FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 97/2017
(BANK OF INDIA **VERSUS** GUPTA COAL INDIA PRIVATE LIMITED, NAGPUR & ANOTHER)

WITH

CIVIL REVISION APPLICATION NO. 98/2017
(BANK OF INDIA **VERSUS** PADMESH DEODATTA GUPTA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri A.T. Purohit, counsel for applicant in both the applications.
Shri M.R. Joharapurkar, counsel for NA-2 in CRA No.97/2017 and for NA-4 in CRA No.98/2017.
Shri A.S. Jaiswal, Senior Advocate with Shri V.B. Gaoli, counsel for NA-3 in CRA No.97/2017.
Shri A.G. Gharote with Shri P.P. Deshmukh, counsel for NA-1 & 2 in CRA No.98/2017.
Shri Adwait Manohar, counsel for NA-3 in CRA No.98/2017.

CORAM : A.S. CHANDURKAR, J.
DATE ON WHICH ARGUMENTS WERE HEARD : 23RD AUGUST, 2018.
DATE ON WHICH ORDER IS PRONOUNCED : 4TH SEPTEMBER, 2018.

Since identical challenges have been raised in these Civil Revision Applications, they are being decided together by this common order.

2. The defendant no.1 in Special Civil Suit No.65 of 2017 as filed seeking a declaration that the inclusion of the account of the plaintiff-Company as a fraud account is aggrieved by the order passed by the trial Court rejecting the application that was filed under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code'). The said order has been challenged in Civil Revision Application no.97 of 2017.

3. It is the case of the plaintiff which is a company registered under the Companies Act, 1956 that it was engaged in the business of trading of coal. It had obtained a financial assistance from the defendant no.1-Bank initially and thereafter also from the defendant no.2-Bank. During the course of business, on account of change in the policies with regard to allotment of coal, the company faced financial setbacks. The defendants alongwith other banks formed a consortium with a view to recover the amounts due from the plaintiff-Company. According to the plaintiff, various guidelines were issued by the Reserve Bank of India so also there was a Master Circular that was holding the field which empowered the financial institutions to take steps towards recovery of the amounts. During that process, the account of the plaintiff-Company was declared as a fraud account, thus giving a cause of action to the said company to file the aforesaid suit. In the suit, a declaration has been sought that the action on the part of the defendants in declaring the account of the plaintiff-Company as fraud was illegal and that it was contrary to various guidelines and circulars issued by the Reserve Bank of India. It was also against the principles of natural justice. As regards, the valuation of the suit, it was pleaded that the claim for declaration was incapable of monetary valuation however, it was valued at the quantum of lending by paying the maximum Court fees.

In Civil Revision Application No.98 of 2017, an identical challenge has been raised by the Directors of the aforesaid company by filing Special Civil Suit No.236 of 2017. In that suit the plaintiffs have sought a declaration that any intended action on the basis of declaration of the company's account as fraud is illegal.

4. The defendant no.1-Bank on being served filed its written statement and denied the prayers as made. It also filed application under provisions of Order VII Rule 11 of the Code seeking rejection of the plaint, *inter alia*, on the ground that the suit was barred by the provisions of the Commercial Courts Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short, 'the Act of 2015'). Similarly, a pursis was also filed raising the plea that the suit was not tenable in view of provisions of Section 41(d) of the Specific Relief Act, 1963 (for short, 'the Act of 1963').

5. Reply was filed on behalf of plaintiff opposing the said application by stating that the plaint was not liable to be rejected. The trial Court after considering the contentions of the parties rejected that application by holding that the suit was maintainable before the Civil Court. Being aggrieved, the defendant no.1 in both the suits have challenged that order.

6. Shri A.T. Purohit, learned counsel for the applicant submitted that considering the nature of the suit as filed, the Civil Court had no jurisdiction to entertain the same. He referred to the provisions of the Act of 2015 and especially Section 2(1)(c)(i) thereof to urge that the dispute in question was a commercial dispute. Reference was also made to the provisions of Section 12(1)(d) of the Act of 2015 to urge that the specified value of the commercial dispute was much higher than what was disclosed by the plaintiff. It was then submitted that in view of provisions of Section 54 of the Banking Regulation Act, 1949 (for short, 'the Act of 1949'), the steps taken by the defendants were in good faith and intended to be done in pursuance of that Act and hence, no suit in that regard was maintainable. Referring to the provisions of Section 41(d) of the Act of 1963, it was urged that the relief sought by the

plaintiff so as to restrain the defendants from instituting proceedings in a criminal matter as a consequence of the account being declared as fraud could not be granted. The learned counsel referred to the pursis filed on record before the trial Court and submitted that on a complete reading of the plaint, the cognizance of the suit as filed could not be taken by the trial Court and the plaint was liable to be rejected. The learned counsel also referred to the provisions of Recovery of Debts and Bankruptcy Act, 1993 (for short, 'the Act of 1993') as well as the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') and urged that the Civil Court had no jurisdiction to entertain the suit. The learned counsel placed reliance on the decision in *D.M. Corporation Pvt.Ltd. Versus State of Maharashtra & Others* [**2018 (4) Mh.L.J. 457**] in support of his contentions. It was thus submitted that by filing the aforesaid suits, the plaintiffs intended to avoid any action that was sought to be taken by the defendant-Banks pursuant to the plaintiffs account being declared as fraud. It was urged that the trial Court erred in rejecting the applications in question.

7. Shri A.S. Jaiswal, learned Senior Advocate for the non-applicant no.3 through its liquidator, submitted that the interests of the plaintiff-Company were to be taken care of by the liquidator. He submitted that the provisions of Section 2(1)(c)(i) of the Act of 2015 were not attracted, inasmuch as, ‘commercial dispute’ would mean a dispute arising out of an ordinary transaction between banks and which related to enforcement and interpretation of mercantile documents. No relief in that regard had been sought in the suit and therefore it could not be said that the plaintiffs had raised a commercial dispute. He also referred to the provisions of Section 6

of the Act of 2015 as well as Section 12(1)(d) thereof and urged that the Civil Court had jurisdiction to entertain the suit. The provisions of Section 54 of the Act of 1949 were not attracted inasmuch as, no relief touching those provisions was being sought by the plaintiffs. Similarly, the provisions of Section 41(d) of the Act of 1963 cannot be applied in a matter seeking rejection of the plaint. The learned Senior Advocate relied upon the observations in paragraphs 27 and 76 of the decision in *Most.Rev.P.M.A. Metropolitan & Others Versus Moran Mar Marthoma & Another* [**AIR 1995 SC 2001**]. It was thus submitted that there was no reason to interfere with the impugned order.

8. Shri A.G. Gharote, learned counsel for the non-applicant nos.1 and 2 in Civil Revision Application No.98 of 2017 also supported the impugned order. According to him, the challenge as raised was to the declaration of the companies account as a fraud account which declaration was made without following guidelines of the Reserve Bank of India and in breach of the principles of natural justice. Referring to various documents which were filed alongwith the plaint and especially the Forensic Audit Report, it was sought to be urged that the same was prepared hastily without due application of mind. It was submitted that considering the nature of relief sought, it could not be said that there was a 'commercial dispute' that was sought to be adjudicated. The valuation of the suit was also proper and it was thus submitted that the trial Court did not commit any error while rejecting the applications. The learned counsel placed reliance on the observations in paragraph 85 of the decision in *Nahar Industrial Enterprises Limited Versus Hong Kong and Shanghai Banking Corporation* [**(2009) 8 SCC 646**].

9. I have heard the learned counsel for the parties at length and I have given due consideration to the respective submissions. As the defendant no.1 is seeking rejection of the plaint under provisions of Order VII Rule 11 of the Code, it is only the plaint averments and the documents filed along with the plaint that are required to be taken into consideration at this stage. On perusal of the plaint, it is seen that the plaintiff has pleaded the manner in which financial assistance was taken by the company from the defendants and other financial institution. It is further pleaded on account of various factors, the company faced financial difficulties thereby affecting its business. It is then pleaded that the consortium of the banks under the guise of implementing the guidelines of the Reserve Bank of India proceeded to declare the account of the company as a fraud account. In paragraph 60 of the plaint, it is averred that this declaration is in gross violation of the guidelines of the Reserve Bank of India as well as in breach of principles of natural justice. The relief as sought is a declaration that the action of the defendants in declaring the account of the plaintiff-Company as fraud is illegal followed by prayer for permanent injunction. Various documents including the Forensic Audit Report have been filed on record.

10. Under provisions of Section 2(1)(c) of the Act of 2015, the expression 'commercial dispute' has been defined and the same for the present matter means a dispute arising out of ordinary transactions of bankers and traders relating to mercantile documents and including enforcement and interpretation of the same. Section 6 of the Act of 2015 prescribes the jurisdiction of the Commercial Court while under Section 12(1) the manner in which the specified value of the subject matter of a 'commercial dispute' in the suit has to be determined. In the light of the plaint averments and the

nature of relief sought, it cannot be said that the subject matter of the suit can be termed as a 'commercial dispute' as per provisions of Section 2(1)(c) of the Act of 2015. The relief sought in the suit is with regard to declaration of the account of the plaintiff-Company as a fraud account. The same cannot be said to be a dispute arising out of ordinary transactions of bankers and traders. It is the case of the plaintiff-Company that in view of various guidelines of the Reserve Bank of India and Master Circulars, its account has been declared as fraud account without following the due procedure and in breach of principles of natural justice. In the light of the challenge as raised, it would be the Civil Court that would retain jurisdiction to entertain the suit. As per paragraph 69 of the plaint, the same has been valued in terms of Section 12(1)(d) as per the estimation of the plaintiff. In the light of the plaint averments, the ratio of the decision in *D.N. Corporation Private Limited* (supra) cannot be made applicable to the case in hand considering the distinct facts of that case.

11. Insofar as provisions of Section 54 of the Act of 1949 are concerned, the same are not attracted in the present facts. The suit is not filed against the Central Government, the Reserve Bank or any Officer as contemplated by those provisions. Similarly, the provisions of Section 41(d) of the Act of 1963 merely stipulate the contingency when injunction cannot be granted. Same cannot be a reason to reject the plaint. In view of the fact that the reliefs sought in the plaint are not those reliefs which are impermissible in view of provisions of Sections 17 and 18 of the Act of 1993 as well as Section 34 of the Act of 2002, the cognizance of the suit is not barred before the Civil Court.

12. The decisions relied upon by the learned counsel for the non-applicants fully support their contention and justify the filing of the suit before the Civil Court. It is thus seen that the trial Court did not commit any jurisdictional error when it refused to reject the plaint.

13. By clarifying that the observations made in this order are only for deciding the application under Order VII Rule 11 of the Code and by further observing that the suits shall be decided on their own merits and in accordance with law, the Civil Revision Applications stand dismissed with no order as to costs.

JUDGE

APTE

Rohit Dattatraya Apte

Digitally signed by Rohit Dattatraya Apte
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