IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION (L) NO. 610 OF 2017
IN
COMMERCIAL SUIT (L) NO. 535 OF 2017

Rajkumar Jatia ..... Applicants

IN THE MATTER BETWEEN

Rajkumar Jatia ….. Plaintiff

VERSUS

Oriental Bank of Commerce ….. Defendant

Mr.D.D.Madon, Senior Advocate, a/w. Mr.Suraj Iyer, Mr.Hussain Dholakwala, i/b. Ganesh & Co. for the Plaintiff.

Mr.Anant Narayan for the Defendant.

CORAM : R.D. DHANUKA, J.
DATE : 2nd NOVEMBER, 2017

P.C.

By consent of parties, the notice of motion is heard finally.

2. By this notice of motion, the applicant seeks injunction against the defendants to transfer a sum of Rs. 155,231,176.29 sent by the defendant no.1 in 17 fixed deposits on behalf of the plaintiff for any purpose, including but limited to the discharge of the overdraft facilities availed by the four companies owned by the plaintiff's brother and seeks order and direction against the defendant to deposit the said amount in this Court.

3. It is not in dispute that the defendant had granted various facilities to (1) A.P.Trading Company, (2) Subhkaran & Sons, (3) Superways Enterprises Pvt. Ltd. and (4) Dilshad Trading Co.Pvt.Ltd. The companies at serial nos. 1 to 4 are controlled by the brother of the plaintiff. The company at serial no.5 Avenue Technologies Pvt. Ltd. is controlled by the plaintiff.

4. The plaintiff had placed certain amount in fixed deposits with the defendant from time to time to secure the repayment of the loan given by the defendant to those five companies. The two fixed deposits given by the plaintiff as and by way of security were renewed on the date of expiry.

5. It is the case of the plaintiff that vide a letter dated 29th July, 2016, the defendant as per the instructions of the plaintiff created 17 fixed deposits all value of Rs.1 crore during 4th August,2016 to 29th August,2016.

6. Mr.Madon, learned senior counsel for the plaintiff invited my attention to the fixed deposits annexed to the plaint at Exs.A and B and would submit that both these fixed deposits in respect of which the lien was created in favour of the bank was specifically indicated on the fixed deposits. He submits that the loan account numbers also were specifically mentioned including the date of lien, annexed at Exs.A and B to the plaint.

7. Learned senior counsel also invited my attention to other 17 fixed deposits annexed at Ex.E to the plaint and would submit that when these 17 fixed deposits were issued by the defendant in favour of the plaintiff, no lien was created in favour of the defendant. Neither any endorsement was made on those fixed deposits nor any particulars of lien was recorded in respect of those documents.

8. Learned senior counsel also invited my attention to the document annexed at Ex.A to the written statement filed by the bank i.e. the application cum authority letter for financial assistance signed by the plaintiff. He submits that the Part-A of Schedule I annexed to the said application would indicate that those 17 fixed deposits are not included in Part -A as and by way of security in favour of the defendant.

9. It is submitted by the learned senior counsel that the defendant however is taking undue advantage of the letter dated 5th November,2016 addressed by the plaintiff to the defendant. He submits that even if that letter is taken into consideration by this Court, the plaintiff had asked for the increase in the over draft limit for the company described at serial no.5 above and asked the bank to confirm its position. He submits that since the bank did not confirm the additional facilities, the bank cannot rely upon the said letter to contend that a lien was created in respect of those fixed deposits in favour of the bank.

10. Learned counsel for the defendant on the other hand invited my attention to various averments made in the plaint and would submit that even according to the plaintiff, till 17 fixed deposits were issued by the defendant pursuant to the letter dated 29th July, 2016, the plaintiff had created a security in favour of the defendant or various facilities granted by the defendant in favour of the five companies including a company which is under control of the plaintiff. He submits that the remaining four companies are controlled by the brother of the plaintiff and his family members. He also invited my attention to the document annexed at Ex.A to the written statement i.e. application cum authority letter for financial assistance and more particularly clauses 2, 3 and 6 and would submit that the plaintiff who had admittedly signed the said document had himself agreed that the lien was created by him over the said security placed and/or assigned and had further agreed that same would be available as the continuing security even if the overdraft cash credit once entered into the credit or the balance is reduced or extinguished at any time or from time to time.

11. Learned counsel also invited my attention to the letter dated 5th November,2016 addressed by the plaintiff himself to the bank thereby stating that those 17 fixed deposits were to be discharged against the existing overdraft limits and had in fact discharged all those fixed deposits in the bank in the sum of Rs.155,231,176.29. He submits that in view of the covenants in the application filed by the plaintiff annexed at Ex.A to the written statement, the plaintiff cannot be allowed to now contend that those 17 fixed deposits which were given as

securities given to the bank were no more securities. He submits that the defendant is entitled to encash those 17 fixed deposits being continuing securities to the bank for the facilities granted by the defendant to five companies including the company under control of the plaintiff in view of them having committed default.

12. A perusal of the averments made in the plaint and also the documents annexed to the plaint clearly indicates that it is an admitted position that atleast till those 17 fixed deposits were converted by the defendant in favour of the plaintiff pursuant to letter dated 29th July, 2016, the plaintiff had created lien in respect of the fixed deposits issued earlier. The fixed deposits receipts annexed at Exs.A and B to the plaint clearly indicates the lien of the bank. The details of the lien particulars are also provided in those two fixed deposits.

13. At the request of the plaintiff, the defendant had issued 17 fixed deposits in lien of the earlier two fixed deposit on its maturity. It is not in dispute that the defendant bank had granted various facilities to those five companies, out of which four companies were under control of the brother of the plaintiff whereas 5th company was under his control. The plaintiff has not disputed his signature on the 'application cum authority letter for financial assistance' annexed at Exs.A and B to the written statement. A perusal of the said two documents and more particularly the clauses 2 and 3 thereof clearly indicates that the plaintiff had agreed that the securities pledged by the plaintiff would be available with the bank as the continuous security even if the overdraft/cash credit runs into credit or the balance was reduced or extinguished at any time or

from time to time.

14. A perusal of the letter dated 5th November,2016 addressed by the plaintiff to the defendant clearly indicates that the plaintiff has instructed the defendant to discharge the plaintiff from those securities against the existing overdraft facilities. Last paragraphs of the said letter clearly indicates that the plaintiff has discharged all his fixed deposits with the bank of Rs.155,231,176.29.

15. In my *prima facie* view, the 17 fixed deposits described in the letter dated 5th November,2017 were given by the plaintiff to the defendant as continuing security in favour of the defendant bank to secure the facilities granted by the defendant to those five companies. I am not inclined to accept the submission made by the learned senior counsel for the plaintiff that the defendant is trying to take any advantage of letter dated 5th November,2016 annexed at Ex.F to the written statement. I am thus not inclined to direct the bank to deposit any amount in this court or not to encash those fixed deposits. In my view the notice of motion is thoroughly misconceived and is accordingly dismissed. No order as to costs.

16. The oral application of the learned counsel for the plaintiff for continuation of the ad-interim protection is vehemently opposed by the learned counsel for the bank. Application for continuation of the ad-interim protection is rejected.

(R.D.DHANUKA, J.)