

Hotel Maheshwari and anr. Vs. Maharashtra Industrial Development Corporation

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Court : Mumbai

Decided On : Mar-07-2007

Reported in : AIR2007Bom143; 2007(4)ALLMR73; 2007(3)BomCR81

Judge : B.R. Gavai, J.

Appeal No. : W.P. No. 576 of 2007

Appellant : Hotel Maheshwari and anr.

Respondent : Maharashtra Industrial Development Corporation

Advocate for Def. : S.S. Dande, Adv.

Advocate for Pet/Ap. : M.K. Goyanka, Adv.

Disposition : Petition allowed

Judgement :

B.R. Gavai, J.

1. Rule made returnable forthwith. Heard by consent.

2. By way of present petition, the petitioner challenges the order dated 24th November 2006 passed by the learned Joint Civil Judge (Senior Division), Aurangabad, below Exhibit 25 in Special Civil Suit No. 308/2004, vide which the application of the present petitioners for acceptance of the surety, as directed by the learned trial Court by order dated 7th March 2005, came to be rejected.

3. The petitioner has filed a suit for perpetual injunction and declaration that the notice issuing cancellation of plot to the petitioner was not in accordance with law. Along with the suit, an application below Exhibit 5 also came to be filed. The same was allowed vide order dated 7th March 2005 on condition that the plaintiff shall furnish surety in respect of the amount due i.e. Rs. 33,37,836/- within one month from the date of the order. The said surety was not provided within a period of one month. Hence, the petitioner filed an application on 27th September 2005 on the ground that the petitioner could not furnish surety as her husband was bed ridden and, therefore, requested surety certificate to be accepted. The said application came to be rejected vide order dated 24th November 2006. Hence, the present petition.

4. Mr. M.K. Goyanka, learned Counsel appearing on behalf of the petitioners, submit that the petitioner could not furnish the surety due to ill health of her husband. It is submitted that as soon as the health condition of petitioner's husband improved, the surety was prepared and request was made to the learned trial Court, to accept the same, He, therefore, submits that the learned trial Court has erred in rejecting the application.

5. As against this, Mr. S.S. Dande, learned Counsel appearing on behalf of the respondent/Corporation, vehemently opposes the application. He submits that as per order dated 7th March 2005, the petitioner could

have furnished surety of somebody else or furnished bank guarantee. Having not done so, the petitioner is not entitled for grant of equitable relief.

6. Prima facie, I find that the reason given by the petitioner appears to be genuine. The petitioner had also produced on record medical certificate showing illness of her husband. No doubt, there is delay in complying with the condition as imposed by the learned trial court vide order dated 7th March 2005, However, since the learned trial court has found that the petitioner is entitled to an order of injunction, I am of the view that it will not be in the interest of justice to deny benefit of the injunction only on the ground of delay or laches in furnishing surety. In so far as prejudice caused to the respondent is concerned, the same can be compensated by saddling costs.

7. In the result, the Writ Petition is allowed.

The impugned order dated 24th November 2006 passed by the learned Joint Civil Judge (Senior Division), Aurangabad, below Exhibit 25 in Special Civil Suit No, 308/ 2004, is quashed and set aside.

The learned trial Court is directed to accept the surety as furnished by the petitioner for an amount of Rs. 33,37,836/-, as was directed by order dated 7th March 2005 below Exhibit 5 in Special Civil Suit No. 308/ 2004. This order is passed, however, subject to the condition that the petitioner deposits costs quantified at Rs. 10,000/- (Rupees Ten Thousand], It shall be deposited in the trial Court within a period of four weeks from today. On deposit of costs, the respondent/defendant would be entitled to withdraw the same.

8. Rule is made absolute in the above terms with no order as to costs.

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