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

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COMMERCIAL APPEAL NO. 539 OF 2019
IN
NOTICE OF MOTION NO. 1873 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 62 OF 2014
WITH
COMMERCIAL APPEAL NO. 540 OF 2019
IN
NOTICE OF MOTION NO. 1338 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO. 62 OF 2014

UCO Bank .. Appellant
Vs.
Universal Medicare Pvt. Ltd. .. Respondent

Mr. P. A. Das i/n O. A. Das for the Appellant.
Mr. Sameer Pandit a/w. Ms. Sarrah Khambati & Mr. Mohit Parekh i/b Wadia Ghandy & Co. for the Respondent.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 27th JANUARY, 2020.

P. C. :

1. UCO Bank has filed two appeals challenging the order dated 16.09.2019 and 20.09.2019 passed by the learned Single Judge dismissing Commercial Notice of Motion No. 1873 of 2019 and Notice of Motion No. 1338 of 2018 respectively.

2. Vide Commercial Notice of Motion No. 1873 of 2019 prayer made by UCO Bank was to direct the Plaintiff i.e. the Respondent in the Appeals to produce the bank statement of account where commission in sum of ₹ 15.05 lakhs was credited.

3. Learned Counsel for the Appellant has not been able to show under which provision of law the Appeal is maintainable.

4. Suffice it to state only such interlocutory/interim orders which are appealable under the various clauses of Sub-Rule 1 of Order 43 can be appealed against. If an order amounts to a Judgment it can be appealed under the Latters Patent Jurisdiction of this court as per Judgment reported as 1981 SCC (4) 8 *Shah Babulal Khimji Vs. Jayaben D. Kania & Anr.*

5. The said decision guides that the impugned order dated 16.09.2019 is not a Judgment as conceded to by learned Counsel for the Appellant.

6. As regards the order dated 20.09.2019 which has dismissed Notice of Motion No. 1338 of 2018, the notice reads:-

> *"Take Notice that this Hon'ble Court will be moved before His Lordship Justice ___________ on this _____ day of July, 2018 at 11 O' clock soon thereafter as counsel can be heard on behalf of the Applicant/Original*

Defendant abovenamed for the following reliefs.

a) That the delay 243 days if any in filing the application may be condoned;

b) Whether Mr. Gautam Shukla, alleged to be agent of Defendant, Mr. Mohammad Fasiuddin, director of Vivid Hospitality, Mr. E. S. Natarajan and Mr. P. D. Sawant, Mr. Santosh Accounts Manager and Mr. Susheel Employee of the M/s. Vivid Hospitality Ltd. are the necessary and proper parties?

c) Whether the suit is maintainable without adding Mr. Gautham Shukla, alleged to be agent of Defendant, Mr. Mohammad Fasiuddin, director of Vivid Hospitality, Mr. E. S. Natarajan and Mr. P. D. Sawant, Mr. Santosh Accounts Manager and Mr. Susheel Employee of the M/s. Vivid Hospitality Ltd. as parties to the suit?

d) Any other relief deem fit and proper of this Hon'ble Court, may be granted.

Bombay, dated this 13th day of July, 2018."

7. It is apparent that the Appellant wanted two additional issues to be settled as per paragraph (b) and (c) of the Notice of Motion.

8. To appreciate the relevant facts concerning the two issues, suffice it to state they are a reflection of each other and the issue which appellant wanted to be settled was whether the plaint is liable to be rejected on account of non-impleadment of the persons named in the two proposed issues; being necessary or proper parties.

9. Universal Medicare Pvt. Ltd. filed a suit seeking a decree against UCO Bank in sum of ₹ 5,15,84,923/- together with interest thereon @ 8.55% per annum commencing from 5th August 2014 till date of realization. It was pleaded that one Gautam Shukla (one of the six persons stated to be the necessary and proper party in the Notice of Motion taken out by the appellant), as agent of the appellant, visited the Company and told that the appellant would give a highly competitive rate of interest and this induced Shri Vivek Tannan and Ms. Preetika Tannan, the directors and authorized signatories of the Company to sign an application accompanied by two cheques totaling ₹ 5,00,15,000/- drawn in the name of the appellant. The appellant accepted the application and the cheques and opened a fixed deposit account in the name of the Company issuing a confirmation of the fixed deposit receipt issued. The Company desired a premature closure of the fixed deposit account which as per the fixed deposit receipt had to bear interest @ 9.55% per annum. As per the policy of the appellant concerning pre-closure of the fixed deposit account the Company forfeited the right to 1% interest and thus the claim of interest @ 8.55% per annum. It was pleaded that the appellant refused to pay any amount informing that a cash credit facility had been created in the name of the Company in which account the Company was in debt in the sum of ₹ 3,95,00,871/-.

10. In the written statement filed by the appellant it was pleaded that one Mr. Mohammad Fasiuddin (the second person named in the Notice

of Motion) as director of Vivid Hospitality was enjoying a credit facility in the name of Vivid Hospitality. Said Mohammad Fasiuddin introduced the Company claiming to be the agent of the Company and requested for a fixed deposit account to be opened in the name of the Company. Mr. Santosh (the third person named in the application) and one Mr. Sushil (the fourth person named in the application) visited the branch of the appellant with cheques along with Board Resolution of the Company. The appellant en-cashed the cheques and credited the amount in the fixed deposit account of the Company. It is pleaded that a cash credit facility was extended to the Company against security of the fixed deposit and this was done in terms of Board Resolution dated 28th April 2014 attested copy being submitted by the Director of the Company namely Vivek and Preetika Tannan. The two other persons named in the application: Shri E. S. Natarajan and Shri P. D. Sawant were stated to be Group CFO and Senior Manager (Accounts).

11. The issues settled on 4th December, 2015 embraced the issue whether the appellant has negligently opened a cash credit facility in the name of Universal Medicare Pvt. Ltd. without any authorization from the plaintiff.

12. In what manner Gautam Shukla, Mohammad Fasiuddin, E. S. Natarajan, P. D. Sawant, Santosh and Sushil would be necessary or proper parties has not been explained. Even during arguments in appeals learned counsel for the appellant is unable to explain so.

13. Said persons would at best be witnesses and we hold they are neither necessary nor proper parties. Thus, we concur with the impugned order dated 20th September, 2019.

14. Thus, both the Commercial Appeals are dismissed. The former as not maintainable and the latter on merits.

[SMT. BHARATI DANGRE, J.] [CHIEF JUSTICE]

Pravin D. Pandit

Digitally signed by Pravin D. Pandit
Date: 2020.01.28 17:20:25 +0530