an undertaking before the trial
 court as filed in this Court.

G 9. In the light of what is stated above, we dispose of these
 appeals by confirming the order of remand made by the High
 Court and direct the trial Court to pass appropriate orders as
 early as possible, preferably within a period of three months
 from the date of receipt of copy of this judgment. There shall
 be no order as to costs.

H N.J.

Appeals disposed of.