

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9865 OF 2018

[Arising out of SLP (C) No.23737 of 2018]

M/s Empee Distilleries Limited & Ors. .. Appellant(s)

Versus

M/s Gimpex Private Ltd. & Anr. .. Respondent(s)

J U D G M E N T

¹
Abhay Manohar Sapre, J.

1. Leave granted.
2. This appeal is filed against the judgment and order dated 04.06.2018 passed by the High Court of Judicature at Madras in Original Side Appeal (Commercial Division) No.155 of 2018 whereby the Division Bench of the High Court dismissed the appeal filed by the appellants herein and confirmed the order dated 28.03.2018 passed by the Single

Judge of the High Court in Application No.2527 of 2018 in Application No.2215 of 2018 in C.S. (Comm.Div.) No.161 of 2018.

3. Few facts need mention *infra* for the disposal of this appeal, which involves a short point.

4. The appellants are defendant Nos. 1 and 2 whereas respondent No.1 is the plaintiff in the civil suit out of which this appeal arises.

5. On 06.03.2018, respondent No. 1 filed a civil suit being C.S. (Comm.Div.) No. 161/2018 against appellant Nos. 1, 2 and one more defendant on the original civil jurisdiction side before the High Court at Madras. The suit is *inter alia* founded on certain commercial transactions executed between the plaintiff and defendant Nos. 1 and 2 in relation to supply of coal. It is filed for the recovery of Rs.19,54,29,693/-.

6. Respondent No.1 (plaintiff), on 06.03.2018, filed an application (A.No.2215/2018) along with the plaint seeking prohibitory order against the Tamil Nadu State Marketing Corporation (TASMAC) (respondent No. 2 herein). In that application, it was alleged that a sum of Rs.24,00,00,000/- (Rs. Twenty four crores) is payable by respondent No. 2 to the appellants (defendant Nos.1 and 2) and, therefore, prohibitory order be passed against respondent No.2 herein restraining them from paying money to the appellants (defendant Nos. 1 and 2) to the extent of Rs.19,54,29,693/-,i.e., the amount claimed in the suit by the plaintiff.

7. On 13.03.2018, the Single Judge of the High Court passed *ex parte* prohibitory interim order against the appellants (defendant Nos. 1 and 2). The appellants then filed an application on 20.03.2018 and sought vacation of the *ex parte* prohibitory

interim order dated 13.03.2018. By order dated 28.03.2018, the Single Judge, in substance, affirmed the order dated 13.03.2018 and directed that it is made applicable on TASMACH *qua* appellant Nos. 1 and 2 in relation to the supplies made up to 19.03.2018. In this way, both applications, i.e., one filed by the plaintiff and the other filed by defendant Nos. 1 and 2 were disposed of.

8. Defendant Nos. 1 and 2 (appellants herein) felt aggrieved by the order dated 28.03.2018 filed appeal (O.S.A. No. 155/2018) before the Division Bench. By impugned order, the appeal was dismissed resulting in upholding of the order dated 13.03.2018 and 28.03.2018, which gives rise to filing of this appeal by way of special leave by defendant Nos. 1 and 2 in this Court against the order of the Division Bench dated 04.06.2018.

9. Heard Mr. Mukul Rohtagi, learned senior counsel appearing for the appellants and Mr. V. Giri, learned senior counsel for the respondents.

10. Mr. Mukul Rohtagi, learned senior counsel appearing for the appellants (defendant Nos. 1 and 2) while assailing the legality and correctness of the impugned order contended that it is not legally sustainable inasmuch as it does not satisfy the requirements of Order 37 Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) under which it was passed.

11. In the alternative and without prejudice to the appellants’ rights to prosecute the suit on merits, learned counsel also urged that in order to balance the equities and to safeguard their rights, which are subject matter of the suit and are not yet decided on their merits, the Courts below at best could direct the appellants to furnish adequate security to the extent

of the claim in the suit and such order would have been in conformity with the requirements of Order 37 Rule 5 of the Code.

12. In reply, Mr. V. Giri, learned senior counsel supported the impugned order.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to accept the alternative submission of the learned senior counsel for the appellants as, in our opinion, it has force and, if accepted, it would be in the interest of both the parties and would be in conformity with the requirements of Order 37 Rule 5 of the Code.

14. We, therefore, do not consider it necessary to go into the merits of the first submission of the learned senior counsel for the appellants and nor consider it proper to comment upon the merits and demerits of the case at this stage.

15. It is for the reasons that firstly, the suit is pending; secondly, contesting defendant Nos. 1 and 2 (appellants herein) have not yet filed their written statements disclosing their defense; and thirdly, the trial in the suit on merits is yet to commence.

16. In such circumstances, any observations made by this Court on facts would cause prejudice to the rights of the parties while prosecuting the suit on merits.

17. We also heard the learned counsel on the alternative submission.

18. Having heard learned counsel for the parties, we are inclined to dispose of the appeal by issuing the following directions for ensuring its compliance by the parties:

1. The appellants (defendant nos. 1 and 2) shall furnish Bank Guarantee for a sum of Rs.10 crores(Ten crores) of any Nationalized Bank.

2. The appellants shall also furnish solvent security for balance suit amount to the satisfaction of the concerned Court.

3. On ensuring compliance of condition Nos. 1 and 2 by the appellants, the impugned order stands set aside.

4. Let the compliance be done within a period of 3 months by the appellants as an outer limit.

19. The Court, which is seized of the suit, is requested to dispose of the civil suit on merits in accordance with law as expeditiously as possible preferably within a period of one year without being influenced by any of our observations made in this order.

20. In the light of the foregoing discussion and directions, the appeal stands disposed of.

.....J
(ABHAY MANOHAR SAPRE)

.....J.
(MOHAN M. SHANTANAGOUDAR)

New Delhi,
September 24, 2018