

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

**APPEAL (L) NO.415 OF 2017
IN
NOTICE OF MOTION NO.1593 OF 2015
IN
SUIT NO.910 OF 1993**

Union of India & Ors.

.... Appellants

versus

A. Framroz Pheroze Mehta & Anr.

... Respondents

.....

- Ms. Jyotsna N. Pandhi, Advocate for the Appellants.
- Mr.D.D. Madon, Senior Advocate a/w Mr.Ajaraj D. Bagwe, i/b. Mulla & Mulla & CBC, Advocate for the Respondent.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 21st NOVEMBER, 2017.**

P.C. :

1. The above Appeal takes exception to the order dated 21/07/2017 passed by a learned Single Judge of this Court (S.C. Gupte, J.), by which order the Notice of Motion filed by the Appellant i.e. the Union of India raising a preliminary objection as regards the maintainability of the suit and resultantly seeking

the rejection of the plaint under Order 7 Rule 11(d) came to be dismissed. The Respondent herein is the original Plaintiff, who has filed the suit in question to recover the amount of Rs.29.45 lakhs and Rs.36.54 lakhs with interest from the Appellant. The Plaintiff was the proprietor of one Firoze Framroze and Company which was dealing in foreign exchange under a license issued under the Foreign Exchange Regulation Act (for short FERA). It seems that foreign currency and travellers cheques were seized from an employee of the Plaintiff on the ground that there was illegal purchase and sale of foreign exchange at a place not authorized in the license and alleging other violations of FERA. Upon this, the adjudication process was triggered of, ultimately resulting in order dated 12/12/1989 passed by the authority under the said Act absolving the Plaintiff of all the allegations made in the show cause notices and ordering release of the foreign currency seized from the Plaintiff's employee.

2. The claim in the said suit is based on the fact that though there was a release order in favour of the Plaintiffs of the

foreign currency seized from its employee, the refund which was made to the Plaintiff was an amount equivalent in rupees applying the exchange rate as of 18/04/1991, which was the date just before the actual payment was made. The Plaintiff by way of the instant suit therefore seeks recovery of the difference on the basis of the amount payable as on the date of the order i.e. 12/12/1989 and the value paid to the Plaintiff as on 18/04/1991.

3. It is an undisputed fact that the suit summons has been served upon the Appellant, pursuant to which, the Appellant has appeared and the Written Statement has been filed on behalf of the Appellant. It seems that the suit is at the stage where the Affidavit-of-Evidence is filed on behalf of the Plaintiff and the witness of the Plaintiff is now to be cross examined by the Appellant. It is at the said stage that the instant Notice of Motion has been filed seeking the rejection of the plaint by invoking Order 7 Rule 11(d) of the Civil Procedure Code. The said relief is sought on the basis that u/s 78 of the FERA, there is a bar to

the exercise of jurisdiction by the Civil Court in respect of the Orders passed by the Authorities, inasmuch as the said provision bars any suit or legal proceedings 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 the FERA, for anything in good faith done or intended to be done under FERA or under any direction or order made thereunder. It was also averred in the Affidavit in Support of the Notice of Motion that the action taken was referable to an action taken in good faith by the authorities. The learned Single Judge considered the objection to the maintainability of the suit having regard to the fact that the rejection of the plaint was sought under Order 7 rule 11(d) of the CPC. The said rule 11(d) reads thus;

11. Rejection of Plaint -:

(d) Where the suit appears from the statement in the plaint to be barred by any law;

4. The learned Single Judge having regard to the bar as contemplated by section 78 was of the view that the instant suit filed for recovery of the differential amount on account of the delay in releasing the amount to the Respondent, would not be covered by section 78 of the FERA. The learned Single Judge has also adverted to the fact that the suit has progressed inasmuch as the suit is now set down for trial and in fact it is the cross examination of the witness of the Plaintiff, which has to be carried out by the Appellant i.e. the Original Defendant. The learned Single Judge has also adverted to the fact that the instant application has been filed after a period of 23 years of the filing of the suit. The learned Single Judge therefore did not deem it appropriate to entertain the application filed for rejection of the plaint and has accordingly rejected the same by the impugned order.

5. The learned counsel appearing on behalf of the Appellant would seek to reiterate the submissions which were urged before the learned Single Judge based on the bar under section 78 and that the action being taken in good faith.

6. In our view, there is no merit in the above Appeal. As rightly held by the learned Single Judge, having regard to the suit in question, the same would not be covered by section 78 of the FERA. In so far as the defence of the action being taken in good faith is concerned, the same is a question of fact and would therefore not disentitle the Plaintiffs to file the suit in question on the ground that it is barred. That apart the same is a defence which is available to the Defendants but would not entitle the Defendants i.e. the Appellants to seek rejection of the plaint on the said ground. The rejection under clause (d) of Rule 11 has to be on the basis of the statements made in the plaint. It is trite flat for adjudication of an application under Order VII Rule 11 is concerned only, the averment in the plaint are required to be seen and not the defence. In our view, therefore, no interference is called for with the impugned order. The Appeal is accordingly dismissed.

7. In view of the dismissal of the Appeal, the Notice of Motion No.2268/17 does not survive and to accordingly stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)