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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 83/2017 & IAs No.2353/2017 (u/O XXXIX R-1&2 CPC) & 2354/2017 (for exemption)

CAMBATA AVIATION PVT LTD Plaintiff

Through: Mr. Samar Bansal and Mr. Sanad Kumar Jha, Advs.

Versus

KOTAK MAHINDRA BANK LTD. & ANR Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.02.2017**

1. This order is in continuation of yesterday's order.
2. Though the plaintiff yesterday mentioned the suit after the Court commencement hours for listing yesterday itself but when the same came up before this Bench yesterday, got the suit posted for today.
3. Counsel for the plaintiff today states that there are formal defects in the suit and seeks to withdraw the suit with liberty to file a fresh suit.
4. As per my reading of the plaint, the filing of the suit is a case of legal misadventurism.
5. The plaintiff has sued Kotak Mahindra Bank Ltd. and Employee Provident Fund Organisation (EPFO) averring (i) that EPFO has taken out a demand to the tune of Rs.9 crores against the plaintiff and which demand is

subject matter of challenge in Writ Petition No.990/2017 before the Bombay High Court of which notice has been issued; (ii) notwithstanding the receipt of notice, EPFO has attached monies lying in the account of the plaintiff with the defendant No.1 Kotak Mahindra Bank Ltd., New Delhi. The relief, of restraining the defendant No.1 Bank from remitting the monies from the account of the plaintiff to the EPFO is claimed in this suit.

6. On enquiry as to how the plaintiff, having challenged the demand before the Bombay High Court and having failed to get any interim stay therein, can now maintain a suit impugning the enforcement of the said demand, the counsel for the plaintiff states that while the challenge before the Bombay High Court is to the demand under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the challenge before this Court, within whose jurisdiction monies lying in the account of the plaintiff have been attached, is to the attachment order under Section 8F of the said Act.

7. Though *prima facie* it appears that the plaintiff cannot challenge the demand and its enforcement / implementation in different foras but since the plaintiff has not even paid the requisite court fees on this suit, the suit is permitted to be withdrawn with liberty to file fresh suit but on the condition that the plaintiff, along with the fresh suit if any filed, shall file a copy of the plaint in this suit as well as yesterday's and today's order in this suit.

8. A copy of this order as well as yesterday's order in this suit be given *dasti* under the signatures of the Court Master to the counsel for the plaintiff.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 22, 2017/bs..

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