IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No.695 of 2015

In
Suit No. 851 of 2014

Shree Vaishnav Wire & Rod Pvt. Ltd, … Plaintiff

Versus

Punjab National Bank & Anr. … Defendants

Mr. Zubin Behramkamdin, instructed by M/s. B. Amin & Co., for the Plaintiff.

Mr. Pankaj Vijayan, instructed by M/s. Intralegal, for Defendant No.1.

Mr. B.G. Tanysuli for Defendant No.2.

Mr. Praveen Ranjan, Credit Manager of Defendant No. 1 Bank present.

CORAM: S.J. KATHAWALLA, J.
DATE: 23rd June, 2015.

P.C.:

1. The above Suit is filed by the Plaintiff – Shree Vaishnav Wire & Rod Pvt. Ltd. against the Defendants – Punjab National Bank and Ajay Metallics Pvt. Ltd. for the following reliefs:

> "*(a) This Honourable Court be pleased to direct the Defendants jointly and/or severally to return the amount of Rs. 49,45,000/- with interest at the rate of 18% per annum from 24 February 2014 till the date of filing of suit being amount of Rs. 54,47,228/- as more particularly set out in Exhibit N particulars of claim and with further interest at the rate of 18% per annum from date of filing of the suit till payment and realization;*

(b) This Honourable Court be please to decree the suit against the Defendants directing the Defendant to jointly and/or severally to pay amount of Rs. 1,00,00,000/- as compensation towards damages with interest at the rate of 18% per annum to the Plaintiff from date of filing of the suit till payment and realization."

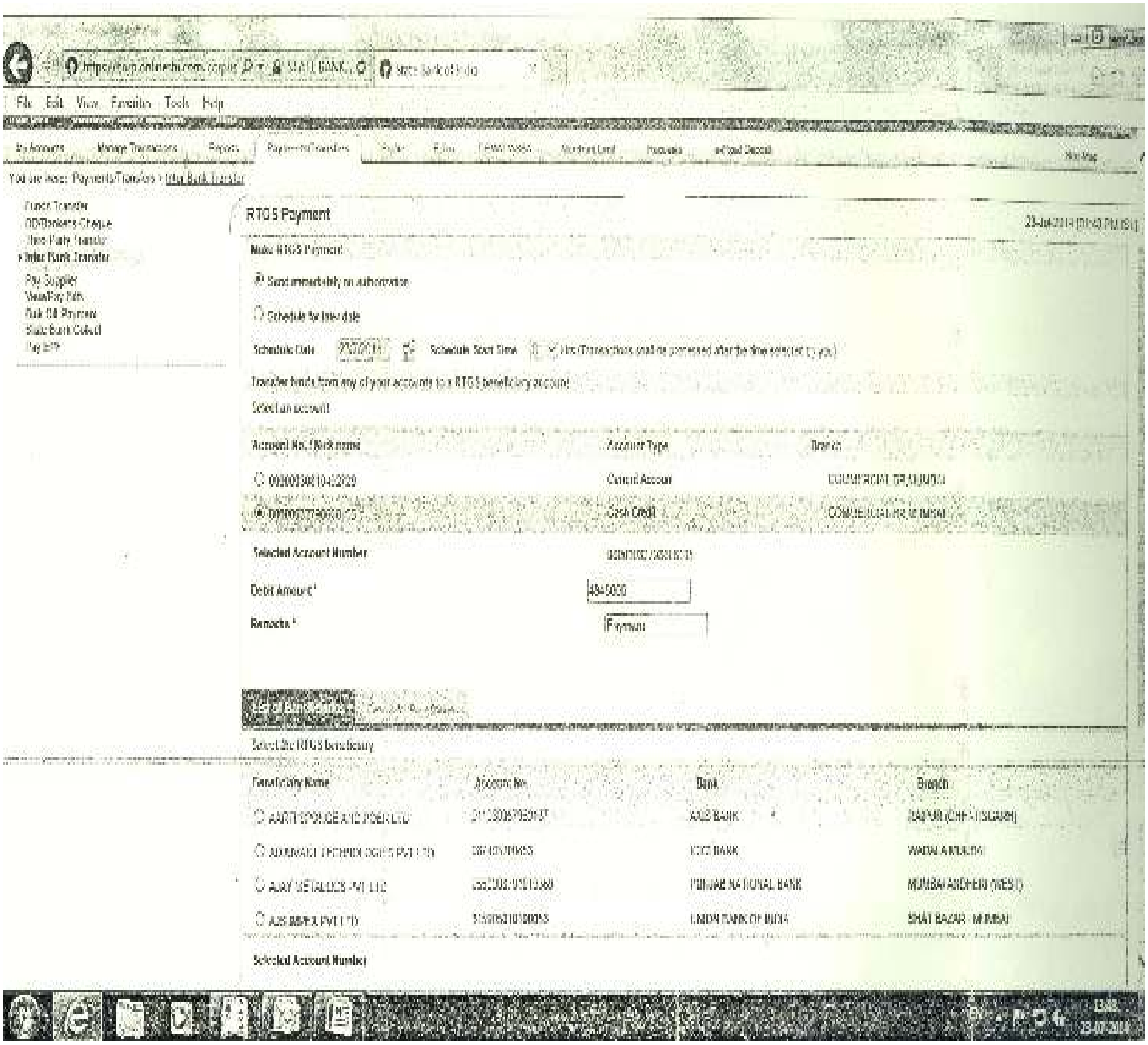
2. The Applicant/Plaintiff has taken out the above Notice of Motion for a direction against the Defendants to jointly and/or severally make payment of the amount of Rs. 49,45,000/- to the Plaintiff.

3. Briefly set out are the facts as stated by the Plaintiff.

3.1 On 22-2-2014, one Adjuvant Industries supplied goods to the Plaintiff and raised three invoices for the total amount of Rs. 49,45,000/. (Exh. A-1,A-2,A-3, pages 22 to 24 of Plaint).

3.2 Thereafter, on 24-2-2014, Plaintiff decided to transfer the said amount through its SBI account online into Adjuvant Industries Bank Account.

3.3 On 24-2-2014, the Plaintiff's employee, Mr. Satyawan Pawar logged into the online website of SBI Bank for electronic transfer of the said amount to Adjuvant Industries but accidently the employee made wrong selection of party in the online transaction and transferred the said amount in the Defendant No. 2's Ajay Metallics Pvt. Ltd.) Punjab National Bank Account No. 0550008701019369, Andheri Branch.This mistake occurred because the name of Defendant No. 2 i.e. Ajay Metallics was next to the name of Adjuvent Industries, as can be seen from the screenshot of the Computer reproduced hereunder:



3.4 Thereafter the SBI issued a e-pay order with a remark debit status "Success" in favour of Defendant No. 2. (Page 28 of the Plaint).

3.5 After realizing the mistake, the Plaintiff immediately sent an email at 2:21 PM on the same day to Assistant General Manager, SBI Bank to stop the RTGS payment. **(**Exh. C page 26 of plaint**).**

3.6 Plaintiff again sent a further email at 2:53 PM on the same day to the 1st Defendant's Branch Manager and its RTGS cell to stop the payment. (Exh. D of plaint).

3.7 Thereafter, Plaintiff wrote various emails on same day to SBI regarding wrongful transfer of funds to 2nd Defendant's Bank Account . (Exh. E-1, E-2 Pages 29 and 30 of plaint)

3.8 At 3:33 PM, the 1st Defendant wrote an email to the Plaintiff giving two contact details of their Bank and also requested to produce an authority letter from SBI regarding wrong transaction.(Exh. F pages 33 and 34 of Plaint).

3.9 Thereafter, the Plaintiff's Bank, SBI wrote a letter to the 1st Defendant stating that the money is wrongly transferred and the amount should be remitted back to Plaintiff's Account**.** (Exh. G page 35 of plaint).

3.10 On 25-2-2014, the 2nd Defendant wrote an email to the 1st Defendant and admitted that the money has been wrongly transferred to its Account and the amount should be remitted back to Plaintiff's account.(Exh. H page 36 of plaint).

3.11 On 25-2-2014, the 1st Defendant admitted that the money had been wrongly transferred and therefore, 1st Defendant's RTGS cell wrote an Email at 6:29 PM to 1st Defendant, Andheri Branch, asking them to refund the said amount. A copy of the email was also sent to SBI .(Exhs. I and J pages 37 to 39 of plaint).

3.12 Thereafter, Plaintiff had telephonic conversation with the 1st Defendant regarding the error, and at this point of time, Plaintiff was informed that the 2nd Defendant is a defaulter, and the amount has been kept as lien, which would only be repaid after 2nd Defendant pays its dues of ten crores to 1st Defendant.

3.13 On 25-2-2014, Plaintiff had to subsequently transfer the said amount of Rs. 49,45,000/- into the Bank Account of Adjuvant Industries, because of failure on part of 1st Defendant to repay the amount. Thus, in all a total amount of Rs. 99,00,000/- is debited from Plaintiffs Bank Account.(Exh. K page 40 of plaint).

3.14 On 1-3-2014, the Plaintiff met the Deputy General Manager of 1st Defendant, and explained about the mistake, but he again refused to remit back the amount.

3.15 On 10-3-2014, the Plaintiff through its Advocate wrote letter to 1st Defendant for re-crediting the money into Plaintiff's Account. (Exh. L pages 41 to 56 of plaint).

3.16 On 21-3-2014, 1st Defendant replied to the above letter, through their advocate that the Account of 2nd Defendant is an NPA and 1st Defendant is not liable to re-credit the money. Further, the entire story of transfer of money under a mistake is concocted and that the Plaintiff actually owed money to the 1st Defendant. (Exh. M pages 57 and 58 of plaint). No supporting evidence was relied upon by the 1st Defendant in support of these bald allegations.

3.17 On 6-6-2014, the Plaintiff also filed a police complaint against 1st Defendant before Chembur Police Station.

3.18 On 12-9-2014, the Plaintiff made an RTI application and received the copies of the statement filed by the 1st Defendant in the Chembur Police Station. In that statement, the 1st Defendant claims outstanding as on 30 November 2013 by the Plaintiff in favour of 2nd Defendant an amount of Rs.39,690/-.(Documents tendered in court on 23-6-2015)

3.19 On 25-6-2014, Plaintiff had filed a complaint against 2nd Defendant in the Banking Ombudsman.

3.20 On 30-7-2014, 2nd Defendant wrote a letter to 1st Defendant admitting that the money has been wrongly transferred.(Exh. C of reply to the Notice of Motion)

3.21 On 1-10-2014, the present suit was filed for the return of the amount wrongly credited into 2nd Defendant's Bank Account.

4. The Learned Advocate appearing for the Defendant No. 1 Bank has admitted that the said amount of Rs. 49,45,000/- has been deposited with them by the Plaintiff into the Bank Account of the Defendant No.2. It is submitted that according to the Bank this amount may be payable by the Plaintiff to the Defendant No.2 and it is possible that the Plaintiff and Defendant No. 2 have in collusion come up with a story of the incorrect transfer of the amount of Rs. 49,45,000/- into the Bank account of Defendant No.2.

5. From the aforestated facts, it is clear that one Adjuvant Industries supplied goods to the Plaintiff under three invoices aggregating to Rs. 49,45,000/-. The Plaintiff intended to transfer the said amount of Rs.49,45,000/- through its SBI Account online into Adjuvant Industries Bank Account. However, the Plaintiff's employee accidentally made a wrong selection of the party in the online transaction and transferred the said amount in the Defendant No.2's account with the Andheri Branch of Defendant No.1. That a mistake has occurred is clear since the name of the Defendant No. 2 i.e. Ajay Metallics Pvt. Ltd. was next to the name of Adjuvant Industries, as can be seen from the screenshot of the computer reproduced hereinabove. In view thereof, the amounts which were due to Adjuvant Industries were wrongly transferred to the account of Ajay Metallics Pvt. Ltd. Again, the fact that the said amount is

transferred due to a mistake /error is clear from the manner in which the Plaintiff has on the same day acted swiftly and informed Defendant Nos. 1 and 2 about the said mistake. The Plaintiff has also established that the Plaintiff had to again transfer the said amount of Rs. 49,45,000/- into the Bank account of Adjuvant Industries. Thus, in all a total amount of Rs. 99,00,000/- is debited to the Plaintiff's Bank account. I am therefore prima facie satisfied that the Bank is wrong in taking advantage of the mistake on the part of the employee of the Plaintiff whilst transferring the said amount through its SBI Account online and has unfairly retained the said amount of Rs. 49,45,000/- which it is not entitled to in law. I, therefore, pass the following order:

(i) The Defendant No. 1 i.e. Punjab National Bank is directed to deposit an amount of Rs. 49,45,000/- with the Prothonotary and Sr. Master of this Court on or before 15th July,2015. The Prothonotary and Sr. Master shall invest the said amount in a Fixed Deposit initially for a period of two years and thereafter renew the same from time to time until further orders of this Court. The Prothonotary and Sr. Master may deposit the said amount in Fixed Deposit with the Defendant No.1 Bank if the Defendant No. 1 is willing to pay the same rate of interest as offered by the other Nationalised Bank/s.

Notice of Motion is accordingly disposed of.

Hearing of the Suit is expedited. Written statement to be filed on or before 13th July, 2015. List Suit No. 851 of 2014 for framing of issues on 15th July, 2015.

(S.J. KATHAWALLA, J.)