IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 461 OF 2017

Shantilal Haria ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 462 OF 2017

Kalpana Haria ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 463 OF 2017

Raghuveer Vaman Gudal ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 464 OF 2017

Hitesh Sharma ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Atul Damle, Sr. Advocate a/w Ms. Racheeta Dhuru i/b India Law for the Applicants

Mr. H. J. Dedhia, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 5th JANUARY, 2018

P.C. :

1 Heard learned senior counsel for the applicants and the learned A.P.P for the respondent-State.

2 By these applications, the applicants have impugned the order dated 26th December, 2016 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court at Esplanade, Mumbai, by which the applicants' respective applications (Exhibit B of each of the application) to defreeze their accounts, came to be rejected; as well as the order dated 30th March, 2017 passed by the learned Sessions Judge, Greater Mumbai, in respective Criminal Revision Applications, and have prayed that their bank accounts be defreezed as mentioned in `Exhibit B' to each of the application.

3 Learned senior counsel for the applicants submits that none of the applicants are accused in C.R. No. 71 of 2016, registered with the Economic Offences Wing, Mumbai. He submitted that pursuant to the Memorandum of Understanding (`MOU') entered into between Fortune Finances Services India Ltd., Xperitus Insurance Brokers Pvt. Ltd. and the applicants, the applicants have performed their obligation. He further submitted that the original share certificates as well as the transfer share certificate forms have already been handed over by the applicants to the complainant and that Xperitus Insurance Brokers Pvt. Ltd. was under an

obligation to obtain IRDA permission. He submitted that the applicants, at all times, were and are willing to cooperate and take all necessary steps in terms of the MOU, to get necessary permission from the IRDA. He submitted that the dispute, if any, will have to be referred to the Arbitrator in view of clause (4) of the MOU and that the dispute, if any, is a civil dispute.

4 Learned A.P.P opposed the applications. He submitted that the responsibility to apply for IRDA permission is of the licensed entity and that it is the licensed entity who has to apply for approval of transfer of ownership, according to the Insurance Regulatory and Development Authority of India.

5 Perused the papers, including the impugned order. Admittedly, none of the applicants have been arraigned as accused in C.R. No. 71 of 2016, which is registered with the Economic Offences Wing, at the instance of the complainant. Admittedly, individual MOUs were entered into between the parties i.e. between Fortune Financial Services India Limited, the applicant (in each of the application) and Xperitus Insurance Brokers

Pvt. Ltd. on 22nd July, 2013. According to the MOU, it was the responsibility of each of the applicant (shareholder) to cooperate and to take all necessary steps to get all the approvals through Xperitus Insurance Brokers Pvt. Ltd. in getting permission from IRDA. Clause (7) of the MOU reads thus :

> *"7. The Selling Shareholder will take necessary steps to get all the approvals through the Company in place before the Completion Date and also co-operate with the Company in getting permission from IRDA."*

It appears that shareholding of each of the applicant in Xperitus Insurance Brokers Pvt. Ltd. is as under :

Sl. No.	Name of Shareholder	Share %	Amount of share
1	Smt. Kalpana Haria	19.61	47,50,000
2	Sh. Shantilal Haria	19.61	47,50,000
3	Sh. Raghuveer Gudal	3.88	9,40,500
4	Sh. Hitesh Sharma	9.80	23,75,000

6 It appears that pursuant to the MOU entered into between the parties, the first instalment was released by the complainant to the applicants against the receipt of the said shares along with duly executed share transfers. According to the MOU, the second instalment was to be

released by the complainant to the selling shareholder only subject to the satisfactory completion of the conditions mentioned in clause (1) along with the successful transfer of the said shares in the name of the complainant company by Xperitus Insurance Brokers Pvt. Ltd. It is specifically stated in clause (1) of the MOU that the shares would not be transferred in the name of the complainant company (Fortune Financial Services India Ltd.) till IRDA permission was obtained and the second instalment was paid. It appears that the original share certificates have been handed over along with the share transfer forms by each of the applicants to the complainant company. There is also a provision in the said MOU for referring the matter to an Arbitrator, in case of any dispute.

7 The amounts that have been frozen during investigation are as under :

Sl. No.	Name of Shareholder	Amount frozen
1	Smt. Kalpana Haria	5,59,740
2	Sh. Shantilal Haria	5,74,522
3	Sh. Raghuveer Gudal	1,22,426
4	Sh. Hitesh Sharma	42,53,155

8 Learned senior counsel for the applicants also submitted that each of the applicant is ready to file their respective undertakings, stating that they would take all steps and will cooperate with the authorities/company in getting permission from IRDA in compliance with clause (7) of the MOU.

9 In the facts and considering the role of the applicants, the applications are allowed.

10 Accordingly, the impugned order dated 26th December, 2016 passed by the Additional Chief Metropolitan Magistrate, 47th Court at Esplanade, Mumbai, as well as the order dated 30th March, 2017 passed by the learned Sessions Judge, Greater Mumbai, in respective Criminal Revision Applications, are quashed and set-aside and the applicants' bank accounts, with the following amounts, of the applicants are defreezed :

Sl. No.	Name of Shareholder	Bank A/c.	Amount frozen
1	Smt. Kalpana Haria	SVC Co-op. Bank A/c. 101803130001402	5,59,740
2	Sh. Shantilal Haria	SVC Co-op. Bank A/c. 101803130001401	5,74,522
3	Sh. Raghuveer Gudal	SVC Co-op. Bank A/c. 100303130010127	1,22,426
4	Sh. Hitesh Sharma	HDFC Bank Ltd. A/c. 02911140000931	42,53,155

11 The applicants shall file undertakings in this Court that they will cooperate and shall take all necessary steps, in compliance with clause (7) of the MOU. The said undertakings shall be filed in the Registry of this Court, since investigation is in progress and till date charge-sheet has not been filed. The applicants shall also give indemnity bonds that they will bring back the aforesaid amounts, if and when the individual liabilities of the applicants are cystalised/determined in appropriate proceedings. The indemnity bonds shall also be filed in the Registry of this Court.

12 The applications are accordingly disposed of.

13 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.