

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER ORDER NO. 60 OF 2016

IN

SUIT (L) NO. 638 OF 2015

Omkar Steel Rolling Mills Ltd.

... Plaintiff

vs.

M/s. Prasiddhi Associates & Ors.

...Defendants

Mr. Pawan Tiwari, instructed by Jamshed Ansari, for the Plaintiff.

None for the Defendant.

CORAM: S. J. KATHAWALLA, J.

Date: 27th January, 2016

PC.

1. The Plaintiff has filed the above Suit on 25th June, 2015 against the Defendant for reliefs set out on page 6 of the Plaint. In paragraph No. 17 of the Plaint, the Plaintiff has stated as follows:

"The Plaintiff submit that they are seeking money decree of Rs. 1,60,95,346/-. **Plaintiffs has paid court fee of Rs. 2,06,430/-** accordingly. Hereto annexed and marked as Exhibit "H" is the particulars of claim of the Plaintiff."

Despite the above averment viz. that the Plaintiff has paid the Court fee of Rs. 2,06,430/-, the Plaintiff paid court fee of only Rs. 440/-. No reason whatsoever

is given as to why despite the above averment of the Plaintiff in the plaint, the Plaintiff did not pay the court fees of Rs. 2,06,430/-, but sought extension from the Prothonotary and Senior Master on an undertaking to pay the deficit court fee of Rs. 2,05,990/- within two weeks from 25th June, 2015. The undertaking too was breached. The Suit thereafter came up for directions before the Prothonotary and Senior Master on 15th September, 2015, when once again time was granted to the Plaintiff to inter alia pay the deficit court fees of Rs. 2,05,990/- on or before 29th September, 2015. The Plaintiff once again failed to pay the court fees on or before 29th September, 2015. In view thereof, the Suit stood dismissed on 29th September, 2015.

2. The above Chamber Order is taken out on 19th January, 2016, i.e. four months after the suit was dismissed, for restoration of the Suit. In paragraph 8 of the affidavit in support of the Chamber Order filed by the Plaintiff, the Plaintiff has stated on oath as under:

*“8. For the reason for dispute on quantum of proper fees coupled with non-availability of the court fees stamp, the court fees cannot be paid within the stipulated period of four weeks. **The Plaintiff is now ready with requisite court fees.**” (emphasis supplied)*

The above statement is false to the knowledge of the Plaintiff. The Plaintiff having valued court fees of Rs. 2,06,430/- in the Plaint and having further stated in the Plaint that the court fee of Rs. 2,06,430/- is paid, and there being no demand by Office to pay higher court fees than that valued by the Plaintiff, the question of any dispute on quantum never arose. Again it is not possible that the court fees stamps were not available from June 2015 to January 2016.

3. Interestingly, today when the Chamber Order is taken up for hearing, the Advocate for the Plaintiff states that the Plaintiff is not ready with the court fees and he should be granted further time to pay the court fees.

4. In my view, the question of granting any further time to the Plaintiff to pay the court fees does not arise. The Plaintiff first made an incorrect statement in paragraph 17 of the Plaint that the Plaintiff has paid the court fee of Rs. 2,06,430/- and on the basis of the said statement presented the Plaint in Court. However the Plaintiff paid an amount of Rs. 440/- only, towards court fees and thereafter obtained time from the Prothonotary and Senior Master to pay the court fees within two weeks i.e. on or before 10th July, 2015. The Plaintiff failed to pay the court fees on or before 10th July, 2015 and thereby breached the undertaking. The Plaintiff failed to apply for extension of time to pay the court fees. Despite the above, on 15th September, 2015 the Prothonotary and Senior Master once again granted time to the Plaintiff to

remove the office objections including payment of court fees, on or before 29th September, 2015, which again the Plaintiff failed to pay and the suit was dismissed.

5. In the Affidavit in support of the Chamber Order dated 19th January, 2016 (which is filed four months after the dismissal of the suit), the Plaintiff has, as discussed hereinabove, given reasons for non-payment of court fees which are false to his knowledge. Again in the said affidavit, the Plaintiff has stated that the Plaintiff is now ready with the court fees but informs the Court today i.e. on 27th January, 2016 when the Chamber Order is taken up for hearing that he is unable to pay the court fees immediately and once again seeks time. The Chamber Order seeking restoration of the suit is therefore dismissed, with liberty to the Plaintiff to file a fresh suit.

(S.J. KATHAWALLA, J.)

