(2017) 04 BOM CK 0188

In the Bombay High Court

Case No : 1596 of 2017

M/s Sachin and Sachin Corporation, Acting Thr. Its Managing Partner Rajkumar Pralhadrao Meshram — APPELLANT

Vs

Maharashtra Tourism Development Corporation Ltd., & Anr. — RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Citation : (2017) 04 BOM CK 0188

Hon'ble Judges : B. R. Gavai, A. S. Chandurkar

Bench : DIVISON BENCH

Advocate : C. V. Kale, S. G. Jagtap

Final Decision : Dismissed

Judgement

1. The petitioner filed the present writ petition challenging the communication dated 03/03/2017 cancelling its lease deed and calling upon it to pay an amount of Rs.98,18,255/within a period of seven days failing which it has been directed that further legal action would be initiated against it by the respondents. According to the petitioner which is a firm, a leasedeed dated 06/07/1992 for a period of thirty years was entered into with the respondent for running a tourist resort. It is the case of the petitionerfirm that it was running its business through partnership. The partnership firm was reconstituted on 13/02/2010 whereby some erstwhile partners retired and new partners were inducted. It was agreed that till 31/03/2008 all liabilities were to be borne by the erstwhile partners. Accordingly, till March 2008 an amount of Rs.2,39,410/was due and payable to the Corporation and this amount came to be duly paid on 29/10/2013. It is then the case that despite such payment, further dues for the period prior to 01/04/2008 were being demanded from the petitioner. As the amount demanded under the impugned communication was not paid, the Corporation cancelled the leasedeed dated 06/07/1992 and took possession of the leasehold property giving rise to the present writ petition.

2. Shri C. V. Kale, learned counsel for the petitioner submitted that according to

the Corporation itself by the end of March 2008 an amount of Rs.2,39,410/was due and payable. He referred to the letter dated 22/01/2009 issued by the Corporation in that regard and submitted that this amount was already paid. According to him there was a change in the constitution of the partnership firm with effect from 01/04/2008 and it was agreed that the earlier liabilities would be cleared by the outgoing partners. He submitted that this change of partnership was accepted by the Corporation on 29/03/2011 and hence the subsequent demand of arrears of lease amount for the period from the year 1992 and onwards from the present partners was not sustainable. According to him, the Corporation being ''State'' within the meaning of Article 12 of the Constitution of India, it was expected to act fairly and abide by its communication dated 22/01/2009. He also relied upon the communication dated 29/10/2013 in that regard. In support of his submission that the reliefs sought in the present writ petition could be granted, he placed reliance upon the judgment of the Honourable Supreme Court in Joshi Technologies International Inc. vs. Union of India and ors. (2015) 7 SCC 726 and especially paragraphs 66 and 67 thereof. He therefore submitted that the impugned communication dated 03/03/2017 was liable to be set aside and the prayers made in the writ petition were liable to be granted.

3. Shri S. G. Jagtap, learned counsel for the respondents at the outset submitted that as per the partnership deed, the disputes arising between the petitioner and the Corporation were liable to be referred for arbitration. He then submitted that there was a serious dispute with regard to issuance of communication dated 22/01/2009 by the Corporation and he submitted that action had been initiated against the officer who had issued the said communication. In that regard he relied upon communication dated 18/05/2012 to urge that in the communication dated 22/01/2009 lessor amount than what was actually due had been demanded from the petitioner. He thereafter referred to various other subsequent communications issued by the Corporation calling upon the petitioner to clear dues of these amounts. He therefore submitted that it could not be said that the petitioner was not liable to pay arrears of these amounts from 06/07/1992 onwards and the claim of the petitioner as regards the actual outstanding amount was seriously in dispute.

4. We have heard the learned counsel for the parties and we have perused the documents on record. Though it cannot be disputed that a writ petition would be maintainable against an instrumentality which is ''State'' within the meaning of Article 12 of the Constitution of India that acts in an arbitrary manner, it is equally well settled that if there are serious disputed questions of facts which are of complex nature and require oral evidence for their determination, the High Court would be slow in entertaining such writ petition under Article 226 of the Constitution of India. In the judgment of the Honourable Supreme Court in Joshi Technologies (supra) that was relied upon by learned counsel for the petitioner, the principles on which the High Court may not exercise discretion under Article 226 of the Constitution have enumerated. Paragraphs 69.3 and 69.4 being

relevant for the present purpose are reproduced here under :

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

Further, observations made in paragraphs 70.6 and 70.8 are also relevant and they are reproduced here under :

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

5. If the submissions of the learned counsel for the parties are taken into consideration on the touchstone of the aforesaid legal provisions, it can be seen there is serious dispute with regard to the amount of dues demanded as per communication dated 22/01/2009. By this communication it is claimed that the total dues from the petitioner were Rs.2,39,410/. In fact according to the Corporation, the amounts due till March 2008 were Rs.48,73,848/as per its communication dated 07/05/2008. By its communication dated 18/05/2012, the Corporation has sought an explanation from the officer who had issued the communication dated 22/01/2009 and it was clarified that the figures showed therein were incorrect. It is to be noted that the entire thrust of argument of learned counsel for the petitioner is on the communication dated 22/01/2009. However, the various communications on which the respondents are relying indicate higher amount of dues even on 31/03/2008 which thus becomes a disputed issue which cannot be resolved without recording evidence. Though the learned counsel for the petitioner also relied on the communication dated 29/10/2013 issued by the Corporation, the Corporation has subsequently issued various communications demanding further amounts from the petitioner pursuant to which some payments also came to be made by the petitioner. Hence this aspect also does not support the stand of the petitioner.

6. In the light of the aforesaid material on record and in view of the clear stand of the respondents disputing the amount of dues payable by the petitioner till 31/03/2008, we do not find that this is a fit case that can be adjudicated in exercise of jurisdiction under Article 226 of the Constitution of India without recording oral evidence. Thus, following the law as laid down in the aforesaid

decision, we are not inclined to entertain the writ petition. It is clarified that any observations made in this judgment would not come in the way of the petitioner if it adopts any alternate remedy available in law. Similarly, the amount of Rs.5,74,000/paid by the petitioner pursuant to the order dated 16/03/2017 shall be taken into consideration as having been paid by the petitioner towards its dues without prejudice to the respective rights and contentions. The writ petition is accordingly dismissed with no order as to costs.

