IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1081 OF 2019
IN
CONTEMPT PETITION NO. 27 OF 2019
IN
EXECUTION APPLICATION NO. 554 OF 2011

M/s. Louis Dreyfus Co. Suisse S.A. ... Applicant/Orig. Petitioner
Versus
Sakuma Exports Ltd. & Ors. ... Respondents

Mr. Pradeep Sancheti a/w Sheikh Yusuf Ali, Chirag Bhatia i/b Advani & Co. for the Applicant/Petitioner.
Mr. Pradosh Mohanty representative of Applicant Company, present.
Mr. Chirag Modi a/w Mr. Soura Subha Ghosh, Mr. Anirban Sen and Mr. Samarth Chaudhari i/b Hariani & Co. for Respondent Nos.1 to 8.

CORAM : R.I. CHAGLA, J.

DATED : 9th JULY, 2019.

P.C. :

1 This Notice of Motion has been taken out in a disposed of Contempt Petition for compliance with the undertaking of Respondent No.8 made to this Court on 01.02.2019 that by 02.03.2019, the entire decretal amount with interest for the period 25.03.2011 upto 16.01.2017 shall be deposited with the Prothonotary and Senior Master, High Court, Bombay. In the undertaking it was expressly stated that this undertaking

would bind Respondent No.1 and other directors as well and affidavit has been filed confirming the undertaking which was recorded by this Court on 01.02.2019. In the Notice of Motion further relief has been sought insofar as deposit of the balance sum of Rs.65,66,556/- being the shortfall in the deposit made by Respondent Nos.1 to 8 and which sum is the TDS amount which was to be paid to the Income Tax Department and which forms part of the decretal sum which was ordered to be deposited. Further, relief has been sought insofar as remission of the entire decretal amount deposited by Respondent Nos.1 to 8 with the Prothonotary and Senior Master to the Applicant/Petitioner and for conversion of the amount into US Dollars in the Bank account of the Applicant as mentioned in the consent terms. A further direction was sought against Respondent Nos.1 to 8 to furnish TDS certificate @ 8.96% as mentioned in Income Tax Certificate dated 02.11.2018 for deducting TDS from the entire decretal amount.

2 The learned Senior Counsel appearing for the Applicant has submitted that the Respondent Nos.1 to 8 have committed a breach of the undertaking made to this Court that they would deposit the entire decretal amount together with interest with the Prothonotary and Senior Master, High Court, Bombay. He has submitted that the balance sum of Rs.65,66,556/- has not been deposited and he refers to the Income Tax certificate dated 02.11.2018 which authorized the Respondent No.1 to pay

the sum of Rs.6,94,24,440/- after deducting income tax @ 8.96% to the Applicant. He has submitted that the validity of the Income Tax certificate relating to deduction of tax at source has been extended from time to time by applications made by the Respondents contesting the amount deductable by way of tax payable at source. He has submitted that this Motion had been taken out in a disposed of Contempt Petition as the Respondents had given the undertaking to this Court to pay the decretal amount with interest and it was only upon this undertaking that the Contempt Petition was disposed of. He, therefore, applies for the necessary relief to be granted to the Applicant in terms of the Notice of Motion.

3 The learned Counsel for the Respondents has opposed the Notice of Motion and has stated that there is another certificate issued by the Income Tax Department in New Delhi Branch and in which a lesser amount of tax to be deducted at source i.e. @ 1.93% was provided. He has submitted that the amount to be deducted at source is in dispute and that this amount is to be paid directly to the Income Tax Department and cannot be deposited in this Court. He has referred to the affidavit-in-reply which is dated 26.06.2019 and in particular paragraph 5 thereof, which states that the shortfall figure of Rs.65,66,556/- claimed in the Notice of Motion, is due to miscalculation of the decretal amount as the decretal amount is not Rs.6,94,20,440/- and upon a proper calculation of the

amounts payable as per the decree, the actual amount payable by the Respondents to the Applicant is Rs.6,90,39,854/-. The Respondents have stated that the tax deductable at source is Rs.61,85,970/- being the amount of TDS @ 8.96% payable in future on this amount of Rs.6,90,39,854/- and an amount of Rs.6,28,53,884/- has been deposited in this Court. He has submitted that the Income Tax Department has to clarify the actual rate of income tax and assess the actual tax payable in respect of the decretal amount and only then will the Respondents deposit the TDS amount as assessed by the Income Tax Department and ensure issuance of TDS certificate for this amount of Rs.61,85,970/- in favour of the Applicant. He has accordingly opposed grant of relief in the Notice of Motion.

4 Having considered the submissions, it is an undisputed position that the Respondents were to deposit the entire decretal amount with interest and for which they had given their undertaking to this Court and which undertaking is binding upon them and by virtue of which the Contempt Petition came to be disposed of. The Notice of Motion taken out in the disposed of Contempt Petition necessarily seeks strict compliance on the part of the Respondents with the undertaking as the Respondents have admittedly not deposited a certain sum forming part of a decretal amount. There is an income tax certificate issued under Section 197(1)/195 of the Income Tax Act, 1961 relating to deduction of tax at source and

authorizing the Respondents to pay a sum of Rs.6,94,24,440/- after deducting Income Tax @ 8.96% to the account of the Applicant. The validity of this certificate has been extended from time to time and the certificate initially was executed and valid till 30.06.2019 and, the last extension being till 15.07.2019 by an order of this Court dated 26.06.2019. In my view, the earlier certificate which had been issued by the Income Tax Department, New Delhi, which had provided for lesser amount of tax to be deducted at source @ 1.93% cannot be relied upon as the current income tax certificate which is valid provides for rate of tax @ 8.96% and its validity has been extended till 15.07.2019. Further, there appears to be a dispute in the decretal amount as according to the Respondents the decretal amount is Rs.6,90,39,854/- and not Rs.6,94,20,440/- as claimed by the Applicant. Thus according to the Respondents an amount of Rs.61,85,970/- is the tax deductable at source and payable to the Income Tax Department. Be that as it may, the Respondents are bound to comply with the undertaking given to this Court and recorded in the order dated 01.02.2019. Considering that according to the Respondents an amount of Rs.61,85,970/- is the tax deductable at source and which admittedly has not been deposited, being part of the decretal amount and for which the undertaking had been given to deposit the decretal amount, the Respondents are required to be directed to deposit the sum of

Rs.61,85,970/- in this Court. It is made clear that the sum of Rs.61,85,970/-which is deposited in this Court, shall be kept aside and shall be ultimately made payable to the Income Tax Department towards the deduction of tax at source and for which the validity certificate dated 02.11.2018 had been issued. The other relief sought for in the Notice of Motion including the remission of the entire decretal amount deposited/to be deposited by the Respondent Nos.1 to 8 to the Applicant cannot be granted by way of this Notice of Motion and that the Applicant is required to take out appropriate proceedings in execution of the decree for remission of this amount. The TDS certificate is dated 02.11.2018 and the validity of which has been extended till 15.07.2019. Hence, the validity of the TDS certificate will necessary have to be extended for a further period of four weeks as the Respondents are directed to deposit this sum of Rs.61,85,970/- payable according to them towards tax deductable at source with the Prothonotary and Senior Master of this Court. Accordingly, the following order :

ORDER

i) The Respondents shall deposit the sum of Rs.61,85,970/- being the amount of TDS @ 8.96% payable to the Income Tax Department with the Prothonotary and Senior

Master within a period of two weeks from the date of uploading of this order;

ii) It is made clear that the above sum of Rs.61,85,970/- deposited by the Respondents shall be kept aside by the Prothonotary and Senior Master as this sum is towards the TDS, payable to the Income Tax Department.

iii) The income tax certificate dated 02.11.2018, the validity of which expires on 15.07.2019 as directed by this Court vide order dated 26.06.2019, is further extended for a period of four weeks from the date of uploading of this order. For which the copy of this order will be communicated by the learned Advocates on both sides to the Deputy Commissioner of Income Tax who will act on production of an authenticated copy of this order. All contentions shall be kept open.

iv) It is made clear that the calculation of the decretal amount together with interest is for a period upto 16.01.2017, as more appropriately provided for in the undertaking to this Court on 01.02.2019 to deposit this amount. The interest thereon shall be payable till the receipt of the decretal amount under the consent terms.

v) The Notice of Motion is partly made absolute in the above terms with liberty granted to the Applicant to take out appropriate proceedings in the Execution Application No.554 of 2011 for the further relief which had been sought for in the Notice of Motion.

5 Accordingly, the Notice of Motion is disposed of in the above terms.

(R.I. CHAGLA, J.)