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

NOTICE OF MOTION NO. 761 OF 2015
IN
SUIT NO. 875 OF 2014

SPL Industries Limited ....Plaintiff
V/s.
Standard Chartered Bank ....Defendant

Mr. Sheikh Yusuf Ali i/b. Advani and Co. for the plaintiff.
Mr. Parikshit Desai for the defendant.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 29th MARCH, 2019.

P.C.:

. In a suit for recovery of Rs.16,14,76,679/-, the defendants have filed this Notice of Motion for the following reliefs :-

" (A) That pending the hearing and final disposal of the Suit this Hon'ble Court may be pleased to pass the necessary orders, directing the Plaintiff Company to produce the following documents which are within their knowledge and in power and possession of the Plaintiff Company for proper adjudication of the dispute and determining the controversy in question:

(a) the documents executed by the Plaintiff Company in relation to the Derivative / Forward Cover Transactions with Banks other than the Defendant Bank to hedge its foreign exchange receipt and outgo, i.e. :

(i) ISDA Master Agreement or any other relevant agreement

with respect to such Transactions,

(ii) All Term Sheets,

(iii) All Confirmations,

(iv) Underlying,

(v) Copy of settlement agreement executed by the Plaintiff Company with State Bank of India.

(b) the Management Risk Policy of the Board of Directors of the Plaintiff Company for appraisal and assessment of risk ;

(c) any report submitted to the Plaintiff Company with respect to assessment and appraisal of the risk attached to the Derivative Transactions, pursuant to said Management Risk Policy,

(d) Copies of agendas circulated for convening board meeting held on 30.01.2006 and 23.04.2007 along with relevant duly certified minutes of such board meetings containing the discussion and reasoning arrived at by the Board of Directors of the Plaintiff Company to enter into the Derivative Transactions. "

2. Heard Mr. Sheikh Yusuf Ali, learned counsel for the plaintiff and Mr. Parikshit Desai, learned counsel for the defendant / applicant.

3. The plaintiff and the defendant had entered into an agreement on 16/02/2006 styled as a 'Master Agreement'. The plaintiff claim that the said document is based on a standard form (2002 ISDA Master Agreement) of the International Swaps and Derivatives Association Inc.

(ISDA). It is alleged that the defendant had assured that it would not carry any risk under the transactions and that the said representation formed the core basis of the plaintiff's decision to enter into the arrangements. On 30/10/2007, the plaintiff and the defendant entered into 'Final Term Sheet' styled as 'Target Redemption Forward' in which the parties confirmed that certain transactions under the Master Agreement had been partialy unwound. The defendant had persistently assured that derivative transactions were perfectly safe and there was no chance of loss. On 26/04/2011, the Reserve Bank of India imposed penalty on 19 commercial banks including the defendant – bank for mis-selling derivative products. The plaintiffs have claimed that the Reserve Bank of India has prohibited banks from carrying out any derivatives transactions in the absence of a real underlying risk. The plaintiffs have stated that the Reserve Bank of India, in its Master Circular on Risk Management and and Inter-Bank Dealings issued to all Authorized Dealer Banks has provided the conditions applicable to all Authorized Dealer banks when entering into derivative transactions with business entities. In addition to the conditions prescribed in FEMA, the circular also provides that the Authorized Dealer Banks should ensure that the derivative products inter alia do not result in increase in risk in any manner.

4. It is the case of the plaintiff that all payments under the agreement/transactions were made under mistake, under an illegal and void contract and for a consideration which has totally failed and hence, the defendant is liable to restore the amount of Rs.16,14,76,679/- which is inclusive of interest.

5. The defendants have claimed that the plaintiff / company had entered into similar derivative trades with other banks. The defendants have also claimed that the plaintiffs are misrepresenting that they did not understand the method and risk attached to the contract. The defendants have also denied having misrepresented the plaintiff in any manner in entering into the said contract. The defendants had claimed that the documents listed in the Motion sought to be produced are relevant to prove that the plaintiff was well aware of the risk factor as it has entered into similar transaction with the other banks and to determine the controversy in question.

6 It may be mentioned here that Order 11 Rule 12 of the Civil Procedure Code permits any party to the suit to seek direction against the other party to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in

question therein. This rule confers discretion on the Court either to refuse such discovery or order such discovery where the documents are relevant for the effective disposal of the issues in the suit. Rule 14 of Order 11 empowers the Court to order production of documents relating to any matter in question in the suit. From a plain reading of Rule 12 and 14, it is evident that the Court can order discovery or production of documents only when such documents are relevant to decide the issue involved in the suit. In the instant case, the documents which are sought to be produced do not pertain to the transaction between the plaintiff and the defendant and do not relate to the matter in issue. The attempt of the defendant appears to be to cause a roving inquiry to fish out information, which in my considered view, is not relevant for the disposal of the suit.

7. Under the circumstances, the Notice of Motion is devoid of merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)