

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3823 OF 2016
IN
FIRST APPEAL NO.1639 OF 2016**

The State Bank of India	...Appellant
vs.	
Trade Wings Limited	...Respondent

Ms. Rajani Iyer, Senior Counsel a/w Mr. Girish Utangale i/b Utangale & Co. for the Appellant.
Mr. Vivek Menon a/w Mr. Sahil Thukral i/b Dave and Girish & Company for the Respondent.

**CORAM: G.S.KULKARNI, J.
DATE: 24th NOVEMBER, 2016.**

P.C.:-

. Heard learned counsel for the parties. By this Civil Application the Applicant/Appellant State Bank of India seeks stay of the impugned ex-parte judgment and order dated 22/6/2015 passed by the learned Judge, City Civil Court at Bombay.

3. The Respondent initially instituted a Summary Suit in this Court being Summary Suit No.3975/1999 against State Bank of Saurashtra. The basis of the suit according to the Respondent was an amount payable under a transaction pertaining to Traveller's cheques. By order dated 13/4/2005 passed by this Court unconditional leave to defend the suit was granted to the defendant /State Bank of Saurashtra. Subsequent thereto in view of enhancement of pecuniary jurisdiction of the City Civil Court at Bombay, the suit was transferred to the City Civil Court, on 5/10/2012 and the Suit came to be numbered as Summary Suit

No.9574/1999. In the intervening period during the pendency of the suit the Defendant/State Bank of Saurashtra was merged with the State Bank of India. The Respondent thereafter took steps to amend the plaint and implead the State Bank of India. Thus the appellant became a defendant in the said suit in place of State Bank of Saurashtra. It is the contention of the Respondent that the appellant State Bank of India was put to appropriate notice of its impleadment as a defendant to the Suit and in any case after the merger of the State Bank of Saurashtra the suit was required to be defended by the State Bank of India, being a necessary party.

4. The Applicant did not file written statement and the suit proceeded, ex-parte and was accordingly decreed directing the defendant to pay the respondent a sum of Rs.7,28,000/- with interest @ 15% p.a from the date of filing of the suit till realization of the amount. The Respondent has instituted an execution application seeking to execute the decree and has sought attachment of the premises of the Applicant situated at Mumbai.

5. On this background the Appellant is seeking stay of the execution proceeding. The principal contention as urged on behalf of the Applicant is that the original defendant was State Bank of Saurashtra, in respect of transaction which took place with the Respondent at Rajkot which was not within the territorial jurisdiction of the Civil Court at Mumbai. It is submitted that even the address of the defendant State Bank of Saurashtra as set out in the plaint was of Rajkot. Then reliance is placed on the order dated 13/4/2005 passed by this Court in Summons for Judgment No.694/2003as taken out in the Summary Suit wherein it was

observed that the suit transaction had taken place at Rajkot. Leave under clause 12 of the Letters Patent was not obtained before filing of the suit and thus on that unconditional leave to defend was granted. Thus the contention as urged on behalf of the appellant is that the learned Trial Judge did not have territorial jurisdiction to decide the said suit.

6. However, Mr. Menon, learned counsel for the respondent relied on an order dated 16/11/1999 passed by the learned Prothonotary and Senior Master on the issue of jurisdiction:

“ On the application of Miss Kashi, time to remove the remaining office objections, if any, is extended till 20/11/1999.

Heard Miss Kashi.

The Office objection at Sr. No.4 is not maintainable in view of the judgment reported in 78 BLR Page 549 (Pratapsingh vs. Bank of America) wherein it has been held that-

“Under the last para of clause 12 of the Letters Patent, a Suit can be brought on the Original Side of the High Court if the Deft. At the time of the institution of the Suit, dwells or carries on business or personally works for gain within the limits of such original jurisdiction of the Court, as for consideration of the jurisdiction in this Suit, the consideration whether the cause of action occurred wholly or in part within or without the limits of the said jurisdiction is only irrelevant.”

7. Mr. Menon, learned counsel for the Respondent would contend that thus the contentions as urged on behalf of the Applicant is misconceived. The Applicant did not file a written statement and contested the suit on the issue of territorial jurisdiction. He has also opposed this application on the ground that the Appellant is not entitled for any discretionary relief of stay to the

execution proceedings and, more particularly on the grounds as urged on behalf of the respondent in the reply affidavit opposing the present Civil Application. One of the ground being that the Appeal was filed beyond the prescribed limitation. However the fact remains that the delay in filing the appeal is already condoned. The submissions which are urged on behalf of the Respondent cannot be entertained at this stage

8. Having noted the rival submissions it can be seen that though by an order dated 13/4/2005 passed by this Court an unconditional leave came to be granted in favour of the State Bank of Saurashtra to defend the suit and though the suit was pending in this Court, surely up to 2008, when the merger had taken place, a written statement to defend the suit was not filed much less objecting to the territorial jurisdiction of the Court to try and entertain the suit. Prima facie it also cannot be said that the State Bank of Saurashtra or for that matter the Applicant was not aware of the merger and also subsequent transfer of the suit to the City Civil Court, so that their absence can be justified. Consequently, as the record would indicate the suit proceeded and was decreed under the impugned judgment and order.

9. Be that as it may these are all issues which would be required to be gone into at the hearing of the Appeal. The present application seeks a stay on the execution of the decree. There cannot be any unconditional stay to the execution decree, being a money decree.

10. In the above circumstances, the execution of the

impugned decree can be stayed pending disposal of the Appeal subject to the Applicant depositing in this court the full decretal amount as ordered by the learned Trial Judge in paragraph 1 of the operative part of the impugned order, within a period of 4 weeks from today. It is so ordered. On the amount being deposited the office is directed to invest the amount in the State Bank of India initially for a period of one year and for such further period in similar intervals till the final disposal of the appeal. Needless to observe that on depositing of the said amount, attachment of the premises of the Appellant in pursuance of the warrant of attachment dated 2/9/2016 in Execution Application No.409/2016 shall stand revoked. The Civil Application is disposed of in the above terms. No costs.

11. Parties to act on authenticated copy of the order.

(G.S.KULKARNI, J.)