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

NOTICE OF MOTION No. 1503 OF 2017
IN
SUIT (L) No. 1176 OF 2014

Dena Bank ...Applicant
In the matter between

Dena Bank ...Plaintiff
Vs.
Export Credit Guarantee Corporation of India Ltd. ...Defendant

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Ms. Savita Nangare a/w. Ms. Deepali Jadhav i/b. Law Focus for Applicant/ Plaintiff

Mr. Rashmin Khandekar i/b. Mr. Mahendra Pratap Singh for Defendant.

CORAM : B.P. COLABAWALLA, J.

DATE : AUGUST 14, 2019

P.C.:

1. This Notice of Motion has been filed by the Plaintiff- Bank seeking restoration of the above Suit as well as seeking condonation of delay of 702 days in filing the present Notice of Motion.

2. The Learned Advocate appearing on behalf of the Applicant/Plaintiff brought to my attention the averments made in paragraphs 4 to 8 of the additional affidavit dated 27th March, 2019. She stated that originally, the above suit was filed on 4th

December, 2014. In the said Suit, the Plaintiff was directed to remove the office objections on or before 10th February, 2015, failing which, the suit was to stand rejected. Since the office objections were not removed by the aforesaid date, the above suit stood rejected under Rule 986 of the Bombay High Court Original Side Rules,1980. Thereafter, the Plaintiff filed an application for restoration of the suit before the Prothonotary and Senior Master and which was restored vide order dated 7th August, 2015. The said order further directed the Plaintiff to remove the office objections on or before 21st August, 2015, failing which once again the suit would stand rejected under Rule 986.

3. The Learned Advocate for the Plaintiff submitted that the Plaintiff complied with the objections as to replacement of illegible documents annexed to the Plaint with the legible copies whereas the objection regarding annexing the statement of accounts and particulars of claim to the Plaint remained to be complied with. Therefore, once again, the suit stood rejected on 21st August, 2015.

4. The Learned Advocate for the Plaintiff thereafter brought to my attention that they were unable to provide the statement of accounts and particulars of claim within the stipulated time, because the statement of accounts of their Borrower (M/s. Zoom Developer Pvt. Ltd.) and the claim sought to be made against the Defendant herein, were intertwined. She submitted that the particulars of claim and the statement of accounts could not be

filed because the files relating to the Borrower (M/s. Zoom Developer Pvt. Ltd.) were scattered all over different offices of the Plaintiff at Mumbai, Delhi and Indore as the said Borrower was being investigated by the Central Bureau of Investigation (CBI) and Directorate of Enforcement for a fraud committed in 2012. It is for this reason that there has been a delay in filing the present Notice of Motion as the statement of accounts for various facilities granted to the Borrower as well as to prepare the particulars of claim was available with the Plaintiff only in July, 2017. This being the case, the Learned Advocate appearing on behalf of the Plaintiff submitted that a sufficient cause has been made out for condoning the delay and restoring the above suit.

5. On the other hand, this Notice of Motion was vehemently opposed by the Defendant. The Learned Advocate appearing on behalf of the Defendant submitted that there was no cause much-less a sufficient one that was made out by the Plaintiff to seek restoration of the above suit. The Learned Advocate submitted that no particulars are given by the Plaintiff as to which documents were scattered in Mumbai, Delhi and Indore and which were seized by the CBI and /or the Directorate of Enforcement so that the Plaintiff was unable to file the statement of accounts as well as the particulars of claim.

6. Without prejudice to the aforesaid argument, the Learned Advocate submitted that in any event, the present suit would not lie before this Court as it is a suit filed by a bank for

recovery of its alleged dues from the Defendant and, therefore, would have to be filed before the Debt Recovery Tribunal under the provisions of the Recovery of Debt and Bankruptcy Act, 1993. For all these reasons, the Learned Advocate for the Defendant submitted that there is no merit in this Notice of Motion and the same be dismissed with costs.

7. I have heard the Learned Counsels for the parties at length and I have also perused the papers and proceedings in the above Notice of Motion. The explanation given by the Applicant/Plaintiff for the delay can be found in its additional affidavit dated 27th March, 2019. Paragraphs 4 to 8 of this additional affidavit read thus:

> *"4. I say that the Plaintiff has complied with the objections as to replacement of illegible documents annexed to the Plaint with the legible copies while objection as to annexing Statement of Account and Particulars of Claim to the suit was remained to be complied with. Therefore, as per the said order dated 7th August, 2015, the above said suit stood rejected on 21st August, 2015 for non-compliance of office objections for annexing Statement of Account and Particulars of Claim.*
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> *5. I say that the Plaintiff could not provide Statement of Account and Particulars of Claim before 21st August, 2015 to remove office objections and register the suit as the suit claim amount is on the basis of policy claim amount and the calculation of policy claim amount was on the basis of statements of various accounts of M/s. Zoom Developer Pvt. Ltd. (**"Borrower"**).*
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> *6. I say that the Borrower has availed various credit facilities from the Plaintiff such as foreign/inland letter of credit, Bank Guarantees, etc. since 2005 against the contracts executed with as Llondenium Ltd. at United Kingdom, Astikor AG at Switzerland and PEMS (Project Engineering Management and Services) at Switzerland. The Plaintiff has taken insurance from Defendant to cover the risk under the said credit facilities granted to the Borrower. The said Bank Guarantees were invoked in 2010 post which the Plaintiff also filed its claim with*

the Defendant, which the Defendant refused to pay and hence the present suit is filed for recovery of the claim filed with the Defendant along with the interest @ 18% p.a.

7. I say that the Plaintiff filed the said claim with the Defendant on 15th June, 2010. At that time the claim was calculated after adjusting margin money lying in the certain FDs of the Borrowers from the total outstanding. In 2014 the suit was filed to recover the said claim amount along with interest @ 18% p.a. and therefore no separate Particulars of Claim was prepared for filing suit in 2014. Subsequent to filing of the suit, when the registry raised an objection to file the Particulars of Claim, the Plaintiff was unable to prepare the Particulars of Claim as files relating to the Borrowers account was scattered all over the different offices of the Plaintiff at Mumbai, Delhi and Indore as the Central Bureau of Investigation (CBI) and Directorate of Enforcement had already started the investigation into the Borrowers accounts for fraud since 2012. Hereto annexed and marked as ***Exhibit "C" Colly*** *is the copy of the letter dated 23rd May, 2012 issued by CBI to the Plaintiff, requiring documents related to the said Bank Guarantees, foreign letter of credit etc. and Summons dated 30th June, 2015 issued to the plaintiff by the Directorate of Enforcement along with letter from Dena Bank, Delhi Branch to CBI.*

8. I say that the Plaintiff was unable to procure the Statement of Account for various FDs of the Borrower and the Statement of Account for various facilities of the Borrower to prepare the Particulars of Claim until July, 2017 as the files pertaining to Borrowers loan account were missing and/or scattered all over the various branches of the Plaintiff at Mumbai, Delhi and Indore due to ongoing CBI and DOE investigation. The Plaintiff could procure necessary Statement of Account relating to FDs and credit facilities of the Borrower in July 2017 when the Plaintiff prepared the Particulars of Claim for filing in the present suit. Therefore, in August, 2017 the Plaintiff filed the present Motion for restoring the above suit after removing office objections."

8. As can be seen from the aforesaid explanation, the Borrower of the Plaintiff (M/s. Zoom Developer Pvt. Ltd.) was being investigated by the CBI as well as by the Directorate of Enforcement. It is for this reason, the Particulars of Claim as well as the Statement of Accounts could not be brought on

record earlier. Though it is true that no detailed particulars are given in the affidavit, I find this explanation to be satisfactory to condone the delay. However, taking into consideration that the delay is of 702 days, I think that it would be in the interest of justice, if the delay is condoned subject to the payment of costs.

9. In view of the aforesaid discussion, the Notice of Motion is allowed in terms of prayer clauses (a) and (b), which read thus:

> "(a) This Hon'ble Court be pleased to restore the present Suit for complying with the Objections.
>
> (b) This Hon'ble Court be pleased to condone delay of 702 days in filing present Motion for Restoration of Suit."

10. The condition precedent for allowing the above Notice of Motion is that the Plaintiff shall pay costs of Rs.50,000/- to the Tata Memorial Hospital within a period of three weeks from today and file on record of this Court a receipt evidencing payment of the aforesaid costs.

11. The Plaintiff shall also remove the office objections regarding the non-filing of Statement of Accounts as well as the Particulars of Claim within a period of three weeks from today.

11. It is needless to clarify that if the costs are not paid or the objections are not removed within the period mentioned

hereinabove, this Notice of Motion shall stand dismissed without further reference to the Court. It is made clear that I have not examined the issue of jurisdiction and once the suit is restored, the Defendant shall be at liberty to take out an appropriate application, agitating the issue of jurisdiction, which shall be decided on its own merits and in accordance with law.

[B.P. COLABAWALLA, J.]

V.A. Tikam