

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

**APPEAL NO.115 OF 2016
IN
CHAMBER SUMMONS (L) NOS. 1137 AND 1119 OF 2015
IN
SUIT NO. 163 OF 2008**

Indusind Bank LimitedAppellant
V/s
Union of India, through
the Deputy Commissioner of Customs
(EPCG) and ors. Respondents.

Ms Bulbul Singh Rajpurohit i/b M/s. Crawford Bayley & Co. for the Appellant.
Ms S.I. Shah i/b M/s. S.I. Shah & Co. for Respondent No.1.
Mr. Sudeep Dasgupta for Respondent No.2.

**CORAM : DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

Date of Reserving the Order : 24 November 2016
Date of Pronouncing the Order : 08 December 2016.

P.C.:

1] The appellant challenges the order dated 27 July 2015 to the extent it allows in part Chamber Summons (L) No. 1137 of 2015 taken out by the Union of India (original plaintiff) and permits the Union of India to produce two letters on record in the course of pending suit.

2] Ms B.S. Rajpurohit, learned counsel for the appellant, submits that the two documents which have been permitted to be produced on record by the impugned order were neither referred to nor relied in the plaint and therefore, no leave could have been granted for their production. She submits that the Union of India has exhibited no

due diligence and therefore, learned Single Judge erred in exercising discretion in favour of the Union of India. She submitted that grave prejudice will occasion the appellant, in case, such documents are permitted to be produced on record at belated stage of the suit.

3] Ms S.I. Shah, learned counsel for the Union of India, has however, submitted that detailed reasons were furnished as to why the said two letters could not be produced on record earlier. She further submitted that the two documents are letters, which were admittedly received by the appellant and even considered by the appellant in the legal opinion obtained by it, as also in its reply to the same. In these circumstances, she submitted that the discretion has been rightly exercised by the learned Single Judge and the impugned order does not even constitute a judgment within the meaning of Clause 15 of the Letters Patent, in order to maintain an appeal against the same.

4] The Union of India had applied for leave to produce several documents under Order 7 Rule 14(3) of the Code of Civil Procedure, 1908 (CPC). By the impugned order, however, leave has been declined in respect of most of the documents except two letters, since there appears to be no dispute that the said letters were received by the appellant and even responded to. This means that the appellant can neither be said to have been taken by surprise nor for that matter seriously prejudiced by production of the said two letters on record. In paragraphs 26 and 27 of the impugned order, the learned Single Judge has taken into consideration the reasons set out by the Union of India for non-production of these documents earlier and after accepting such reasons, basically, exercised discretion under Order 7 Rule 14(3) of the CPC. There is neither any arbitrariness nor any unreasonableness in the exercise of such discretion. The aspect of due diligence on the part of

Union of India, has been duly considered by the learned Single Judge in the proper legal perspective. There is, accordingly, no case made out to interfere with the impugned order.

5] In case of ***Shah Babulal Khimji V. Jayaben D. Kania and anr.***¹, the Hon'ble Supreme Court has held that in the course of the trial, the Trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause come inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the Trial Judge. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the Trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

6] Applying the aforesaid ruling, at least *prima facie*, the impugned order cannot be regarded as a judgment, so as to entitle the

1 (1981) 4 SCC 8

appellant to maintain the present appeal. However, for the reasons set out earlier, even if the impugned order is to be regarded as a judgment there is neither any illegality nor any unreasonableness in the exercise of discretion by the learned Single Judge.

7] We, therefore, dismiss the appeal. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(CHIEF JUSTICE)

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