

CIDC of Maharashtra Ltd.

Vs

Apple Finance Ltd. and another

Civil Appeals No. 2238 of 1998

(S. B. Majumdar, M. Jagannadha Rao JJ)

22.04.1998

ORDER

1. Leave granted in both the special leave petitions. We have heard learned counsel for the parties finally.

2. The short question is whether the impugned interim orders in these two appeals pending writ petitions can be said to have been passed by the learned Judges of the High Court after considering all relevant aspects pertaining to grant of interim relief. The impugned orders are more or less identically worded. We may extract herein one of these two orders :

"2. This matter was heard for some time in the morning session and the interim orders passed by different benches of this Court were brought to our notice; one is the order dated 14-2-1997 passed by Agarwal and Bhairavia, JJ. in Writ Petition No. 605 of 1997 and the other is the order dated 24-4-1997 passed by Tipnis and Jahagirdar, JJ. in Civil Application No. 2637 of 1997 in Writ Petition No. 1256 of 1997. We would have liked to examine the facts and circumstances of the cases before different benches leading to the passing of different orders which may be justified by the terms of the tender and the conditions of lease that were under consideration in a particular case.

3. However, in view of the minutes of the order now submitted by both the learned counsel appearing before us, it is no longer necessary for us to do that. The said minutes of order, duly signed by both the learned counsel, are taken on record and marked 'X' for identification."

3. At the first blush it appeared in the light of what is stated in para 3 that these might be consent orders. However, when there was controversy between the parties regarding the nature of the orders whether they were consent orders or not the High Court was approached in review proceedings for considering whether they were passed by consent of the parties and it is not in dispute between the parties that the learned Judges of the Division Bench deciding the aforesaid matters have taken the view that they were not consent orders but were passed on grounds of the signed minutes for identification. Be that as it may, therefore, it must be taken that they were not consent orders. However, a mere look at the impugned orders shows that the learned Judges who passed the interim relief orders were apprised of different orders passed by the High Court in different writ petitions pending in the High Court and they expressed their inclination to examine the facts and circumstances of the cases before different benches leading to the passing of different orders but they did not do so due to the fact that the minutes for identification were submitted before them

thereafter. Consequently, we find that the impugned orders are passed by the Bench without having an opportunity to consider the pros and cons of the prayer for interim relief.

4. Only on the short ground and without expressing any opinion on the merits of the controversy between the parties, we allow these appeals, set aside the impugned interim orders and request the appropriate Division Bench of the High Court to reconsider the question of granting interim relief in these writ petitions after hearing the parties. We make it clear that the question of interim relief will be re-examined on its own merits without in any way being inhibited by the earlier signing of the minutes for identification which had resulted into the impugned orders.

5. We also note that while passing these orders and requesting the High Court to reconsider the question of interim relief, two admitted facts have been kept in view as on these facts there is no controversy now. Firstly, 75% of the premium amount has already been refunded to the writ petitioners and secondly, the possession of the lands in question has already been handed over to the present appellant-Corporation by the original writ petitioners. These admitted facts, of course, will be subject to any further orders that may be passed by the High Court either at interim stage or at final stage.

6. It is obvious that all legally permissible contentions will be open to the parties for being urged before the High Court. As the questions which will have to be decided by the High Court in the pending writ petitions pertain to interim relief, the High Court is requested to make it convenient to decide the question of interim relief in these petitions afresh as expeditiously as possible and preferably latest by 31-7-1998.

7. The appeals are allowed accordingly. No costs.