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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) (COMM) 139/2019 & CM Appl.No. 28241/2019 & 29340/2019**

RIDHIMA M DOSHI & ORS ..... Appellants

Through Mr. Balbir Singh, Sr.Advocate with Mr. Chirag M.Shroff, Mrs. Mahima C.Shroff & Ms. Sanjana Nangia, Advocates

versus

STATE BANK OF INDIA & ORS ..... Respondents

Through Ms. Ekta Chaudhary, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **09.07.2019**

1. The present appeal is filed against an order dated 20th May, 2019 passed by the learned Single Judge dismissing the Appellant's suit being CS(OS) (COMM.) No. 186/2019 for declaration and permanent injunction.

2. It must be noted at the outset that the six Plaintiffs in the suit are the six Appellants before this Court. Plaintiff No. 6 is Atlanta Limited having its registered office in Mumbai. The Appellant/Plaintiff Nos. 1 to 5 are its shareholders. The prayers in the suit, *inter alia,* were for a permanent injunction restraining Defendant No. 5 in the suit i.e. the SBICAP Trustee Company Limited (Respondent No. 5 herein) from alienating, encumbering, selling or creating third party rights or making Inter-Depository Transfer or granting rights in any manner in respect of the paid up equity shares of the

Appellant No.6, which were pledged with Defendant No.5. The other incidental reliefs were for a declaration that a notice dated 1st April, 2019 issued by the Defendant No.5 to Appellant No. 6 invoking the pledged shares was bad in law. It must be noted herein that the pledge was created pursuant to a Share Pledge Agreement (SPA) dated 10th September, 2015 (and supplemental SPAs), which contains a jurisdiction clause conferring exclusive jurisdiction on the Courts in Delhi. By an interim order dated 9th April, 2019 the Defendants were restrained by the learned Single Judge from selling the shares of Plaintiff No.6 pledged with Defendant No.5.

3. In the said suit before the learned Single Judge, the stand taken by the Defendants was that the Plaintiffs have suppressed the facts that a suit had been filed by the Plaintiff No.6 in the High Court of Bombay, which *inter alia* included the same reliefs as claimed in the present suit. It is specifically contended that under Order II Rule 2 CPC, the present suit before the learned Single Judge of this Court was barred.

4. It was *inter alia* noted by the learned Single Judge in the impugned order that when the suit was listed before the learned Single Judge on 15th April, 2019 learned Senior Counsel for the Plaintiffs did not dispute the fact of non-disclosure in the plaint of the filing of the suit by the Plaintiff No.6 in the High Court at Bombay claiming reliefs including a relief similar to the one claimed in the suit. The explanation given was that this was owing to "grave urgency in which the suit was filed". The learned Single Judge in the order dated 15th April, 2019 did not accept this as a sufficient justification and accordingly held that "on the ground of practicing concealment alone,

the interim arrangement in force is liable to be vacated and the suit dismissed."

5. In the order dated 15th April, 2019 the learned Single Judge recorded an undertaking of Plaintiff No.5, who was present in the Court that the Plaintiffs would deposit in the consortium account of the Defendants on or before 14th May, 2019 a sum Rs.15 crores "without prejudice to his contentions of the deposit being required to be made with Defendant No.1 with SBI". The said undertaking was accepted and Plaintiff No.5 was held bound by it. It was made clear that if the amount as undertaken was not deposited, besides being becoming liable for breach of the undertaking, the interim arrangement would be vacated. It was recorded that the value of the shares as on that date was Rs. 80 crores.

6. Subsequently, IA No. 6840/2019 was filed by the Plaintiffs before the learned Single Judge for extension of time to deposit Rs.15 crores. *Inter-alia,* the learned Single Judge by the impugned order dated 20th May, 2019 saw no reason to extend the time for making the said deposit. The suit was accordingly dismissed and notice was issued to Plaintiff No. 5 asking him to show cause as to why he should not be punished for breach of undertaking given to the Court.

7. During the pendency of the present appeal certain interim orders were passed by this Court but they need not be discussed at this stage. All that requires to be clarified is that there is in effect no restraint on the Defendants/Respondents from proceeding to sell such of the pledged shares that have been invoked by the Defendants/Respondents.

8. Learned senior counsel for the Plaintiffs/Appellants submits that in view of the stand taken by the Respondents before the learned Single Judge regarding non-maintainability of the suit, the Appellants/Plaintiffs would file an application before the learned Single Judge seeking recall of the impugned order on the ground that they would withdraw the suit itself since in any event the relief sought therein is being pursued by the Plaintiffs in the suit in the High Court of Bombay.

9. Learned counsel for the Defendants on instructions states that the Defendants have no objection to the maintainability of the suit in the Bombay High Court since according to the Defendants/Respondents notwithstanding the jurisdiction clause in the Share Pledge Agreement, both the Bombay High Court and this Court would have concurrent jurisdiction *qua* the disputes between the parties arising out of the SPAs.

10. This Court without expressing any opinion on the above submissions permits the Appellants to file before the learned Single Judge an appropriate application for recall of the impugned order and specifically aver therein the above submissions. The said application will be considered on merits by the learned Single Judge. The appeal and the pending applications are accordingly disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019/mw