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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM CHAMBER SUMMONS (L) NO. 589 OF 2019
IN
LEAVE PETITION (L) NO. 164 OF 2019
IN
COMMERCIAL SUIT (L) NO. 456 OF 2019

Rio Resources PTE Ltd ...Applicant/ Original Defendant No.3

In the matter of
Indian Bank ...Respondent No.1/ Plaintiff

Versus
Gajanan Oil Private Limited & Ors ...Respondents/ Defendants

Mr Aspi Chinoy, Senior Advocate, *with Mr Kunal Mehta, Mr Prashant Asher, Mr Naishadh Bhatia and Ms Bulbul Singh Rajpurohit, i/b Crawford Bayley And Co, for the Plaintiff.*
Mr Prashant Pratap, Senior Advocate, *with Mr Nishant Shetty, Mr Rishabh Saxena and Ms Tripti S, i/b Bose And Mitra & Co, for Applicant/Original Defendant No.3.*

CORAM: G.S. PATEL, J
DATED: 23rd April 2019

PC:-

1. On 9th April 2019 the Plaintiff mentioned a Leave Petition seeking urgent relief. I was told that the Plaintiff proposed to move for urgent ad-interim reliefs the next day, apprehending that the Defendants would withdraw some funds. Holding that a material part of the cause of action arose within the jurisdiction of this Court, I granted that leave. The suit itself and interim applications are assigned to another Court. The present Chamber Summons, filed on 20th April 2019, seeks revocation of the leave I granted.

2. Mr Pratap on behalf of the Applicant, the 3rd Defendant, would have it that correctly read, and particularly having regard to the reliefs sought and also the contract in question at page 99, the entire plaint is directed against and only against his client, a Singapore-headquartered company called Rio Resources Pte Limited. What the Plaint seeks, he says, is a decree and declaration that the Plaintiff, Indian Bank, has a lien over a deposit of USD 3 million Rio Resources placed with Indian Bank's Singapore arm. That is only partly correct, for the prayer also seeks a declaration that Indian Bank is entitled to exercise that lien until repayment of the dues of the 1st Defendant, Gajanan Oil Private Limited, and that it is entitled to appropriate the Rio Resources' fixed deposit towards the debts of the 1st Defendant. The second prayer is for an anti-suit injunction restraining Rio Resources from taking any proceedings in the Singapore Court.

3. Inviting attention to page 99, a document of 9th November 2017 addressed by Indian Bank Singapore to Rio Resources, Mr Pratap argues that nothing in this contract makes it subject to Indian jurisdiction. The contract was placed in Singapore. The fixed deposit was made in Singapore. The contract itself contains a clause subjecting that entire transaction to the non-exclusive jurisdiction of Courts in Singapore and Singapore law (page 104).

4. There are many difficulties in accepting this submission as placed. It is possibly an over-simplification of the case with which the Plaintiff has come to Court. Although I am not on the merits of the plaint, I am assessing this only for the purposes of the averments in regard to jurisdiction. To begin with, it is incorrect to say that the suit is not at all concerned with Indian Bank's claim against the 1st Defendant, Gajanan Oil. While the Plaint may not seek recovery of that debt, because that may be required to be brought in a separate forum or a Court, prayer clause (a) makes it clear that according to the Plaintiff there is a direct linkage between Gajanan Oil, a Mumbai-based company and Rio Resources. This is also clear from paragraphs 31 and 32 of the Plaint. But that is not all. The entire narrative in the Plaint, the relevant portions of which are summarised in paragraph 3 of Indian Bank's Affidavit in Reply to this Chamber Summons, is that Rio Resources was always presented to Indian Bank, including by itself, as the Singapore-based unit of Defendants Nos. 1, 2 and 4. As early as 27th August 2017, Rio Resources itself told Indian Bank in Singapore that it was part of the Gajanan Group under the Chairmanship of Nitin Jadhav, the 4th Defendant. Rio Resources claimed to be part of that group. It said that the Gajanan Group was headquartered in Mumbai. There are several such documents in this vein. The transactions in question go back to 2016. Indian Bank gave credit facilities to Gajanan Oil sometime in August. About a year later, Rio sought credit facilities from Indian Bank in Singapore on the assertion that it was part of the Gajanan Group. When Indian Bank sanctioned the credit facilities to Rio Resources the acceptance was signed by Jadhav and apparently on behalf of the 2nd Defendant as well. This is another India-based Gajanan Group company called Gajanan Solvex Limited. It passed a resolution offering and executing a corporate guarantee for the repayment of Rio Resources' loan.

5. Gajanan defaulted. Indian Bank stopped further credit to both Gajanan Oil and to Rio Resources. In October 2018 Gajanan Oil told Indian Bank in Mumbai that additional funding was imminent from another investor. The request was to resume credit facilities for both Gajanan Oil and Rio Resources. There was a specific request to this end. All this is documented. Therefore the transaction is not limited to the sanction letter at pages 99 to 104 at all. Indeed, until as recently as January 2019 Rio Resources continued to say it was part of the Gajanan Group and requested the resumption of credit facilities on that basis. There were also promises to repay the amounts due. It seems that it is only thereafter that Rio Resources began to attempt to put some distance between itself and Gajanan Oil claiming that it was a distinct legal entity incorporated in another jurisdiction.

6. The Plaintiff's case is therefore not as simple as Mr Pratap would make it out to be. On the one hand, Rio Resources claims that it is entitled to a return of its fixed deposit and threatens legal proceedings to this end. On the other, Indian Bank says that it is owed amounts by the 1st Defendant, Gajanan Oil, and that the credit granted to Rio Resources and the security deposited placed by Rio Resources are inextricably linked to the credit facilities granted to both Gajanan Oil and Gajanan Solvex. This is the background to its claim for a declaration of a lien.

7. I am not addressing the question of whether or not the Plaintiff has a prima facie case for the grant of interim reliefs. This enquiry is limited to the question of whether jurisdictional leave granted ought to be revoked. Mr Pratap relies on the decision of the Supreme Court in *Ahmed Abdulla Ahmed & Anr v Star Health & Allied Insurance Company Limited & Ors*[1] and the earlier decision of the Supreme Court in *Kusum Ingots & Alloys Ltd v Pennar Peterson Securities Ltd & Ors*.[2] The principle enunciated of a convenient forum is not one that in my view can legitimately be invoked in this case. Prima facie it appears to be incorrect to say that as between Rio Resources and Indian Bank everything has happened in Singapore and nothing has touched Indian shores. That is not how the Plaint proceeds; and I am concerned only with the averments in the Plaint at this stage. Whether there is a question of subject matter jurisdiction or other defences to be taken at the interim application will be decided to Court to which that application is made.

8. I am not satisfied that sufficient ground has been made out for the revocation of the leave. The Chamber Summons is dismissed with no orders as to costs.

(G. S. PATEL, J)

[1] Civil Appeal No. 9786-9799 of 2018, decided on 26th November 2018.

[2] (2000) 2 SCC 745.