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

NOTICE OF MOTION (LODGING) NO.1428 OF 2019
IN
SUIT NO.121 OF 2014

National Spot Exchange Ltd.

...Applicants

IN THE MATTER BETWEEN :

L J Tanna Enterprises Pvt. Ltd.

...Plaintiffs

V/s.

63 Moons Technologies Pvt. Ltd. & Ors.

...Respondents

Mr.Virag Tulzapurkar, Senior Counsel with Mr.Arvind Lakhawat, Mr.Vishwanathan Iyer, Mr.Melvyn Fernandes, Ms.Pratiksha Agrawal i/b M/s.Vaish Associates, Applicant in NMSL/1428/2019 / Original Defendant No.2.

Mr. J. P. Sen, Senior Counsel with Mr. Sarosh Bharucha, Mr.Piysh Raheja, Mr. Bhushan Shah, Mr. Veer Ashar and Mr. Akash Jain i/b M/s.Mansukhlal Hiralal & Co. for the Respondent Nos.1 to 3 / Original Plaintiffs.

Mr.Vikram Nankani, Senior Counsel with Ms. Gulnar Mistry, Ms. Namita Shetty and Ms. Surabhi Saboo i/b M/s.Amarchand Mangaldas for Defendant Nos.1, 4, 17, 18 and 27 / Respondent No.9.

Ms.Prachi Kolambekar with Ms. Apoorva Sanglikar i/b M/s.Thodur Law Associates for the Defendant / Respondent No.9.

Mr.Sunil Varma i/b M/s.Jobby Mathew & Associates for the Defendant / Respondent No.9.

Mr.Sunil Varma i/b M/s.Jobby Mathew & Associates for the Defendant No. 24.

Ms.Nikita Vardhan with Mr.Vishal Tiwaru i/b M/s.Kanga & Co. for the Defendant No.30.

CORAM : R.D. DHANUKA, J.
DATE : 29TH NOVEMBER, 2019.

P.C. :-

1. By this notice of motion, the applicant (original defendant no.2) seeks permission to utilize the amounts received or to be received from time to time by the applicant from its parent company i.e. defendant no.1 in terms of and for the purposes mentioned in the undertaking dated 11th April, 2019 submitted by the defendant no.1 before the Supreme Court in Civil Appeal No. 4476 of 2019 and more particularly in paragraphs 57 and 58 of the said judgment.

2. On 28th August, 2018 Shri Justice S.J. Kathawalla had passed an order in Notice of Motion No. 212 of 2014 in the suit filed by the plaintiffs *inter-alia* praying for recovery of various amounts. In the said order this Court had clarified that in the event of the applicant using the amount of Rs.3.5 crores before 5th September, 2018, the same shall be subject to further orders passed by this Court. Any further amounts received by the applicant shall not be transferred without seeking permission of this Court.

3. The applicant had applied for clarification of the said order before this Court. By an order dated 12th December, 2018 passed by this Court after hearing the parties at length, this Court clarified that the applicant shall not be allowed to utilize any amount lying with the applicant without seeking permission of this Court. It was clarified that restriction on transfer of funds would include utilization of fund.

The applicant is not allowed to utilize any amount without seeking permission of the Court. This Court rejected the submission of the applicant that this Court had restrained the applicant only for transferring the amount and not from utilizing the amount, without the permission of the Court. The said clarification was directed to be continued till the Notice of Motion no. 212 of 2014 is heard by this Court. In paragraph 1 of the said order, it was further clarified that even if any amount is received by the applicant NAFED or from any other parties such amount should not be permitted without permission of this Court in terms of the order dated 28th August, 2018.

4. Being aggrieved by the said clarificatory order dated 12th December, 2018, the applicant herein preferred an appeal being Appeal (Lodging) No. 571 of 2018 before the Division Bench. By an order dated 12th February, 2019, the Division bench of this Court dismissed the said appeal. The Division Bench of this Court considered the order passed by the learned Single Judge of this Court in the contempt notice of motion against the applicant on 1st November, 2018 and made various observations about the conduct of the applicant. In paragraph 12 of the said order passed by the Division Bench, it is held that considering the totality of the circumstances and the way the matter has proceeded so far, the learned Single Judge has found it prudent to keep the expenditure of the applicant herein under supervision to protect the interest of the plaintiff and thus it cannot be said that it is a perverse use of

discretion. It is also observed that *prima-facie* in the facts and circumstances of the case as borne out by the record, such supervision is necessary. It is not that the learned Single Judge has refused to sanction any amount as such and the learned Judge only had directed the applicant to provide details and justifications.

5. Mr. Tulzapurkar, learned senior counsel appearing for the applicant, invited my attention to the orders passed by this Court in various notices of motion filed by the applicant seeking permission to allow the applicant to make various payments which orders are annexed at pages 52 to 57 of the affidavit in support of the notice of motion. He also strongly placed reliance on the orders passed by Shri Justice B.P. Colabawalla on 17th October, 2019 and 22nd July, 2019 allowing the applicant to release payment to various parties towards various heads including salary to employees, food coupons to the employees, statutory taxes, office expenses, towards legal expenses etc.

6. Learned senior counsel invited my attention to an undertaking filed by the defendant no.1 before the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 4210 of 2018 and in particular paragraphs 4 and 5 and would submit that the defendant no.1 had agreed to infused the funds upto Rs.50 crores for financial year 2016-2017, financial year 2018-19 in order to assist the applicant in effecting recoveries from defaulters and also for its day to day administrative, operational, legal and recovery expenses. The

defendant no.1 undertook to continue funding the applicant as may be required to the extent it does not have the necessary funds for the purpose towards legal proceedings *inter-alia* for recovering money from defaulters and to defend various legal cases and to continue taking necessary legal action against various parties to recover amounts from the defaulters.

7. It is submitted by the learned senior counsel that in view of the undertaking rendered by the defendant no.1 to infuse various amounts from time to time to enable the applicant to utilize those funds for the purposes mentioned in the said undertaking rendered by the defendant no.1, the applicant has to make various payments to various parties under those heads and also towards the expenses incurred towards the salary of the employees whose assistance are required for obtaining legal assistance from the advocates firms. He submits that the applicant does not propose to use the amounts received by the applicant from any other sources for the purposes of making any such payment but seeks to make these payments towards various heads out of the amounts infused by the defendant no.1 in the applicant. He submits that the applicant is thus not required to seek any permission for incurring these expenses required to be incurred towards various heads for which the amounts are infused by the defendant no.1.

8. Learned senior counsel submits that when interim orders came to be passed by this Court and more particularly by Justice S.J.

Kathawalla on 28th August, 2018 and clarificatory order passed by this Court on 12th December, 2018 clarifying that the applicant could not be allowed to utilize any amount received from NAFED or any other party, the defendant no.1 had not rendered any such undertaking before the Hon'ble Supreme Court.

9. Mr. Nankani, learned senior counsel for the defendant no.1 supports the application of the applicant and would submit that the amounts infused by the defendant no.1 in the applicant are under complete supervision of the Committee appointed by the Courts. He submits that this Court may clarify that the applicant would not be allowed to utilize any amount received from party other than the defendant no.1 without prior permission of this Court. He submits that the applicant thus shall not be asked to seek prior permission of this Court for releasing such payments for specific purposes out of the funds infused by his client.

10. Mr. Sen, learned senior counsel for the applicant on the other hand invited my attention to the order passed by Justice S.J. Kathawalla on 28th August, 2018, clarificatory order passed by this Court on 12th December, 2018, order passed by Shri Justice S.C. Gupte in the contempt notice of motion and the order passed by the Division Bench of this Court dismissing the appeal preferred by the applicant against the clarificatory order passed by this Court on 12th December, 2018. It is submitted by the learned senior counsel that considering the past conduct of the applicant which was noticed by

not only the learned Single Judges of this Court in various orders but also the Division Bench of this Court while dismissing the appeal preferred by the applicant. He submits that this Court had only directed the applicant to seek prior permission of this Court before releasing any payments.

11. I have perused the order passed by Shri Justice S.C. Gupte making various observations about the conduct of the applicant in the contempt notice of motion. There are large number of claims made against the applicant by various creditors which are pending in different proceedings. Though, the defendant no.1 had rendered an undertaking before the Supreme Court to infuse the funds to the applicant for various purposes specifically mentioned in the said undertaking, that undertaking will not give any blanket right in favour of the applicant to utilize the money received from the defendant no.1 for various purposes without prior permission of this Court.

12. There is no dispute that various applications have been made by the applicant from time to time before this Court by filing notices of motion for seeking permission to release various amounts towards various heads. I have perused the orders passed by this Court from time to time in those notices of motion filed by the applicant. After considering the nature of the expenses purposed to be incurred or already incurred by the applicant, this Court has permitted the applicant to make various payments after scrutinizing

those heads of payment. Mr. Sen, learned senior counsel appearing for the plaintiff vehemently urged that similar application has been filed by the applicant by way of Notice of Motion No. 729 of 2019 which is pending before this Court and is proposed to be heard by Shri Justice Anil K. Menon of this Court.

13. The order passed by the Division Bench of this Court on 12th February, 2019 in Appeal Lodging No. 571 of 2018 against the clarificatory order passed by this Court on 12th December, 2018 is binding on this Court. It is observed by the Division Bench of this Court in paragraph 12 that the learned Single Judge had exercised discretion to protect the interest of the plaintiff, it can be said that it was a perverse use of discretion. In my view, since the applicant has already preferred an application for seeking permission for release of various payments which is pending and in view of the past conduct of the applicant, I do not propose to modify the order dated 12th December, 2018 passed by this Court clarifying the earlier order passed by Shri Justice S.J. Kathawalla that the applicant shall not be allowed to utilize any amount lying with the applicant without seeking permission of this Court and that restriction on transfer of funds would include utilization of fund. The said order is directed to be continued till Notice of Motion no. 212 of 2014 is heard by this Court.

14. Though the said Notice of Motion No. 212 of 2014 filed by the plaintiff for different reliefs is still pending for last more than four years, the parties have not proceeded with the hearing of the said

notice of motion. The pleadings in the said notice of motion are complete. In my view, it would be thus more appropriate if hearing of the said Notice of Motion No. 212 of 2014 is proceeded with expeditiously. None of the parties shall apply for an unnecessary adjournment in the said notice of motion.

15. The notice of motion is accordingly dismissed with aforesaid clarifications. Place Notice of Motion No. 212 of 2014 before the Judge having assigned this matter on board for directions on 9th December, 2019 to enable the learned Judge to fix an early date of hearing. No order as to costs.

(R.D. DHANUKA, J.)