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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 658 OF 2018
IN
SUIT NO. 3022 OF 2009

Somerset India Fund ...Applicant/ Defendant No.10

In the matter between

Networth Stock Broking Ltd & Ors ...Plaintiffs

Versus

Mukesh Konde & Ors ...Defendants

Mr Dipan Merchant, Senior Advocate, *with Dimple Merchant, Mr Gaurav Jangle & Punit K, i/b IV Merchant & Company, for the Plaintiffs.*

Mr JP Sen, Senior Advocate, *with Onkar Chandurkar, N Carrimjee, Aparajita Sen, Sneh Nainan, i/b Desai Desai Carrimjee & Mulla, for the Applicant/Defendant No.10.*

Mr Sandesh Godse, *i/b Vivek Patil & Associates, for Defendant Nos.6 & 7.*

Mr Prathamesh Kamat, *i/b Ganesh & Company, for Defendant No.8.*

Mr Omprakash Jha, *i/b The Law Point, for Defendant No.9.*

Mr Raghav Shekhar, *i/b The Law Point, for Defendant No.5.*

Mrs M Naidu, Beena Soneji & Jayshri Rohra, *representative of Plaintiffs present.*

Mrs R Kale, *Master & Assistant Prothonotary present.*

CORAM: G.S. PATEL, J

DATED: 13th April 2018

PC:-

1. The Notice of Motion No. 658 of 2018 is filed by the 10th Defendant, Somerset India Fund ("**Somerset**") seeking that an amount of Rs.4,91,61,278/-, previously deposited and invested, be released to it with accrued interest. This is in respect of a sale of 1,64,474 shares on the Bombay Stock Exchange (**"BSE"**) of RTS Power Limited (**"RTSPL"**).

2. Shortly stated, the case of the three Plaintiffs, all share and stock brokers, is that they were defrauded *inter alia* by Defendants Nos. 1, 2, 3 and possibly Defendant No.8, all individuals, who, between them, on one particular day of trading, 11th February 2009, contrived to rig or artificially control the trading price of the RTSPL shares listed on the BSE.

3. The regulator, SEBI, is also before me. The complaint that the Plaintiffs made was also referred to the Economic Offences Wing (**"EOW"**). The EOW found no material or evidence of criminality or involvement of Somerset in the alleged transaction(s). SEBI itself has carried out what it describes as an in-depth investigation. It has came to the same conclusion.

4. It seems that on that particular date, Somerset, perhaps in a stroke of extreme bad fortune, happened to put to sale its holding, or part of its holding, of several thousand shares of RTSPL in two lots. Some of these shares so put to sale by Somerset were bought by Defendants Nos. 1 to 3 or 8. Somerset itself was at no point during those transactions a purchaser of a single one of these shares. It was always only a seller in the entire set of transactions.

5. Since the Plaintiffs alleged share price rigging, all payouts were halted. Ultimately, even the amount due to Somerset as the seller of these shares was withheld. Thus, Somerset did not have the shares, since these were sold and the transactions never reversed, nor did it have the sale proceeds of those sales.

6. From a reading of the plaint, and now the conclusion reached by the EOW which has caused a C Summary report to be filed, and the result of SEBI's investigation, *prima facie* it is difficult to discern any case made out that Somerset was in any way involved in the alleged price rigging or manipulation. As against Defendant No.8, there may be other material requiring evidence or investigation. But Somerset was always only a seller, and no one has been able to pinpoint any connection or nexus between Defendants Nos. 1 to 3, or Defendant No.8 (or all of them) and Somerset, except — and this is a matter of record — that some of the shares put into the market by Somerset were picked up by one or more of the contesting Defendants. That is, *prima facie*, not sufficient evidence of collusion, conspiracy or involvement in the alleged fraud.

7. The rupee value of Somerset's sale is not small. It is in the amount of Rs.4,91,61,278/-. Following statements made to Court by BSE and SEBI, this Court issued orders or accepted statements resulting in several amounts being deposited in this Court, including the transaction value of the Somerset sales.

8. Mrs Rajashree Kale today gives me a statement of the amounts lying to the credit of the suit. All these amounts are invested. The earliest of these matures on 12th June 2018 and the last of these matures on 4th May 2019. Mr Sen on behalf of the Somerset has instructions to state that Somerset will await the maturity of FDR No. 50300096574306 on 12th June 2018. The maturity amount is Rs.6,65,28,921/-. From this, the amount requested by Somerset, i.e. Rs.4,91,61,278/- with interest accrued due computed from 2nd May 2013 (which is when a deposit was made of Rs.4,90,50,484.40, inclusive of interest up to that date), will be allowed to be withdrawn by Somerset. If there is any shortfall in the interest computed due, or the amount of this Fixed Deposit is not sufficient to cover the payout with interest to Somerset, it (viz., Somerset) will await till the maturity of the immediately next investment on 13th July 2018.

9. The BSE and HDFC Bank request that they be dropped from the array of Defendants. At this stage, that order cannot be made, even if their role at the trial of the suit is limited. It is entirely conceivable, for instance, that either or both these entities may be required to produce documents or give evidence as to their end of these transactions. The BSE may be required to give evidence regarding its records of these transactions and how it monitored them, and the regulatory actions that followed. HDFC Bank may be required to adduce evidence of the accounts it maintained for one or more of Defendants Nos. 1 to 3 (and perhaps Defendant No.8 as well), and give evidence of the movement of funds in and out of those accounts. It is of little use saying that BSE or HDFC Bank can always be summoned as witnesses to give evidence. That will only delay the trial and increase costs. It is therefore necessary, convenient and proper that, at least for the present, both BSE and

HDFC Bank be continued as defendants to this suit. Liberty, however, to both defendants to file a formal application for their deletion as party defendants. All contentions are left open in this regard.

10. Mr Merchant for the Plaintiffs submits that if Somerset is being allowed to withdraw the transactional value of its sales and accrued interest, then it should be put to terms and required to give an undertaking to bring back the entire amount should an order be made in that regard. I do not think this is necessary. Somerset is a party defendant to the suit and is not being deleted from the array of defendants. It will, of course, being a defendant be subjected to any final order or decree in the suit. The 'security' that the Plaintiffs seek might have been necessary had there been any material, even *prima facie*, of Somerset's culpability or involvement. So far there is none. In the nine years that have passed since the suit was filed, the Plaintiffs have brought forward absolutely nothing against Somerset except to say that they do not know if Somerset had any involvement in the alleged fraud or not. That is not good enough. This is not a public interest litigation of the kind that might lend itself to a wide-ranging enquiry ordered by a court. It is a civil suit constrained by the provisions of the Code of Civil Procedure, 1908, and therefore an essential requirement is that there must be a demonstrated cause of action. What we do have, however, is an unambiguous finding by the EOW that there is no material to show criminality by Somerset, and, second, the result of SEBI's own investigation, which, too, shows that there is nothing to evidence Somerset being a participant in the perpetration of the alleged fraud. Should Somerset, for these reasons, be deleted as a party? Again, for the same reasons that apply to BSE and HDFC Bank, I am inclined to say no. After all, Somerset's shares were, at least in part, picked up by one or more of the principal contestants, Defendants Nos. 1 to 3. At the trial, the Court will need a complete record and given the intricacy of these transactions, in my view, it is premature at this stage to allow the deletion of Somerset as Defendant No.10. That issue is also kept open and may be re-visited at some appropriate stage on a formal application being made for that purpose.

11. Finally, the Plaintiffs are dominus litus, and it is for them to decide whom to sue for what relief. This also means that is they who run the risk of answering questions of joinder and maintainability.

12. The Motion is disposed of in these terms. There will be no order as to costs.

13. List the Suit for framing issues on 25th June 2018.

(G. S. PATEL, J)