

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

**NOTICE OF MOTION NO.1868 OF 2016
IN
SUIT NO.1198 OF 2001**

ATV Projects India Ltd.Applicant/Plaintiff

Vs.

Central Bank of India & Ors.Defendants

Ms. Mansi Kaku a/w. Ms. Soniya Putta i/b. M/s. Solomon and Co. for the
applicant/plaintiff.

None for the defendants.

**CORAM : K.R.SHRIRAM, J.
DATE : 15th DECEMBER, 2016**

P.C.

1 The plaintiff had filed this suit claiming damages for Rs.305.96 crores alongwith interest at the rate of 18% p.a. from 1st April, 2001 till payment/realisation for losses and damages allegedly suffered by the plaintiff due to acts and omissions on the part of the defendants in making available to the plaintiff the sanctioned working capital. Only defendant no.1 had filed written statement whereas defendant nos.2 to 4 had not filed any written statement.

2 It is stated in the affidavit in support that the plaintiff had been declared sick under the provision of SICA and draft rehabilitation scheme of plaintiff company is pending sanction. In the meanwhile, one time settlement was arrived at between the plaintiff and all the defendants

and it is stated in the affidavit in support that the plaintiff made full payment of the agreed OTS amounts with interest. It is also stated in the affidavit in support that as per the OTS, each of the defendants were to fulfill certain obligations like issuance of No Dues Certificate, return the security documents, return the personal guarantees duly cancelled, withdraw all legal proceedings against the plaintiff and also issue and deliver papers and documents necessary for recording the extinguishment of charge. The suit has been subsequently disposed.

3 The counsel for the plaintiff states that defendant no.1, defendant no.4 and defendant no.5 have complied with all requirements even though there is a prayer sought against defendant no.4 at prayer clause – (c). As regards defendant no.3, it is stated that the debt has been assigned by defendant no.3 to the respondent – ARCIL and ARCIL has partly performed the requirements under the OTS but is still to issue and deliver to the plaintiff (i) security documents in original relating to the plaintiff's assets and properties deposited by the plaintiff with ARCIL/defendant no.3 and (ii) all papers and documents necessary for recording of extinguishment of charge. So far as Bank of India is concerned, viz., defendant no.2, the counsel for the plaintiff submits that even though almost 1 ½ years has lapsed since the OTS amount has been paid, Bank of India has been on one ground or the other dragging their feet

and not fulfilling their obligations. The counsel for the plaintiff also submitted that correspondence were addressed on behalf of the plaintiff calling upon the defendant no.2 to fulfill their obligations under the OTS failing which legal proceedings will be commenced but still defendant no.2 has not complied with.

4 The counsel for the plaintiff states that defendant nos.2,3 and the respondent were served a copy of this notice of motion on or about 2nd August, 2016 itself and undertakes to file affidavit of service within one week from today. Despite service the defendant nos.2,3 and the respondent have not filed any affidavit in reply opposing this notice of motion. When the notice of motion was listed on 13th December, 2016 the matter was stood over to today and the plaintiff was directed to once again intimate defendant nos.2,3 and the respondent that the notice of motion will be taken up for hearing. The counsel for the plaintiff states that such a notice was issued on 13th December, 2016 itself and states that service of that communication also will be included in the affidavit of service that is to be filed by the applicant.

5 Have heard the counsel for the plaintiff and also considered the affidavit in support. Since the defendant nos.2,3 and the respondent have not filed any affidavit in reply denying any of the allegations contained in the affidavit in support, I would proceed on the basis that they

have no objection if the relief as prayed for is granted. The counsel for the plaintiff states that on 4th November, 2016 when they once again called upon the advocate for defendant no.2 to advise their client to fulfill their obligations failing which they will press ahead with the notice of motion, the advocate for defendant no.2 made an endorsement in the office copy of the plaintiff's letter stating that the plaintiff do not have any cause of action as against defendant no.2.

6 In my view, this is not sufficient but the defendant no.2 should have filed an affidavit in reply and bring everything to the notice of this court as to why the relief as sought should not be granted.

7 In the circumstances, the notice of motion is allowed and accordingly disposed in terms of prayer clauses – (a) and (b) - partly, which read as under :-

(a) That this Hon'ble Court be pleased to direct Defendant No.2:-

(i) to issue and deliver to the Plaintiff No Dues Certificate confirming that no amount is remaining payable by the Plaintiff to Defendant No.2;

(ii) to issue and deliver to the Plaintiff security documents in original relating to the Plaintiff's assets and properties deposited by the Plaintiff with Defendant No.2;

(iii) to issue and deliver to the Plaintiff personal and other guarantees duly cancelled; and

(iv) to withdraw legal proceedings filed by Defendant No.2 in any court, tribunal, authority against Plaintiff/its officials/directors/guarantors;

(v) to issue and deliver all papers and documents necessary for recording of extinguishment of charge;

(b) That this Hon'ble Court be pleased to direct Asset Reconstruction Company (India) Limited Respondent to the Notice of Motion /Defendant No.3 :-

(ii) to issue and deliver to the Plaintiff security documents in original relating to the Plaintiff's assets and properties deposited by the Plaintiff with Asset Reconstruction Company (India) Limited / Defendant No.3;

(v) to issue and deliver to the Plaintiff all papers and documents necessary for recording of extinguishment of charge.

8 The defendant no.2 and the respondent are directed to comply with the order within four weeks from today.

(K.R. SHRIRAM, J.)