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

\+ CS(COMM) 899/2018

SANJAY GUPTA ..... Plaintiff

Through: Mr. V.K. Gupta, Adv.

Versus

BANK OF MAHARASHTRA ..... Defendant

Through: Mr. Jose Verghese and Mr. Alex Joseph, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.05.2018**

IA No.7158/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(COMM) 899/2018 & IA No.7157/2018 (u/O XXXIX R-1&2 CPC)

3. The plaintiff has instituted this suit for (i) permanent injunction restraining the defendant Bank of Maharashtra from restraining the plaintiff from approaching another Bank and from interfering with Credit Rating Process of the plaintiff; (ii) declaration that the defendant Bank owes to the plaintiff the excess amount taken by the defendant Bank from the plaintiff with interest @ 18% per annum from the year 2012; (iii) mandatory injunction directing the defendant Bank to restructure the loan of the plaintiff and charge the plaintiff only that prevailing market rate of interest

which the other Banks are charging and to enhance the cash credit limit of the plaintiff from Rs.650 lakhs to Rs.1,000 lakhs; (iv) mandatory injunction directing the defendant Bank to render all time bound assistance to the plaintiff; (v) mandatory injunction directing the defendant Bank to issue a letter addressed to all credit agencies in order to facilitate the Credit Rating of the plaintiff; (vi) mandatory injunction directing the defendant Bank to permit the plaintiff to run a parallel account; (vii) mandatory injunction directing the defendant Bank to upgrade the NPA status of the plaintiff; (viii) mandatory injunction directing the defendant Bank to make available all statements, documents and certificates to the plaintiff.

4. The plaintiff, in paras 33 to 35 of the plaint, qua valuation has pleaded as under:

> *"33. That the plaintiff is entitled for declaration of above Rs.1,00,00,000/- (Rupees One Crore) with 18% interest from 2012.*
> *34. The captioned suit is a 'commercial dispute' as defined U/s. 2(c)(i) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 and for the purpose of jurisdiction, the suit is valued above Rs.1,00,00,000/-, and the requisite fixed court fee of Rs.200/- has been paid.*
> *35. That for the relief of permanent injunction, valuation is made for Rs.130/- and court fee of Rs.13/- affixed herewith."*

and filed this suit with the court fee of Rs.230/-.

5. Though the Registry of this Court raised objection about the valuation of the suit but the counsel for the plaintiff insisted on having the suit listed before the Court.

6. However, the counsel for the plaintiff today has not cited any provision of law as per which the valuation done of the plaint is correct and only states that this is a commercial suit.

7. Attention of the counsel is invited to the dicta of this Court in ***Mukesh Kumar Gupta Vs. Rajneesh Gupta*** 2016 SCC OnLine Del 3148, ***Soni Dave Vs. Trans Asian Industries Expositions Pvt. Ltd.*** AIR 2016 Del 186 and ***Laxmi Narayan Vs. Navneet*** (2017) 240 DLT 247 holding that the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 does not deal with the valuation of the suits for the purposes of court fee and jurisdiction which is governed by the Court Fees Act, 1870 and the Suits Valuation Act, 1887.

8. As far as the reliefs claimed of declaration and injunction are concerned, as per Section 8 of the Suits Valuation Act, the valuation for the purposes of jurisdiction has to be the valuation for the purposes of court fees and as per Section 7(iv)(c) of the Court Fees Act, the valuation of a suit to obtain a declaratory decree or order, where consequential relief is prayed, has to be according to the amount on which the relief sought is valued in the plaint or memorandum of appeal. If the plaintiff values the relief at Rs.1 crore as has been purported to be done, appropriate court fees thereon has to be paid and if the plaintiff wants to value the suit at Rs.200/-, the suit has to go before the Civil Judge.

9. Though Article 17(iii) of Schedule II to the Court Fees Act permits a suit for declaration where no consequential relief is prayed, to be filed with a fixed court fee but the plaintiff, as would be obvious from the above, is seeking consequential relief as well.

10. The plaint is thus liable to be rejected on this ground alone.

11. However attention of the counsel is also drawn to ***Radnik Exports Vs. Standard Chartered Bank*** (2014) 7 HCC (Del) 393 followed in judgment dated 26th April, 2017 in CS(COMM) No.246/2017 titled ***Shiva Industries and Holdings Ltd. Vs. Tata Teleservices Ltd.*** laying down that the suit, insofar as claiming the reliefs in the nature of defences to a claim of a Bank entitled to approach the Debt Recovery Tribunal (DRT) under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act), is not maintainable.

12. The relief sought of declaration of the amounts being due from the defendant Bank to the plaintiff is also misconceived, inasmuch as the plaintiff, if has any monetary claim, has to sue for recovery thereof and cannot claim declaration under Section 34 of the Specific Relief Act, 1963.

13. The suit qualifies as a 'fantastic one' and the plaint is rejected.

RAJIV SAHAI ENDLAW, J.

MAY 22, 2018

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