

Sharayu Khot.

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

COMMERCIAL NOTICE OF MOTION NO. 1873 OF 2019

IN

COMMERCIAL SUMMARY SUIT NO. 62 OF 2014

UCO Bank

**...Applicant/
Defendant**

In the matter between

Universal Medicare Private Limited

...Plaintiff

Versus

UCO Bank

...Defendant

Mr. O.A. Das, for the Applicant/Defendant.

Mr. Sameer Pandit, a/w Ms. Sarrah Khambati, i/by M/s. Wadia Ghandy & Co., for the Plaintiff.

CORAM : R.I. CHAGLA J.

DATE : 16 September 2019

ORDER :

1. This Notice of Motion has been taken out in the above Commercial Summary Suit directing the Plaintiff for a direction against the Plaintiff to produce bank statement on account of which Rs. 15.05 Lakhs was credited as commission for opening fixed deposit Account and for disclosure of the name and address of the party who has sent the commission.

2. The learned Counsel for the Applicant refers to the cross-examination recorded by the Court Commissioner appointed on 13th July 2019 and in particular answers to Question 127 to 133. He states that it is the Plaintiff's witness who himself had stated that the Plaintiff had got Rs. 15,50,000/- from the agent and has thereafter, refrained from answering as to who is the issuing party and has only stated that he is not aware about the enquiry made about the depositor and when a question viz. Question 133 was put to him that the amount has come from Mr. Mohammed Faisuddin's account to the Plaintiff Company's account, he has stated that I am not aware.

3. The learned Counsel for the Applicant has referred to the Complaint and the Written Statement and in particular, the case made out by the Plaintiff that one Gautam Shukla is the agent, who had offered the Plaintiff an opportunity to open a fixed deposit account with the Defendant at a highly competitive rate of interest. He has also relied upon the Written Statement wherein the Defendant has stated that it was not Gautam Shukla, but one Mohammed Faisuddin, who had introduced himself as an agent of the Plaintiff and had stated that he would like to have the Plaintiff's fixed deposit account opened with the Defendant. He states that had the answers to these

questions, in particular as to the name of the agent of the Plaintiff for the purpose referred above, been disclosed by PW.1 rather than stating that he was unaware, this would have had a material bearing of the case.

4. The learned Counsel for the Plaintiff has stated that the cross-examination of the PW.1 has been concluded on 13th July 2019. This has been recorded by this Court in the order dated 13th July 2019 and that it was at this belated stage that the Notice of Motion was taken out on 16th July 2019. He has submitted that further particulars cannot be sought by way of this Notice of Motion, particularly, when inspection and discovery had been completed in the year 2015 i.e. four years back and such information as now sought in the Notice of Motion was never sought. He accordingly, submits that the relief sought in the Notice of Motion deserves to be rejected.

5. Having considered the submissions, I am of the view that once cross-examination of PW.1 has been completed on 13th July 2019, the questions which were answered by PW.1 cannot be improved upon by seeking further production of information viz.

Bank statement on account of which the commission had been credited for opening the fixed deposit account. Further, the inspection and discovery has been completed as far back as in 2015. If the Defendant had considered it necessary, it would have sought for necessary discovery in respect of the bank statement of the account of the Plaintiff in support of their case that the commission for opening the fixed deposit account had been paid by Mohammed Faisuddin.

6. In fact, at this belated stage, it would not be open for the Defendant to seek disclosure of the bank statement of the Plaintiff and/or disclosure of the name and address of the party who had paid the commission as sought to be done in the Notice of Motion.

7. The Notice of Motion is dismissed without any order as to costs.

[R.I. CHAGLA J.]