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

\+ CS(OS) 556/2018

ARUN INTERNATIONAL ..... Plaintiff

Through: Mr. Sushil Kumar Pandey, Mr. B.B. Gupta and Ms. Neha Sharma, Advs.

Versus

ORIENTAL BANK OF COMMERCE & ANR. ..... Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **31.10.2018**

<u>IA No.14976/2018 (for exemption)</u>

1. Allowed, subject to just exceptions.

2. The application is disposed of.

<u>CS(OS) 556/2018 & IA No.14975/2018 (u/O XXXIX R-1&2 CPC)</u>

3. The plaintiff has instituted this suit impleading Oriental Bank of Commerce (OBC) as defendant No.1 thereto and ECGC Ltd. as defendant No.2 thereto.

4. It is *inter alia* the case of the plaintiff in the plaint, (i) that it is engaged in the business of export of goods and has taken credit from defendant No.1 OBC and the export on credit is subject to the guarantee from defendant No.2 ECGC Ltd.; (ii) that the defendant No.1 OBC served a notice dated 17th July, 2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (SARFAESI Act) on the plaintiff and to which the plaintiff has given a reply; (iii) that the defendant No.1 OBC has issued another notice dated 23rd August, 2018, again under Section 13(2) of the SARFAESI Act on the plaintiff; (iv) that the plaintiff has claim against the defendant No.2 ECGC Ltd. and assignment whereof has also been obtained by the defendant No.1 OBC in its own favour; and, (v) that the defendant No.1 OBC is not realising the amount due from defendant No.2 ECGC Ltd. and on the contrary is claiming the amount due from the plaintiff. Challenge on merits, is also made to the demand of the defendant No.1 OBC.

5. On the aforesaid pleas, the plaintiff seeks decree of declaration a) that the notices dated 17th July, 2018 and 23rd August, 2018, both under Section 13(2) of the SARFAESI Act, are null and void and cannot be enforced; (b) that the notice dated 2nd August, 2018 of the defendant No.2 ECGC Ltd. to the plaintiff, stopping the export insurance cover of the plaintiff, is illegal; (c) declaration that the defendant No.1 OBC is illegally withholding the Fixed Deposit Receipts (FDRs) of the plaintiff.

6. The plaint is replete with typographical errors with the plaintiff referring to defendants No.1&2 interchangeably and at least at one place referring to defendant No.3, when there is no defendant No.3 in the suit.

7. The suit, for the purposes of court fees and jurisdiction is valued in para 47 of the plaint as under:

> *"47. That the valuation of the suit for the purpose of Jurisdiction of this Hon'ble court is as per the alleged illegal claimed amount is Rs.11,94,23,981.42 (as in the 1st notice dt. 17.07.2018 issued by the defendant bank while 2nd notice dt.*

23.08.2018 crystallize the amount to be Rs.10.83,12,442.46) : the higher amount claimed by the bank. The valuation of the suit for the purpose of court fee for the relief of declaration is valued at Rs.11,94,23,981.42 upon which prescribed court fee is paid".

8. The plaintiff has however paid court fees only of Rs.400/- on the plaint.

9. On the plaintiff filing this suit, the Registry of this Court raised an objection as to the court fees paid and pointed out to the counsel for the plaintiff that ad valorem court fees was required to be paid.

10. The counsel for the plaintiff however insisted on the suit being listed before this Court, stating that he will satisfy this Court and appropriate court fees having been paid on the plaint.

11. However, today morning when the suit came up before this Court for admission, the counsel for the plaintiff was totally unprepared to satisfy this Court that appropriate court fees was paid. On request of the counsel for the plaintiff, the suit was passed over.

12. Now, the counsel for the plaintiff states that fixed court fees is payable on the plaint and refers to Schedule II of the Court Fees Act, 1870, clause 17(iii) whereof provides fixed court fees for a suit to obtain a declaratory decree where no consequential relief is prayed.

13. Attention of the counsel for the plaintiff is drawn to Section 34 of the Specific Relief Act, 1963 which provides that no declaratory relief can be granted where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The reliefs claimed by the plaintiff

squarely fall in the said prohibition. The plaintiff, by instituting this suit is seeking to stall the proceedings under Section 13 of the SARFAESI Act initiated by the defendant No.1 OBC against the plaintiff and is seeking to direct the defendant No.2 ECGC Ltd. to continue providing the insurance cover to the export credits of the plaintiff. However, the plaintiff has not sought the said reliefs.

14. I may otherwise state that per Section 7(iv)(c) of the Court Fees Act, in a suit to obtain a declaratory decree or order, where consequential relief is prayed, is to be valued according to the amount at which the relief sought is valued in the plaint and per Section 8 of the Suits Valuation Act, 1887, the valuation of the suit for the purposes of jurisdiction has to be the same.

15. The plaintiff, having valued the suit for the purpose of court fees and jurisdiction at Rs.11,94,23,981.42 paise is required to pay court fees thereon.

16. I have enquired from the counsel for the plaintiff, whether the plaintiff wants to pay the requisite court fees.

17. The counsel for the plaintiff replies in the negative.

18. I have however cautioned the counsel for the plaintiff that the plaintiff, even if pays the appropriate court fees, will still have to answer questions as to maintainability of the suit. Attention of the counsel for the plaintiff in this regard is drawn to ***Planet Colors Eco Townships Ltd. Vs. State Bank of India*** (2014) 211 DLT 433 (DB), ***Radnik Exports Vs. Standard Chartered bank*** 2014 SCC OnLine Del 3404, ***Dr. Yashwant Singh Vs. Indian Bank*** (2015) 220 DLT 667 (DB), ***Sigma Generators Pvt. Ltd. Vs. Oriental Bank of Commerce*** (2015) 217 DLT 622 (DB), ***Neha Aggarwal Vs. Pnb Housing Finance Ltd.*** 2016 SCC OnLine Del 3765,

Amish Jain Vs. ICICI Bank Ltd. (2016) 228 DLT 22 and ***Amish Jain Vs. ICICI Bank Ltd.*** MANU/DE/1788/2018.

19. In this view of the matter, the plaint is otherwise also liable to be rejected.

20. At this stage, the counsel for the plaintiff states that four weeks' time be granted to the plaintiff for paying the court fees.

21. The suit is accompanied with an application for interim relief showing that the suit is of an urgent character.

22. In this view of the matter, the stand of the plaintiff now as an afterthought, is found to be dilatory.

23. Be that as it may, since the plaint is being rejected, it will always be open to the plaintiff to, in accordance with law, institute appropriate proceedings.

24. The plaint is rejected. However, the plaintiff having filed this misconceived suit, it is ordered that the plaintiff, as a condition of applying afresh in any Court, will annex to the plaint/petition a copy of this order.

RAJIV SAHAI ENDLAW, J.

OCTOBER 31, 2018

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