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

SUMMARY SUIT NO.508 OF 2014

SBI Global Factors Limited ...Plaintiff
vs.
M/s. Greenwoods India and Others ...Defendants

Mr. Rahul Jain a/w. Ms. Khushboo Rupani i/b. HSA Advocates, for the Plaintiff.
None for the Defendants.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 18, 2021

ORAL JUDGMENT

. This commercial division Summary Suit is instituted for recovery of a sum of Rs. 3,04,54,783.70/- with further interest on the principal sum of Rs.2,57,93,969/-.

2. The material averments in the Plaint can be stated in brief as under:

The Plaintiff is a Non- banking finance company and a subsidiary of “State Bank of India”. The Defendant No. 1 is a registered partnership firm. Defendant Nos. 2 and 3 are its partners. Defendant No. 1 deals in the business of trading in raw rubber and allied products. Pursuant to the request of the Defendants, Plaintiff had sanctioned Trade Finance Facility in favour of Defendant No. 1 which included a maximum funds in use limit of Rs.5 Crore for Domestic (Sales) Letter of Credit Discounting Facility in terms of the sanction letter dated 1st June, 2011. The Defendants had represented the Plaintiff that Defendant No. 1 sold rubber to M/s. New Gujrat Impex and has raised invoice for the same. At the instance of the purchaser M/s. New Gujarat Impex, Union Bank of India, Narsanda Branch had allegedly issued irrevocable transferable Letter of Credit in favour of Defendant No. 1 for the sum of Rs.4,91,96,240/- for a period of 180 days, with maturity on 24th February, 2012. The Defendant No. 1 and M/s. New Gujrat Impex also jointly executed a Bill of Exchange dated 6th September, 2011 drawn on Union Bank of India for the said sum. By letter dated 7th September, 2011 the Defendant No. 1 authorized the Plaintiff to collect the payment as beneficiary of the said Letter of Credit on the due date and confirmed that the Plaintiff shall have the sole right to receive the payment thereunder. Union Bank of India was also instructed to make the payment under the said Letter of Credit to the Plaintiff. In the month of September, 2011, the Plaintiff, however learnt that the Letter of Credit issued by Union Bank of India was a fraudulent instrument. Thus, the Plaintiff vide communication dated 22nd September, 2011 requested the banker of Defendant No. 1 namely Bank of Baroda, Ernakulam Main Branch to freeze the account of the Defendants maintained with them and not to allow further debit in the said account. The issue of genuineness of the said Letter of Credit also became a subject matter of criminal investigation.

3. The Defendant No. 2 agreed to transfer a sum of Rs. 2,24,80,000/- to the Plaintiff towards the liability of the Defendant. Accordingly, pursuant to the request to Bank of Baroda to unfreeze the account and transfer the said amount of Rs. 2,24,80,000/-, the said amount was received by the Plaintiff. The Defendants by executing writing dated 23rd

September, 2011 undertook to pay further sum of Rs.2,40,00,000/- together with interest being shortfall against the said Letter of Credit discounted by the Plaintiff within 75 days from 24th September, 2011. As the Defendants committed default, the Defendant No. 1 had drawn cheque bearing No. 607456 for an amount of Rs. 2,40,00,000/- on State Bank of Travancore, Ponkunnam branch payable on 5th December, 2011. The cheque was dishonored on presentment. Thus, the Plaintiff issued a demand notice under section 138 of the Negotiable Instruments Act, 1881 and on failure to comply with the demand, instituted complaint for the offence punishable under section 138 of the Act in the Court of Metropolitan Magistrate, Bandra, Mumbai. Thus, the Plaintiff was constrained to institute the suit to recover the said amount along with interest and costs.

4. As the writ of summons could not be served on the Defendants in the ordinary manner, the Plaintiff was permitted to serve the writ of summons by way of substituted service. By an order dated 15th March, 2018 it was noted that

none appeared on behalf of the Defendants despite service of writ of summons. By a subsequent order dated 21st January, 2020 it was again noted that the writ of summons was duly served on the Defendants and yet there was no appearance.

5. In view of default in appearance on the part of the Defendants after the service of writ of summons within the period stipulated by Order XXXVII (2)(3) of the Code of Civil Procedure, 1908, the Court is enjoined to hold that the allegations in the plaint shall be deemed to be admitted by the Defendant and the plaintiff is entitled to a decree.

6. Nonetheless, this Court has considered the justifiability of the claim and its admissibility under sub Rule (2) of Rule 1 of Order 37 of the Code. By an order dated 21st February, 2020 the Plaintiff was directed to file an affidavit in support of the claim along with compilation of original documents. Ms. Komal Vijaykumar Sahastrabuddhe (P.W.1), Executive (Legal), of the Plaintiff has filed affidavit in lieu of examination in chief (Exhibit P-1/1). The compilation of the

documents is also tendered for the perusal of the Court.

7. The affidavit and the documents on which the Plaintiff relied indicate that the genesis of the transaction is in the Trade Finance availed from the Plaintiff by Defendant No. 1. The claim of the Plaintiff that after realizing that the Letter of Credit appeared to be a fraudulent document, it has instructed the Defendant No. 1's banker namely Bank of Baroda, Ernakulam Main Branch to freeze the account and stop payment therefrom finds support in the copy of the letter dated 22nd September, 2011. A similar request appears to have been made on behalf of Defendant No. 1 to its banker i.e. Bank of Baroda on 22nd September, 2011. Further claim of the Plaintiff that the account was later on requested to be unfreezed and a sum of Rs. 2,24,80,000/- was received by it, is evidenced by the documents which shows that the money was transferred by RTGS on 24th September, 2011. The undertakings dated 23rd September, 2011 by Defendant No. 2 in personal capacity and Defendant Nos. 2 and 3 in the capacity of the partners of the Defendant No. 1 indicate that

Defendants had acknowledged the liability to pay Rs. 2,40,00,000/- and jointly and severally agreed to repay the said amount together with interest being the shortfall in the Bill discounted on 14th September, 2011 on behalf of Defendant No. 1 within 75 days therefrom.

8. The factum of issue of cheque payable on 5th December, 2011 for the sum of Rs. 2,40,00,000/- and its dishonor are evidenced by the cheque return memo dated 29th May, 2012 issued by the drawee bank. The Plaintiff has tendered the original cheque drawn on State Bank of Travancore, Ponkunnam branch for the perusal of the Court.

9. The aforesaid material thus indicates that the Defendants had acknowledged the liability to repay the sum of Rs. 2,40,00,000/-. The undertakings dated 23rd September, 2011 constitute a written contract. Moreover, the Defendants had drawn a cheque in favour of the Plaintiff to repay the said amount. The cheque was returned un-encashed on account of insufficient funds. The fact that the

Defendants had made a part payment to repay the liability on account of discounting of the Letter of Credit, which was allegedly fraudulent, lends support to the claim of the Plaintiff. The Plaintiff is entitled to recover the balance amount of Rs. 2,40,00,000/- which the Plaintiff was made to part with on the representation of the Defendants and which the Defendants had agreed to repay. The claim thus falls within the ambit of sub Rule (2) of Rule 1 of Order 37 of the Code.

10. The claim of the Plaintiff is supported by documents of unimpeachable evidentiary value. The claim has also gone un-controverted. Hence, there is no impediment to pass the decree for the sum of Rs. 2,40,00,000/-. As regards the claim of interest, the Plaintiff has claimed interest @ 11.75% from 2nd March, 2012 to 31st May, 2013 and @ 18% p.a from 1st June, 2013 on the sum of Rs. 2,57,93,969/- which comprises penal interest and legal charges etc. It was fairly submitted on behalf of the Plaintiff that there is no contract as regards the rate at which the interest was to be charged on the said

amount of Rs. 2,40,00,000/-. In my considered opinion, it would be justifiable to apply interest @ 9% p.a. from 5th December, 2011, the day the cheque drawn by the Defendants in favour of the Plaintiff was payable. Hence, the following order.

ORDER

1. The Suit stands partly decreed.

2. The Defendants No. 1 to 3 do jointly and severally pay to the Plaintiff the sum of Rs. 2,40,00,000/- along with interest @ 9% p.a. from 5th December, 2011 till the realization.

3. Court fee refund, if any, be made as per rules.

4. Decree be drawn up and sealed expeditiously.

(N. J. JAMADAR, J.)

V. S. Parekar

Digitally signed by V. S. Parekar
Date: 2021.01.20 14:40:13 +0530