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

SUMMONS FOR JUDGEMENT NO. 169 OF 2011
WITH
NOTICE OF MOTION NO. 648 OF 2013
IN
SUMMARY SUIT NO. 929 OF 2011

Canbank Factors Ltd. .. Plaintiff
Vs.
The State Trading Corporation
of India Ltd. & Ors. .. Defendants

Mr.Vishal Talsania a/w. Mr.Pushkal Mishra i/b M.V. Kini & Co. for plaintiff.

Mr.Roy Choudhary, senior advocate a/w. Mr.Madhur Rai i/b PRS Legal for defendant no.1.

CORAM : K.R.SHRIRAM, J.
DATE : 18TH JULY, 2016

P.C.

1 The plaintiff has filed this suit claiming a sum of Rs.10,69,11,141.73 along with interest @ 16% per annum from the date of the suit until payment/realization.

The plaintiff is a Subsidiary of Canara Bank, a nationalized bank. Defendant no.1 is the State Trading Corporation of India. Defendant no.2 (in liquidation) approached the plaintiff with the proposal of factoring the invoices raised on defendant no.1. The plaintiff was given to understand that the goods, that were sold by defendant no.2 to defendant no.1, were to be exported by defendant no.1 to buyers in the international market of good repute and creditworthiness. Defendant no.2 also agreed to issue bills of exchange on defendant no.1 in favour of the plaintiff for the amounts of invoices issued by defendant no.2.

2 The plaintiff, thereafter, sanctioned the facility of purchasing the bills of exchange in the aggregate amount of Rs.15 crores on the terms and conditions as per their sanction letter. It is also alleged in the plaint that as per the Factoring Agreement, if the customer of defendant no.2 fails to make payment of the monies receivable by defendant no.2 from the customer under the invoices that have been factored by the plaintiff, defendant no.2 will be liable to pay the said amount to the plaintiff forthwith.

3 According to the plaintiff, the plaintiff, vide their letter dated 12th February, 2008, advised defendant no.1 that defendant no.2 has drawn the bills of exchange on defendant no.1 in favour of the plaintiff and since the plaintiff factored the same for a valuable consideration, it became the holder in due course. According to the plaintiff, defendant no.1 extended facility to defendant no.2 by allowing defendant no.2 to draw bills of exchange on defendant no.1. It is the plaintiff's case that since the plaintiff factored the said accepted bills of exchange and made payment to defendant no.2 and defendant no.1 in its capacity as an acceptor of the said bills of exchange,

honoured the same, defendant no.1 has to honour 13 bills of exchange and the total amount payable under the bills of exchange is the suit claim amount.

4 The basis of the suit is that defendant no.1 was the acceptor of the bills of exchange and but for defendant no.1 accepting the bills of exchange, the plaintiff would not have released the payments to defendant no.2 (in liquidation). Hence, defendant no.1 is also jointly and severally liable to make payments to the plaintiff.

5 Defendant no.1 has filed affidavit in reply. The first defence of defendant no.1 is that before the present suit came to be instituted, defendant no.1 instituted a suit bearing CS(OS) No.1923 of 2009 in which the plaintiff herein is defendant no.2 therein, claiming reliefs on the basis of the same bills of exchange, which is the subject matter of the present suit between the same parties. Defendant no.1 has also taken out a notice of motion for stay of this suit, being notice of motion no.648 of 2013 pending disposal of the suit filed in the Delhi High Court. It is also submitted that the bills of exchange have not been properly stamped and it is not a defect that is curable of Section 35 of the Indian Stamp Act, 1899.

6 As regards the second defence that it is not curable, I am afraid, the defendants are not correct because of the 2006 Amendment to Section 35 of the Indian Stamp Act. Section 35 of the Indian Stamp Act, 1899, was amended with effect from 18th April 2006. Prior to 18th April 2006, it did provide that a Bill of Exchange or Promissory Note cannot be admitted in evidence for any purpose if it is not duly stamped. Clause (a) of Section 35, pre-amendment, did not permit the validation of the instrument in the case of Bill of Exchange or Promissory Note. The result was in regard to all other instruments, there was a procedure prescribed for subsequent validation of the instrument by collection of the stamp duty or penalty. Such a procedure was not available in the case of Bills of Exchange and Promissory Note. Even if a party who wanted to use it as evidence was prepared to pay the stamp duty and penalty, he was not allowed to do so, so far as these instruments were concerned. The document become waste paper and on account of this rigid procedure, several debtors were allowed to escape liability unjustly. Therefore, based on the recommendation of the Law Commission of India in December 2001, Section 35 of the Indian Stamp Act came to be amended and the words "*not being an instrument chargeable with a duty not exceeding 10 naye paise only, or Bill of Exchange or Promissory Note, shall subject to all just exceptions*" came to be deleted. This amendment came into effect from 18th April 2006. Therefore, in case

of Bills of Exchange and Promissory Notes, procedure prescribed for subsequent validation of all other instruments by collection of stamp duty and/or penalty is available.

7 As regards the first defence that defendant no.1 has filed a suit under the same bills of exchange prior to the present suit filed in Delhi High Court, in which the present plaintiff is also defendant no.2, in my view, that itself, should be a reason for which unconditional leave to defend the present suit ought to be granted.

8 The defendants are, therefore, granted unconditional leave to defend.

9 The summons for judgement stands dismissed.

10 Similarly, defendant no.2 (in liquidation) has also filed summary suit No.1849 of 2009 in this Court under the same bills of exchange which is the subject matter of this suit, prior to filing of this present suit and the same is also pending. I, therefore, cannot say the defence raised by defendant no.2 is baseless and misconceived. In my view, unconditional leave to defend has to be granted to defendant no.2 as well.

11 Defendant nos.3 and 4 have issued personal guarantees for amounts due and payable by defendant no.2 pursuant to the to the sanction letters. Since the liability of defendant no.2 itself is in question, I am not inclined to grant summary decree against defendant nos.3 and 4 also. Leave to defend to defendant no.3 and defendant no.4, in my view, ought to be granted.

12 The counsel for defendant no.1 states that the written statement already filed by them before the Apex Court directed the summons for judgement be re-heard be considered as their written statement. The counsel does not wish to file any additional written statement. As regards defendant nos.2, 3 and 4, they are directed to file written statement within four weeks from today.

13 The counsel for the plaintiff to forward a copy of this order to the Official Liquidator of defendant no.2.

14 The counsel for defendant no.1-applicant seeks leave to withdraw the notice of motion no.648 of 2013. The notice of motion dismissed as withdrawn.

15 List the suit on 2nd August 2014 for directions.

(K.R. SHRIRAM, J.)