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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**IN ITS COMMERCIAL DIVISION**
**NOTICE OF MOTION NO. 692 OF 2019**
**IN**
**COMMERCIAL SUIT NO. 2 OF 1994**

Hindustan Photo Film Manufacturing Co Ltd ...Applicant
*In the matter between*
Hindustan Photo Film Manufacturing Co Ltd ...Plaintiff
*Versus*
ICICI Bank Ltd ...Defendant

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**Mr Rohan Sawant**, *with Manik Joshi & Mr Mantul Bajpai, i/b Crawford Bayley & Company, for the Applicant.*
**Mr Kirit Mody**, *with Mr Kiran Gandhi and Mr Anuj Jaiswal, i/b Little & Companay, for the Defendant.*

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**CORAM: G.S. PATEL, J**
**DATED: 12th March 2019**

**PC:-**

**1.** The application is by the Plaintiff, Hindustan Photo Film Manufacturing Company Ltd. This is a Government of India enterprise. It seeks to set aside an order dated 30th August 2018 dismissing Hindustan Photo Film's Commercial Suit No. 2 of 1994. The suit itself had proceeded to trial. Evidence was complete. It was at the stage of final hearing when KR Shriram J dismissed it.

**2.** On 30th August 2018, the matter was listed before KR Shriram J. Hindustan Photo Film was represented by attorneys and counsels. Its lawyers made a statement that they had "written innumerable communications" to Hindustan Photo Film for instructions but received none. KR Shriram J dismissed the suit. He directed the attorneys to communicate a copy of that order to the Plaintiff.

**3.** The matter did not end there. It was apparently listed again on 5th October 2018. Counsel for the Plaintiff said on that day that a copy of the 30th August 2018 order had been sent to Hindustan Photo Film; but with no response. That statement was accepted. It is at this time that Mr Mody for the Defendant, ICICI Bank Limited, said that at the time of the summons for judgment, ICICI Bank was given conditional leave to defend by an order of 30th March 1999 (FI Rebello J, as he then was). The bank deposited Rs.2,31,16,713/- with the Prothonotary and Senior Master. Hindustan Photo Film was granted liberty to withdraw the amount against the bank guarantee. It never did. This was confirmed by the Advocate then appearing for Hindustan Photo Film. KR Shriram J directed the registry to check the factual position and if it was found that the amount had not been refunded, directed a refund of that amount with all accrued interest against the usual indemnity.

**4.** Paragraph 6 of the 5th October 2018 order reads:

> "6. After this order was dictated, I directed the Associate of this court to check whether the company is in liquidation. The extract of the Company Master Data taken on record and marked 'X' for identification indicates that

> the company is in existence, last balance-sheet filed was dated 31st March 2017 and the last Annual General Meeting was held on 25th September 2017 and the company is Union Government Company. **Therefore, copy of this order be forwarded to the company by the registry directly to the Managing Director to ascertain why Government of India is not interested in prosecuting the suit. Plaintiff shall keep an Advocate present on the next date i.e., 19th October 2018, failing which order is passed above, will be confirmed**.
>
> Stand over to 19th October 2018."

(*Emphasis added*)

**5.** On 19th October 2018, the lawyer instructed by M/s Crawford Bayley and Company who had entered appearance for Hindustan Photo Film said to Shriram J that Hindustan Photo Film had been ordered to be wound up by the Madras High Court by an order of 29th August 2016 in Company Petition No. 114 of 2003. This winding up order was based on a recommendation of the then Board of Industrial and Financial Reconstruction. Shriram J was also informed by the Advocate for the Plaintiff, who apparently now did have instructions, that two executives of another public sector undertaking (Hindustan Machine Tools Ltd or HMT) had been deputed to take care of what Shriram J described as "the final rites of the company". I understand this to mean precisely what Shriram J intended it to mean, viz., that the company was in liquidation and these two persons were merely performing their obsequial duties for it. There was a request from the Advocate for the Plaintiff even then to list the matter a few days later to decide whether the suit should be continued or whether the Official Liquidator should be brought on record. He tendered a copy of communication dated 15th October 2018. Shriram J took this on record and marked it 'X' for identification. He noticed that the letter was signed by one S Girish Kumar as a Chairman cum Managing Director. Shriram J then said

> "It is strange, when the company has been ordered to be wound up on 29th August 2016, there cannot be any Chairman cum Managing Director to the company, **and a person to continue to represent the company as Chairman cum Managing Director amounts to fraud on the general public. The said S Girish Kumar is directed to file an Affidavit to explain as to how he represents the company as Chairman cum Managing Director when the company is ordered to be wound up on 29th August 2016. The said Affidavit to be filed and copy served by 31st October 2018, failing which Registry to return the sum of Rs.2,31,16,713 /- deposited by the 1st Defendant together with accumulated interest, if any, against usual indemnity"**.

(*Emphasis added*)

**6.** In my view, Shriram J's order is without compliance. Mr Sawant for Hindustan Photo Film draws my attention to page 32 of the Affidavit in Support. This is an order of 2nd July 2018 of one BP Satapathy, an Under Secretary to the Government of India's Ministry of Heavy Industries and Public Enterprises. The letter extends additional charge of the post of Director (Finance) and CMD of Hindustan Photo Film in favour of S Girish Kumar, Chairman and Managing Director HMT Ltd, Bengaluru for another six months from 18th July 2018 "or till taking over charge by the Official Liquidator" or until further orders, whichever is the earliest.

Mr Sawant also says that — for reasons he cannot explain — the Official Liquidator has not yet taken charge of the assets of the company. I find this exceedingly odd. There is no doubt that the Madras High Court ordered the winding up of the company on 29th August 2016. On 8th September 2018, a learned single Judge of Madras High Court directed the Official Liquidator to take charge of the assets of the company. Why that Official Liquidator has not yet done so is a matter that he will undoubtedly have to explain at some point to that Court. The Affidavit in Support of this Notice of Motion accepts that there were these orders of 29th August 2016 and 8th September 2017. It then goes on to say that there are applications filed for recall and for an injunction against the Official Liquidator from disbursing any amounts. These have apparently been filed by a trade union. Yet paragraph 6 of the Affidavit states that Hindustan Photo Film is in the process of "getting wound up" but contends that the Official Liquidator 'has not yet been appointed'. That is entirely incorrect. The Official Liquidator has indeed been appointed, and has been directed to take charge of Hindustan Photo Film's assets.

**7.** As far as I am concerned, there is complete non-compliance with the order of 19th October 2018 made by Shriram J. For, the only answer to the Learned Judge's query and direction from S Girish Kumar is to point to the Government order to which I have earlier referred. This is no answer at all. In fact, that very Government order itself accepts the fact of the winding up of the company having been ordered. In short, so far as this Court is concerned there is no possibility of Hindustan Photo Film continuing to press for a decree in its own name or at the instance of S Girish Kumar. It is only the Liquidator who can do this.

**8.** Mr Sawant seeks time to take instructions on whether the Official Liquidator should now be moved. That is too little too late. Nothing explains why nobody thought to give the Plaintiff's Mumbai Advocates timely instructions from August 2018 onwards. There is little point in saying that ICICI Bank deposit will be very useful to Hindustan Photo Film. That argument proceeds on the assumption that Hindustan Photo Film is certain to get a decree. That is far from certain. The only submission that seems to be made here is that since Hindustan Photo Film is a government company, therefore exceptional allowance should be made for it — and truly exceptional allowance at that. It need not give instructions despite request after request. It need not file a thoughtful and considered affidavit. It need not disclose the winding up order. It can continue to deny the appointment of the liquidator, though a Judge of the Madras High Court has directed the liquidator to assume charge of its assets. In short, I am being told that Hindustan Photo Film can do nothing at all in pursuit of this litigation, that it can do anything it likes in regard to company law (even pretend that the provisions of the Companies Act as to the effect of a winding up order and an order appointing the Official Liquidator do not apply to it), and, worst of all, can be utterly cavalier with orders of this Court. The Plaintiff is wrong. It is monumentally irrelevant that it is a government company. That makes its responsibility greater, not less. It is bound by the law. It is bound by our orders.

**9.** There is not a single reason I can see that would persuade me to recall anything that Shriram J said in any of his three orders.

**10.** The Notice of Motion is dismissed.

**11.** Shriram J has held that his continuance as CMD is a fraud on the public. What Shriram J called for was an answer in law. There is none. The Registry will proceed to immediately refund the amount of Rs.2,31,16,713/- to the Defendant, ICICI Bank with all accumulated interest. The Prothonotary and Senior Master will act on production of an authenticated photocopy of this order and will, if necessary, prematurely encash any fixed deposit that has been made. The Advocates for ICICI Bank will communicate the necessary RTGS details to the Prothonotary and Senior Master for online remittance.

**(G. S. PATEL, J)**