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

NOTICE OF MOTION NO. 1593 OF 2015
IN
SUIT NO. 910 OF 1993

Framroz Pheroze Mehta & Anr. ....Plaintiffs
V/S
Union Of India & Ors. ....Defendants/Applicants

Mr.Dinyar D. Madon with Ajaraj D. Bagwe I/b. Mulla & Mulla & Craigie Blunt & Caroe for Plaintiffs.
Mr.S.R. Rajguru I/b. Jyotsna N. Pandhi for the Applicants / Original Defendants.

CORAM : S.C. GUPTE, J.

21 JULY 2017

P.C. :

This notice of motion is taken out by the Defendant State under Order 7 Rule 11 of the CPC for rejection of plaint on the ground that the suit appears from the averments in the plaint, to be barred by Section 78 of Foreign Exchange Regulation Act, 1973 ("FERA").

2 The suit filed by the Plaintiffs seeks to *inter alia* recover sums of about Rs.29.45 lakhs and Rs.36.54 lakhs along with interest from the Defendant State. (The original Plaintiff has since been deceased and is represented in the suit today by executors of his last will and testament.) It is alleged in the suit that the original Plaintiff, at the relevant time, was the proprietor of one Firoze Framroze and Company dealing in foreign exchange under a licence issued under FERA. The allegation is that foreign currency and travellers cheques of different countries were seized from an employee of the Plaintiff purportedly on the ground that there was illegal purchase

and sale of foreign exchange at a place not authorized in the licence and other violations of FERA. Hearing was held in pursuance of the show cause notices issued to the Plaintiff. By an order dated 12 December 1989, the show cause notices were discharged, absolving the Plaintiff of all allegations raised in the show cause notices and ordering release of the foreign currency seized from the Plaintiff's employee. It is the grievance of the Plaintiff in the present suit that in pursuance of this order, the foreign exchange seized was not returned to the Plaintiff but what was paid to the Plaintiff was an amount equivalent in rupees applying the exchange rate as of 18 April 1991, a little before the actual payment was made. The Plaintiff *inter alia* seeks to recover the differential sum of the value of the currency as of the date of order of 12 December 1989 and the value paid to the Plaintiff as of 18 April 1991.

3 The present notice of motion is taken out by the Defendant State on the footing that Section 78 of FERA, which was applicable at the relevant time, i.e. as on the date of the suit, bars any suit or legal proceeding against the Central Government or Reserve Bank or any officer of the Government or Reserve Bank or any person exercising any power or discharging any function or performing any duty under FERA, for anything in good faith done or intended to be done under FERA or under any direction or order made thereunder. In the first place, the notice of motion is taken out at a belated stage. The Defendants have not only filed their written statement in the present suit but even issues have been framed and documents are filed and even an affidavit of evidence is tendered in lieu of examination-in-chief by the Plaintiff. At the stage of marking of documents, this motion is taken out, that is to say, nearly after a lapse of 23 years from the date of filing of the suit. Be that as it may, on a fair reading of the plaint,

it is amply clear that the allegation in the plaint is that in clear contravention of the directions passed in the matter as well as the applicable provisions of FERA and rules made thereunder, the Defendants made the Plaintiff accept rupee equivalent to foreign currency as of 18 April 1991, entailing a substantial loss to the Plaintiff. What the Plaintiffs are seeking to recover is amount due to them from the Defendant state under the order passed by the competent authority and also under the provisions of FERA and rules made thereunder. Such a suit is not barred under the provisions of Section 78 of FERA. As far as the claim for damages is concerned, it may be an answer on the part of the Defendant State that the acts were carried out in good faith. Good faith, though, is a matter of fact, on which the defence is raised. It is not capable of being decided at this stage. At the stage of Order 7 Rule 11 of CPC, the court has to go by averments made in the plaint and not consider any defence raised by the Defendants. In any event, the allegation made in the plaint *prima facie* indicates legal *malafides* on the part of the Defendants in omitting to return the amount in foreign exchange or alternatively, at the rate of exchange as of the date of the order mandating such return. In the premises, there is no merit in the notice of motion.

4 The Notice of motion is, accordingly, dismissed. Costs to be costs in the cause.

5 Learned Counsel for the Defendants applies for stay of suit for a period of four weeks. The application is rejected.

(S.C. Gupte, J.)