rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 44 OF 2018

IN

COMMERCIAL SUMMARY SUIT NO. 254 OF 2018

The Railway Goods Clearing and Forwarding Establishments Labour Board, Mumbai	Plaintiff's
vs.	
The State Bank of India and Ors.	Defendants

Mr. Ashutosh Kumbhakoni, Advocate General i/b. Sanjay P. Shinde for the Plaintiffs.

Mr. Hiralal Thakkar, Senior Advocate a/w. Ms. Lopa Munim and Mr. J. B. Navlani i/b. Kusumakar Kaushik for the Defendants.

CORAM : A. K. MENON, J.

DATE : 14th DECEMBER, 2018

P.C.

1. The suit seeks recovery of a sum collectively amounting to Rs.23,43,14,830.80 ps and interest on diverse sums of Rs.21,71,34,096/-, Rs.2,00,00,000/- and Rs.28,65,904/- @ 7.5% p. a. as per particulars of claim. The principal sums claimed form the amount of Fixed Deposits made by the plaintiffs with the defendants.

2. The plaintiff is a board set up under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 ("The Mathadi Act"). Although the plaint was initially filed against four defendants viz.

State Bank of India through its branch Manager, its Regional Manager, Zonal Manager and Chief General Manager, defendant nos. 2, 3 and 4 were dropped from array of parties pursuant to order dated 29th October, 2018 and therefore suit proceeds only against State Bank of India.

3. The plaint proceeds on the basis that a scheme had been notified under the Mathadi Act for the benefit of unprotected workers and regulation of their employment and welfare. The plaintiff board was empowered to manage the scheme and its funds. The plaintiffs' were entitled to invest funds in securities and nationalised banks since the ultimate object and purpose of the Act was to ensure welfare of the Mathadi workers including their provident fund, gratuity and other benefits. The plaintiff reportedly receives interest on investment in securities and deposits and rents. It is the case of the plaintiff that in the regular course of business, they opened a savings account in various nationalised banks. In the month of March 2016 the defendant requested the plaintiff to invest surplus funds in fixed deposits with them. This was accordingly done as described below.

4. On 5th March, 2016 plaintiff submitted a letter dated 4th March, 2016 and instructed the defendant to invest a sum of Rs. 2 crores in a term deposit reinvestment plan for a period of 456 days in the name of "The Railway Goods Clearing and Forwarding Establishment. Labour Board, Mumbai". A cheque for Rs. 2 crores was accordingly issued. It was drawn on the Jogeshwari (East) branch of the defendant no.1. On 5th March, 2016 itself defendant is said to have issued a fixed deposit receipt.

5. Subsequently on 22nd March, 2016 a further letter was received by the plaintiff from the defendant bank, once again requesting the plaintiff to invest surplus funds in the fixed deposit in their branch. The plaintiff obliged and invested further sum of Rs. 22 crores in five installments. The first four installments were of Rs.5 crores each and the 5th installment of Rs. 2 crores. All cheques were issued from the Jogeshwari Branch of defendant where the plaintiff had an account. The plaintiff made an investment totaling to Rs. 24 crores by cheques as aforesaid with separate covering letters dated 22nd March, 2016. The penultimate paragraph in the different covering letters, which were all identical in content, save and except for the change in the cheque numbers, date and amount reads as follows :

> *"It may be noted that, the Deposit re-investment Plan or its Receipt shall not be mortgaged, pledged, hypothecated or transferred to anybody else. No loan shall be granted against these deposit or deposit receipt. No individual person is empowered to raise any loan on the basis of this Deposit or offer this deposit as surety to any loan. If these conditions are violated, the entire responsibility shall lie with the bank only."*

Thus the defendant bank was put to notice that no loan should be granted against deposit and no individual was empowered to raise a loan. The defendant also issued a fixed deposit receipt initially for a sum of Rs. 2 crores. The deposits were made for a period of 456 days @ 7.5% per annum bearing interest @ 7.5% per annum.

6. It is case of the plaintiff that on 5th March, 2016 while tendering the cheques for the aforesaid amounts instructions were given to the bank that the receipts shall not be "mortgaged, pledged or hypothecated" or transferred to anybody and no loan shall be granted against the deposit receipts. No person was empowered to raise any loan on the basis of this deposit. Similar conditions were incorporated in all the five forwarding letters copy of which appears at Exhibit B, F, G, H, I and J. Five separate fixed deposits came to be issued all are identically worded in favour of the plaintiff as detailed below :

A/c No	Amount	Interest rate	Value Date	Maturity date	Maturity Amount
35617707590	2,00,00,000	7.5%	5.3.2016	4.6.2017	2,19,45,537
35654341709	2,00,00,000	"	23.3.2016	22.6.2017	2,19,45,537
35654433861	5,00,00,000	"	23.3.2016	22.6.2017	5,48,63,842
35654341517	5,00,00,000	"	23.3.2016	22.6.2017	5,48,63,842
35654341164	5,00,00,000	"	23.3.2016	22.6.2017	5,48,63,842
35654328449	5,00,00,000	"	23.3.2016	22.6.2017	5,48,63,842

All receipts contained a hand written endorsement said to have been made by the bank. Receipt dated 5th March, 2016 contained the following endorsement :

"This cannot be paid before maturity and cannot be lien"

The rubber stamp of the bank is seen to be affixed under the said endorsement. On the remaining four receipts the endorsement read

"No Loan, No Lien unless request received from Authorised Signatory"

7. By letters dated 17th March, 2016 and 2nd April, 2016 to the bank the Plaintiff informed the bank of the constitution of the board the object of which was

to protect Mathadi workers from the exploitation and the investment were held with Nationalised Banks. The board requested confirmation by way of email that the deposit stands in the name of the board, that they are repayable on demand and that the branch has not granted any loan and the deposits are free of encumbrances. The letters mentioned that many frauds have been detected by the board and such a confirmation was required.

8. On or about 11th April, 2016, it appears that the bank sent email to the board confirming that their instructions would be followed and thanking the board for depositing the sum of Rs. 22 crores. Copy of this appears at Exhibit 'O' to the plaint. A similar confirmation was received from the bank vide email dated 8th August, 2016 Exhibit-Q to the plaint which is also reproduced in the affidavit in support of the summons for judgment.

9. On or about 8th August, 2016 the branch Manager of the defendant while confirming the deposits informed the plaintiff that an overdraft facility has been taken against the security of the deposits and a lien has been marked on the deposits, on 9th August, 2016. The plaintiff were shocked at these revelations and plaintiff promptly filed a complaint with the Economic Offences Wing alleging cheating and fraud. The modus operandi was similar to the case forming subject matter of Commercial Summary Suit no. 218 of 2018 filed in this Court. The Branch Manager had permitted RTGS transactions and permitted debits to the extent of Rs. 1.80 crores. In its affidavit in reply of one Sneha Ambekar, Branch Manager the defence taken is identical to that in Summons for judgment no. 43 of

2018 in Commercial Summary Suit No. 218 of 2018. Diverse amounts were debited by way of overdraft in favour of the plaintiff and payments were made to third parties. A loan application was allegedly found on file and is annexed at Exhibit A-7 to the affidavit in reply. The loan application is dated 9th March, 2016, it bears signatures at the bottom which according to the bank are signatures of the plaintiff's Secretary and Chairman. The form has not been signed on the second page by anybody on behalf of the plaintiff. The column pertaining to particulars of security, D.P. Note, delivery date are also blank. The D.P. note is dated 29th March, 2016 and mentions the sum of Rs.3,60,00,000/- The D. P. Note and delivery letter are blank and contain two signatures allegedly belonging to the plaintiff.

10. The second loan application at Exhibit A-18 is completely blank and contain two signatures said to be of the plaintiff's Chairman and Secretary at the foot of the first page. The second page is not signed by anyone at all. Like the first loan application, particulars of security offered are blank. There are similar loan applications for the other alleged overdraft amounts which are identical to the partially completed loan application forms. One common factor across all the loan applications is the fact that it bears a signature (on behalf of the bank) under the words "recommended" and is signed by one Mr. Rajan Sakhare who was in-charge of deposits.

11. The facts of the case, save and except for these minor variations and the manner monies have been paid out by RTGS transactions are identical to the one in Commercial Summary Suit no. 218 of 2018. There are several application forms

of different dates signed by two persons on behalf of the plaintiff seeking overdraft for diverse amounts. The amounts debited are towards RTGS transactions in favour of third parties. Many of the beneficiaries of the RTGS transfer are common in the two suits viz. M/s. Jesse Trading Private Limited, Shubhan Enterprises, Shreeji Traders and Noble Enterprises. The defences are also identical. The arguments made at the bar are also identical to Commercial Summary Suit No. 218 of 2018 save and except the plaintiff, the defendant bank and its branch are the same. In the circumstances for reasons set out in the order of even date in Commercial Summary Suit No. 218 of 2018 I pass the following order :

(i) The defendant shall create a fixed deposit in a sum of Rs.23,43,14,830.80 Ps . in the name of "Prothonotary and Senior Master, Bombay High Court Account Commercial Summary Suit No.254 of 2018" in the defendant bank initially for a period of one year at the rate available as on date of deposit and to be renewed each year till further orders.

(ii) The deposit shall be made within a period of four weeks. The original deposit receipt shall thereafter be filed with the Prothonotary and Senior Master within one week of the deposit. A copy of the receipt shall also be furnished to the plaintiff's Advocate.

(iii) If the amount is deposited, the written statement to be filed within a period of eight weeks from today.

(iv) Hearing of the suit is expedited.

(v) Summons for Judgment is disposed in the above terms.

(A.K. MENON, J.)