
(2011) 04 BOM CK 0018

In the Bombay High Court

Case No : Contempt Petitions No. 16 of 2010

Sociedade Zarapkar and Parker Ltd.

APPELLANT

Vs

Salgaocar Engineers Pvt. Ltd. and Six Others

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Citation : (2011) 04 BOM CK 0018

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : A. Razaq, for the Appellant; M.S. Sonak, Advocate for Respondent Nos. 1 to 3 and Mr. A.N.S. Nadkarni for Respondent Nos. 4 and 5 in Contempt Petitions Nos. 16 and 17/2010 and Mr. A.N.S. Nadkarni for Respondent Nos. 5 and 6 in Contempt Petitions No. 17/2010, for the Respondent

Judgement

A.P. Lavande, J.—Heard Ms. Razaq, learned Counsel for the petitioner, Mr. Sonak, learned Counsel for respondent nos.1 to 3 in both the petitions and Mr. Nadkarni, learned Senior Counsel for respondent nos.4 and 5 in C. P. No. 16/10 and for respondent nos.5 and 6 in C. P. No. 17/10. None appears on behalf of the other respondents, though served. Leave to delete respondent No. 7 in C.P. No. 16/2010 and respondent No. 8 in C.P. No. 17/2010 Amendment to be carried out forthwith.

2. Both these Contempt Petitions are being disposed of by common order since the issue involved in both the petitions is identical.

3. According to the petitioners, respondent nos.1 to 6 in C. P. No. 16/2010 and respondent nos.1 to 7 in C.P. No. 17/2010 ("the respondents" for short) have committed contempt of order passed dated 14th January, 2010 in Appeal from Order nos. 2 and 3 of 2010. In the said above referred two appeals, the parties have filed minutes of order and the appeals were disposed of in terms of the minutes of order.

4. Placing reliance upon clauses 3 and 4 of the minutes of order in the two

appeals, Ms. Razaq submitted that the respondents were not entitled to lift the ore from stack nos.1 to 5 and the respondents were entitled to lift the ore only from stack nos.6 to 10 in terms of report dated 27th August, 2009 (wrongly mentioned in consent terms as 27th September, 2009)

5. According to Mr. Sonak and Mr. Nadkarni, learned Counsel appearing for the respondents, clauses 3 and 4 of the consent terms do not stipulate that the respondents are only entitled to lift the ore from stack nos.6 to 10. According to the learned Counsel, the remedy for the alleged breach is not by way of contempt and the petitioners are free to avail any other remedy as may be available in law.

6. In rejoinder, Ms. Razaq submitted that in terms of original agreement dated 10th April, 1986, which was renewed from time to time, the respondents were entitled to lift the ore only from stack nos.6 to 10.

7. Whether the respondents have committed contempt would depend upon interpretation of clauses 3 and 4. The said clauses which are identical read thus :

The Appellants shall be entitled to carry out, transport, lift, sell/export all the Ore lying in the Suit Mine (the stacked Ore is mentioned in the Report dated 27/09/2009 of the Director of Mines) and to deal with the same in the manner they wish. However, pending the hearing of the Applications herein ordered to be disposed off, there shall not be any fresh extraction of ore deposits.

8. Upon bare reading of the above clause, the interpretation sought to be put on behalf of the respondents, cannot be said to be unreasonable. I find merit in the submission of Mr. Sonak and Mr. Nadkarni that for the purpose of deciding whether the respondents have committed contempt in lifting ore from stack nos.1 to 5, the agreement between the parties need not be looked into. No doubt, in the report dated 27th August, 2009, there was reference to the ore from stack nos.6 to 10. But on plain reading of above clause, it cannot be said that the respondents are directed not to lift ore from stack nos. 1 to 5. As such, the act of the respondents in lifting ore from stack nos.1 to 5 cannot be said to be in breach of the consent terms. Therefore, in my considered opinion, no case of contempt against the respondents has been made out by the petitioners. It is made clear that this finding is given only for limited purpose of deciding Contempt Petitions filed by the petitioners and the interpretation put on clauses 3 and 4 is also for limited purpose of deciding Contempt Petitions and the parties would be free to agitate their rights, if any, before appropriate forum.

9. All the statements, if any, made on behalf of the respondents stand discharged. Both the petitions stand disposed of.