(1995) 03 BOM CK 0024

In the Bombay High Court

Case No : Appeal against Order No. 1 of 1995

The State of Maharashtra — APPELLANT

Vs

Deepak Dixit — RESPONDENT

Date of Decision : 14-03-1995

Acts Referred:

- Bombay Motor Vehicles Tax Act, 1958 — Section 20(1)
- Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
- Contract Act, 1872 — Section 10, 182
- Evidence Act, 1872 — Section 115

Citation : (1996) 2 BomCR 468

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : L.G. Deshpande, for the Appellant; M.G. Bhangde, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Admit. Mr. Bhangde waives service on behalf of Caveator. Both the learned Counsel for parties jointly pray that this appeal may be heard and disposed of at this stage only.

2. By the order dated 14-9-1994 impugned in this appeal, 2nd Joint Civil Judge, Senior Dn., Chandrapur has allowed application filed by the respondent for grant of temporary injunction and restrained defendant/appellant from recovering suit amount of Rs. 19,04,400/- on account of toll in respect of Wardha River Bridge near Ghuggus for the year 1993, till decision of suit subject to condition that plaintiff deposits amount of Rs. 6,21,982.94 to the defendant within 15 days from the date of the order.

3. Before appreciating the contentions raised by the learned Counsel for appellant, few relevant facts may be noted. Respondent, Deepak Bharatsingh Dixit (for short plaintiff) filed a suit for declaration and injunction against appellant, the State of Maharashtra (for short defendant). In the said suit

plaintiff prayed for declaration that defendant be declared to be not entitled to receive any amount more than Rs. 32.52 lakhs or any other amount on account of toll in respect of Wardha River Bridge near Ghuggus for the year 1993 and that recovery proceedings initiated by the defendant be declared null and void. Plaintiff also prayed a decree of permanent injunction restraining the defendant and all persons claiming through it from claiming Rs. 19,04,400/- or any part thereof or any interest thereon from the plaintiff in connection with agency for collection of toll tax on Wardha River Bridge situated near Ghuggus on Ghuggus-Wani road for the year 1993. The plaintiff averred in the plaint that the defendant has constructed a bridge on Wardha River near Ghuggus on Ghuggus-Wani road and on the said construction which was completed in or about 1986-87, an amount of Rs. 1,10,29,809/- was spent. The case set out by the plaintiff is that u/s 20 of the Bombay Motor Vehicles Tax Act, 1958, as amended by the Amending Act of 1987, defendant is entitled to recover by way of toll, the amount which is sufficient to reimburse the construction cost of the bridge. According to plaintiff section 20(1-c) of the aforesaid Act prohibits the defendant from collecting by way of toll any amount exceeding capital out-lay and expenses for collection of toll. According to the plaintiff, defendant has collected toll to the tune of Rs. 1,67,47,921/- for period 19-8-1987 and 31-12-1992 and the same amount being in excess of capital out-lay and expenses of collection of toll, defendant is not entitled to collect any amount more. It was admitted by the plaintiff that for the collection of toll for the year 1993 (1-1-1993 to 31-12-1993), the plaintiff submitted tender and he being the highest bidder worth Rs. 61,61,000/-, his bid was accepted and he was awarded contract for collection of toll for the year 1993. The plaintiff submits that the agreement entered into between the plaintiff and defendant relating to collection of toll of more than 32.52 lakhs, being contrary to the statutory provisions, is null and void and defendant is not entitled to recover the said excess amount over and above the statutory limit. It is not disputed that plaintiff was to deposit an amount of Rs. 2,61,840/- every fortnight towards collection of toll under the contract awarded to him. According to the plaintiff, there was substantial reduction of traffic on the bridge and it was not possible to recover the said amount of toll every fortnight. The plaintiff has submitted that in May, 1994, the Tahsildar, Chandrapur issued a demand notice against the plaintiff demanding an amount of Rs. 19,04,400/- by way of outstanding dues against the aforesaid agreement for the year 1993 towards collection of toll.

4. Alongwith the plaint, plaintiff also made an application under Order 39, Rules 1 and 2 read with section 151 C.P.C. for grant of temporary injunction and by the said application, plaintiff prayed that defendant be restrained from recovering a sum of Rs. 19,04,400/-, or any other sum from him on account of toll in respect of Wardha River Bridge near Ghuggus for the year 1993.

5. The said application was contested by the defendant. The defendant set up defence that the plaintiff was appointed as agent for collection of toll tax under agreement dated 31-12-1992 for the year 1993 (from 1-1-1993 to 31-12-1993)

from the public and under the terms of the agreement, he was required to deposit amount stipulated in the agreement and since he failed to deposit the said amount, recovery proceedings were initiated and, therefore there was neither any prima facie case in favour of the plaintiff nor balance of convenience in his favour. As regards irreparable loss, defendant submitted that the amount has already been collected by the plaintiff from the public and, therefore, in case no temporary injunction is granted in favour of the plaintiff, no irreparable loss would be caused to him.

6. As observed above, trial Court by order dated 14-9-1994 has allowed the application filed by the plaintiff for grant of temporary injunction and has restrained defendant from recovering said amount of Rs. 19,04,400/- on account of toll tax in respect of Wardha River Bridge for the year 1993 till the decision of the suit subject to the condition that the plaintiff to deposit the amount of Rs. 6,21,982.94/- to the defendant within 15 days from the date of the order.

7. Mr. Deshpande, learned ''A'' Panel Advocate appearing for State submitted that the plaintiff being agent of the State for collection of toll, was required to account for all the money received by him on behalf of the Principal i.e. State and it is not open to the agent to question the legality or otherwise of the money to be received by the Principal and, therefore, the trial Court committed serious error of law and jurisdiction in allowing application filed by the plaintiff for grant of temporary injunction. The learned Counsel for appellant also contended that the plaintiff entered into an agreement with the defendant for collection of toll of Rs. 61,61,000/- for the year 1993 and the said contract was entered into by the defendant with the plaintiff after plaintiff had submitted highest tender and now after the expiry of the contract period, it was not open to the plaintiff to say that contract for collection of toll for the aforesaid period was null and void being contrary to the statutory provisions. Mr. Deshpande contended that the plaintiff has collected an amount of Rs. 61,61,000/- for the said year towards toll and, therefore, in case of refusal to grant temporary injunction no irreparable loss would be occasioned to the plaintiff and, therefore, plaintiff was not entitled for grant of temporary injunction and the order passed by the trial Court is not only perverse but also against the settled principles governing law of temporary injunction.

8. Per contra, Mr. Bhandge, the learned Counsel for plaintiff strenuously urged that since the defendant has constructed, the bridge on Wardha river near Ghuggus in the year 1986-87 for a cost of Rs. 1,10,29,809/- in view of the provisions contained in section 20(1-c) of the Bombay Motor Vehicles Act, 1958, defendant was not entitled to collect toll exceeding capital out-lay and expenses of collection of toll. The Counsel for respondent-plaintiff submitted that defendant has already collected toll to the tune of Rs. 1,67,47,921/- for the period of 19-8-87 to 31-12-92 and in any case it could not have collected more than 2 crores of toll and at best an amount of Rs. 32.52 lakhs could be recovered from the plaintiff which has already been deposited with the defendant and demand of

further payment of Rs. 19,04,400/- was illegal and, therefore, trial Court has not committed any error in granting temporary injunction in favour of the plaintiff.

9. Certain facts are not disputed and the said facts are that the plaintiff submitted a tender for collection of toll as an agent of the defendant for the year 1993 i.e. from 1-1-1993 to 31-12-1993. In the tender, plaintiff submitted a bid worth Rs. 61,61,000/-. The bid submitted by the plaintiff was the highest and was accordingly accepted by the defendant and he was awarded contract for collection of toll for the aforesaid period. The contract commenced from 1-1-1993 and ended on 31-12-1993. The present suit has been filed on 3-8-1994 i.e. after expiry of contract since contract expired on 31-12-1993. It is not disputed that during the period the contract was operative, the plaintiff did not challenge the terms of contract, which was entered into by him with the defendant. The contract was awarded to the plaintiff only because the plaintiff was the highest bidder. After the contract has been completed and the plaintiff failed to discharge his obligation by making payment of toll as agreed to by him under the contract, the plaintiff has filed present suit seeking declaration that the defendant be declared not entitled to receive any amount more than Rs. 32.52 lakhs or any other amount on account of toll in respect of Wardha River bridge near Ghuggus.

10. The trial Court has granted temporary injunction in favour of plaintiff holding that plaintiff has been able to prove that he has prima facie case to proceed with the trial and that balance of convenience was found in his favour. The trial Court also observed that plaintiff has proved that irreparable loss would be caused to him if the relief sought for is not granted. The said findings have been recorded by the trial Court mainly on the ground that the defendant has recovered amount of costs spent by it on the bridge by way of collection of toll upto 31-12-1993 and therefore, u/s 20 of Bombay Motor Vehicles Tax Act, 1958, recovery of amount of Rs. 19,04,400 and interest thereon as claimed by the defendant from plaintiff could be stayed. In this connection, the trial Court has observed as under :-

"15. It is worth to mention that the plaintiff filed on record Pursis (Exh. 18) dated 12-9-1994 stating that he had collected an amount of Rs. 56,06,750/-. However, the entire amount as shown in account statement (vide Exh. 9/4) is not deposited, but only the amount of Rs. 45,71,000 is deposited by the plaintiff to the defendant. It is further stated in the pursis that the plaintiff incurred expenses of Rs. 4,13,370/-. for the collection of amount for the year 1993, the details thereof given in the separate statement alongwith list (Exh. 19) on record. It is further stated by deducting the said amount, the balance amount available with the plaintiff is Rs. 6,21,992.94/- and he is ready to deposit the same to the defendant department. As such the plaintiff is not claiming any order of injunction for the recovery of the said amount of Rs. 6,21,992.94 and only claims the injunction for the recovery of the amount of Rs. 9,67,620.06 and interest thereon as claimed by the defendant".

11. On perusal of the plaint filed by the plaintiff, it is revealed that the entire claim in the suit and relief sought for by the plaintiff is based on the fact that the defendant has already recovered the amount of expenses incurred by it on construction of bridge by collection of toll between 1987 to 1992 and it is not permissible to the defendant to collect toll exceeding capital out-lay and expenses.

12. Law is well settled that temporary injunction can be granted to the plaintiff in a suit for injunction simpliciter or for any other relief along with prayer for injunction provided plaintiff is able to satisfy three basic ingredients viz. :- prima-facie case, irreparable loss and balance of convenience. The only ground set out by the plaintiff in the plaint for the relief sought for in the suit is that u/s 20 of the Bombay Motor Vehicle Tax Act, 1958, it is not open to the defendant to recover toll exceeding capital out-lay and expenditure incurred by it on the construction of the bridge. It is not disputed that though bridge was constructed in the year 1987 and on invitation of tender by the defendant for collection of toll, the defendant on his own submitted tender giving highest bid of Rs. 61,61,000/-. The plaintiff being highest bidder, the tender was accepted and an agreement was entered into between the parties and the plaintiff was awarded contract for collection of toll for the year 1993 i.e. from 1-1-1993 to 31-12-1993. The award of contract in favour of defendant is not challenged by the plaintiff on the equitable ground viz. fraud, misrepresentation or any such ground and the only ground set out challenging the contract is that it was violative of section 20 of Bombay Motor Vehicles Act. The contract having been entered into by the plaintiff being the highest bidder, plaintiff was awarded the contract and, therefore, after expiry of the contract, it was not open to the plaintiff to turn round and say that the contract was null and void because it was violative of section 20 of Bombay Motor Vehicles Act. The plaintiff being Agent of the defendant and agency having been given to him under the contract, it was not open to such agent to challenge the authority and competence of the principal for the recovery of toll for which plaintiff was appointed agent by the principal-defendant. Therefore, the approach of the trial Court in considering the case of the plaintiff and finding that plaintiff has a prima-facie case was misdirected and perverse. The plaintiff had entered into agreement with the defendant and took contract of agency for collection of toll for an amount of Rs. 61,61,000/- and according to the plaintiff himself he has collected an amount of Rs. 56,06,850/- towards toll from public during the contracted period. It is inconceivable that the agent could be permitted to retain the amount recovered on behalf of the principal on the ground that the principal had no right or competence to recover the amount of toll. Since the suit is pending, the present observation are only made to find out any observation made further may effect the ultimate decision of the suit pending before the trial Court. Needless to emphasise well settled principle of law that grant of temporary injunction is not a matter of course and the conduct of the party is very relevant circumstance while considering the application for grant of temporary injunction. The plaintiff on his own submitted

the tender for award of agency to collect the toll on behalf of defendant and got the contract for collection of toll being the highest bidder for a sum of Rs. 61,61,000/- and no whisper was raised during the period when the contract was operative and after the expiry of the period of contract now setting out of the case that the contract was null and void, showed that the plaintiff has by his conduct disentitled himself for grant of temporary injunction. Having taken advantage of the contract for entire period of contract, after the expiry of the said contract, it was not open to the plaintiff to challenge the very contract itself under which he worked and he took advantage of the said contract and collected the toll. The facts, which have been stated above would clearly demonstrate that there was no equity in favour of the plaintiff and trial Court seriously erred in granting temporary injunction in favour of the plaintiff. Besides that, there is neither any balance of convenience in favour of the plaintiff nor the plaintiff would suffer irreparable loss in case temporary injunction was refused. The relief of temporary injunction related to money in as much as by temporary injunction, plaintiff prayed that recovery of an amount of Rs. 19,04,400/- pursuant to the contract for collection of toll entered into by the plaintiff with the defendant be stayed and the defendant be restrained from recovering the amount of Rs. 19,04,400/-. No irreparable loss can be said to be caused to the plaintiff in case recovery of the said amount was made by the defendant, which was due under the agreement duly executed by the plaintiff. If the defendant recovers money outstanding under the contract from the plaintiff, it cannot be said that plaintiff would be put to any irreparable loss. Not only that it is admitted case of the plaintiff that for a contract of Rs. 61,61,000/-, he has already recovered more than Rs. 56 lakhs as collection of toll from public. That being the position, the trial Court overlooked public interest and for this reason also it cannot be said that irreparable loss would be caused to the plaintiff in case temporary injunction was refused. Therefore, the trial Court seriously erred in granting temporary injunction in favour of the plaintiff. The order passed by the trial Court is against well settled principles and cannot be sustained.

13. Consequently, this appeal is allowed. Order passed by the 2nd Joint Civil Judge, Senior Division, Chandrapur on 14-9-1994 impugned in the present appeal is quashed and set aside. As a consequence thereof, application for grant of temporary injunction filed by the plaintiff in Special Civil Suit No. 8/94, stands dismissed. Parties are directed to bear their own costs.

14. Mr. Bhangde prays for stay of the operation of above order orally. But having found no merits in the case of respondent and since application for temporary injunction filed by the plaintiff in the suit has been rejected, question of staying operation of the order does not arise at all. Oral prayer made by the respondent for stay of this order is rejected.

