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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL LODGING NO. 563 OF 2015
IN
NOTICE OF MOTION NO. 695 OF 2015
IN
SUIT NO. 851 OF 2014

Punjab National Bank .. Appellant

Vs.

1. Shree Vaishnav Wire & Rod Pvt. Ltd.
2. Ajay Metallics Pvt. Ltd. .. Respondents

Mr. Pankaj Vijayan with Kalpita Ghosh i/by Intralegal for appellant.
Mr. Anjal Amin i/by B. Amin and Co. for respondent no.1.
Mr. B. G. Tangsali for respondent no.2.

CORAM: NARESH H. PATIL &
S. B. SHUKRE,JJ.

SEPTEMBER 01, 2015.

P.C. [Per S. B. Shukre, J.] :

1. Heard.

2. This is an appeal preferred against the order dated 23/06/2015 passed in Notice of Motion No. 695 of 2015 in Suit No. 851 of 2014 by the learned Single Judge of this court, thereby directing the appellant, Original Defendant No.1, to deposit an amount of Rs.49,45,000/- with the Prothonotary and Senior Master of this court with a further direction for investing the amount in a fixed deposit until further orders.

3. Respondent No.1, the Original Plaintiff, filed a Suit against the

appellant, Original Defendant No.1 and respondent no.2 – Original Defendant No.2, seeking direction to the appellant and respondent no.2 to return an amount of Rs.49,45,000/- with interest at the rate of Rs.18% per annum from the date of filing of the suit till payment and realization. Notice of Motion No. 695 of 2015 was filed for seeking interim reliefs.

4. According to respondent no.1, on account of purchase of some goods by it from one Adjuvant Industries on 22/2/2014, the price of the goods purchased was payable by it to Adjuvant Industries and, therefore, it decided to make the payment by electronically transferring the amount from its account maintained with State Bank of India (for short "SBI") to the account of Adjuvant Industries maintained with the appellant. It is the case of the respondent no.1 that when its concerned employee, on 24/2/2014 logged on to the website of SBI for the purpose of electronic transfer of the amount to Adjuvant Industries and started taking steps, the concerned employee accidentally clicked on the name of respondent no.2, Ajay Metallics Pvt. Ltd., instead of Adjuvant Industries and the amount got transferred to the account of the respondent no.2 – Ajay Metallics Pvt. Ltd. Respondent No. 2 submitted that names of the account holders having been arranged in alphabetical manner, the name of respondent no.2 appeared immediately next to the name of Adjuvant Industries as could be seen from the screen shot of the computer, a copy of which was produced before the court of learned Single Judge. Thereafter, the SBI also issued e-pay order with a remark in respect of debit status as "success" in favour of respondent no.2. However, the respondent no.1 submitted that it realized the mistake almost immediately and thereafter it sent emails to the Assistant General Manager of SBI and also Branch Manager of the appellant with a request to stop the RTGS payment. There was exchange of correspondence between respondent no.1 and the appellant on the issue. Respondent No.1 further submitted that respondent no.2 sent email to the

appellant on 25/2/2014 admitting the fact that the money had been wrongly transferred to its account and the amount should be remitted back to the account of the respondent no.1. According to respondent no.1, even the appellant admitted that the money had been wrongly transferred and, therefore, its RTGS Cell sent email at 6.29 p.m. to Andheri Branch of the appellant calling upon it to refund the said amount, a copy of which was also sent to the SBI. However, the appellant did not act upon the email received by it from its RTGS Cell and later on informed the respondent no.1 that the respondent no.2 being a defaulter, the amount was kept under lien and would be refunded to the respondent no.1 only after respondent no.2 had repaid its dues to the appellant. As a result, the respondent no.1 had to subsequently transfer the amount of Rs.49,45,000/- to the bank account of Adjuvant Industries and thus in all the respondent no.1 had to suffer debit of amount of Rs.99,00,000/- to its account.

5. The respondent no.1 also sent a letter through its Advocate to the appellant calling upon it to refund the amount, but in vain. In reply, a stand was taken by the appellant that the entire story of transfer of money mistakenly was concocted and that respondent no.1 did owe the money to the respondent no.2. Respondent No.1 also approached police as well as Banking Ombudsman for seeking refund of the money mistakenly transferred to the account of respondent no.2, held with the appellant. However, as all these efforts did not bear fruits, the respondent no.1 filed the present suit against the appellant and respondent no.2. seeking direction for return of the amount together with interest.

6. A Notice of Motion, seeking interim reliefs, was also taken out. After hearing both sides, learned Single Judge by his order dated 23/06/2015 disposed of the Notice of Motion with a direction to the appellant to deposit an amount of Rs.49,45,000/- with the Prothonotary and Senior Master of this court

and also directed that same be invested in a fixed deposit account until further orders of the court. The present appeal is directed against this order.

7. Learned counsel for the appellant has submitted that the entire story of the respondent no.1 that the amount was transferred by mistake to the account of respondent no.2 is false and that the amount was transferred on account of bonafide transaction between the respondent no.1 and respondent no.2. According to the learned counsel for the respondent no.1, there was no transaction whatsoever between respondent no.1 and respondent no.2 under which respondent no.1 owed any amount to respondent no.2. He submits that this argument has been duly considered by the learned Single Judge when he found that there was no supporting evidence to show that any amount was owed by respondent no.1 to respondent no.2.

8. On going through the impugned order, we find substance in the argument of learned counsel for the respondent no.1. There is no document, nor any circumstance relied upon by the appellant to support the contention that the amount was transferred to the account of respondent no.2 under bonafide transaction between respondent no.1 and respondent no.2. Therefore, the said contention of learned counsel for the appellant deserves to be rejected and is rejected accordingly.

9. Learned counsel for the appellant further submits that the direction issued for depositing the amount with the court by the learned Single Judge can be issued only in exercise of the power under Order XXXIX Rule 10 of C.P.C. and that the power can be exercised only when certain conditions thereof are satisfied. According to him, the essential condition which must be satisfied is that it must be shown that the defendant has admitted that he is holding money or

any property which is capable of being converted into money as a trustee of the plaintiff. He submits that in the present case, there is no such admission given by the appellant and, therefore, one of the essential conditions of Order XXXIX Rule 10 of C.P.C. is not satisfied. For this submission, he places his reliance upon the view taken by the learned Single Judge of this court in the case of Suman Bansal vs. Mahendra P. Gaunekar **[Appeal From Order No.1 of 2010, decided on 24/04/2012]** and also upon the decision rendered by the learned Single Judge of Delhi High Court in the case of Sh. Harish Ramchandani vs. Mr. Manu Ramchandani and ors. **[91(2001) DLT 480].** Countering the argument of learned counsel for the appellant, learned counsel for respondent no.1 submits that the facts of the present case are entirely different and, therefore, the ratio of the cases, sought to be relied upon by the appellant, is not applicable to the present case.

10. Upon consideration of the facts of the present case and particularly the email dated 25/2/2014 (Exhibit "H", page 36 of the plaint), we find that the learned counsel for the respondent no.1 is right when he submits that the facts of the present case are different in the sense that one of the defendants i.e. respondent no.2 has, prima facie, admitted that the money had been wrongly transferred to its account and it deserved to be returned to the respondent no.1. Therefore, one of the conditions of Order XXXIX Rule 10 of the C.P.C. has been, prima facie, satisfied in the instant case.

11. Apart from the afore-stated admission, there are other circumstances which, prima facie, indicate that the amount was transferred by mistake to the account of respondent no.2. The screen shot of the computer produced before the learned Single Judge did show the name of respondent no.2, Ajay Metallics Pvt. Ltd., as appearing immediately next to the name of Adjuvant Industries on the

screen. Not only this, the screen of the computer displayed even the account numbers of Adjuvant Industries and Ajay Metallics Pvt. Ltd. Therefore, the possibility of accidentally clicking against the name of respondent no.2 cannot be ruled out. Then the appellant has also not, prima facie, shown as to how the transfer of the amount to the account of respondent no.2 could be said to be on account of genuine transaction. Conduct of respondent no.1 in immediately sending emails for stopping RTGS payment further, prima facie, strengthens the case of the respondent no.1.

11. All the aforesaid facts and circumstances appearing on record would show that the view taken by the learned Single Judge is neither perverse nor arbitrary. The nature of the impugned order is also such that no prejudice is ultimately going to be caused to any of the parties as the amount has been directed to be invested in a fixed deposit account until further orders of the court.

12. In the circumstances, we are of the view that no case is made out for entertaining this appeal and it deserves to be dismissed at admission stage.

13. Accordingly, the appeal stands dismissed.

(S. B. SHUKRE, J.) **(NARESH H. PATIL, J.)**