

Arul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 439 OF 2014
IN
COMPANY PETITION NO. 554 OF 2012**

IFCI Factors Limited	...Applicant
<i>Versus</i>	
Raj Oil Mills Limited & 2 Ors.	...Respondents

Ms. Gaurangi Patil, *with Ms. Apurva Wagle, i/b M/s. PKA
Advocates, for the Applicant.*

Mr. Swapnil Bangur, *with Mr. Deepak Shukla, i/b M/s. Vinod
Mistry & Co., for Respondent No. 1.*

Ms. Armin Wandrewala, *with Mr. S.R. Waghmare, & Mr. Dileep
Satale, i/b Mulani & Co., for Respondent Nos. 2 and 3.*

CORAM: G.S. PATEL, J.
DATED: 16th March 2016

PC:-

1. The Company Application is thoroughly misconceived. It seeks an order that I should record a finding to the effect that it “appears that offences under Section 193 read with Section 191 and/or Section 209 and/or any other relevant provision of the Indian Penal Code, 1860 have been committed by the Respondent”; that a complaint be made in writing to an officer of this Court and direct that this be sent to a Magistrate with

jurisdiction; and that I should direct the Respondents to furnish sufficient security for their appearance before the Magistrate.

2. On the face of it, and even without examining the merits, there are so many problems with this frame of the prayers that it is hard to say where one should begin. Prayer (a) is incomprehensible. Presumably it invites a finding in perjury. If that is so, I do not see where there is any question of arriving a finding to this or that “effect”. In matters of criminal law, it is not permissible to invoke “and/or any other relevant provision”. The person accused must know precisely the charge that he or she faces.

3. On this being pointed out, learned Advocate for the Applicant draws my attention to paragraph 13 of the Affidavit in Support. This is worth quoting in full.

“13. The Applicant at this juncture wishes to draw the attention of this Hon’ble Court to the said Reply filed on behalf of the Respondent No. 1. By the said Reply, the Respondent No. 1 alleged that the value of the security, namely the shares pledged in favour of the Applicant exceeded the dues of the Respondent No. 1 and had the Applicant realized the entire security, it would have more than recovered its debt due. However, the aforementioned suggestion is an utter falsification aimed at misleading the Hon’ble Court. The same is elaborated in detail in the paragraphs below. It is reiterated that believing the statements of the Respondent No. 1 to be true and

based upon the same, this Hon'ble Court relied upon the false statements in its order dated 23rd April 2014. The Respondent No. 1 willingly and with malice and intent to deceive this Hon'ble Court made false statements knowing fully well that the value of the shares on the dates mentioned in the Reply is grossly inflated and blatantly false".

4. Now this paragraph compounds the existent problems. It would have been one thing had the Applicant stopped at saying that a statement made by the Respondent on Affidavit was incorrect. But that is not the suggestion at all. The Applicant says that the Court was misled; that the Court believed the statements of the Respondent to be true, relied on these and, based on these, passed an order dated 23rd April 2014. In other words, the Court was completely taken in and passed a wrong order dated 23rd April 2014, one that was against the Applicant, and one that it would not have passed but for that statement being wrong.

5. The order of 23rd April 2014 is at Exhibit "C", from page 164. This was my own order. I do not recall being misled or being persuaded to accept the unacceptable. Indeed, everything that the Applicant says I did, I did not in fact do. A statement was made before me that the Applicant as Petitioning Creditor had sufficient security to cover the entire debt and that it was the Applicant's obligation in law to realize that security, upon which there would be no debt. I noted this argument. I then *rejected* it as a matter of law in paragraphs 7, 8 and 9 of my order. I made a conditional order *against* the Company, i.e., an order in favour of the Applicant,

directing a deposit of Rs. 9,89,00,000/- and in default ordering the admission of the winding up petition and an advertisement. I am wholly unable to see how the Applicant is even remotely aggrieved by any of this. It has, of course, not challenged the order of 23rd April 2014, for the simple reason that it could not. That order was in its favour.

6. This Company Application is wholly and entirely without merit. It deserves to be dismissed. It is.

(G. S. PATEL, J.)