

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL NOTICE OF MOTION NO.1919 OF 2019
IN
COMMERCIAL IP SUIT NO.20 OF 2008**

Reserve Bank of India

....Applicant/Plaintiff

V/s.

Sudhir Diwan

....Defendant

Mr. Himanshu W. Kane a/w. Ms. Anusha Ramanathan for plaintiff.

Ms. Nisha Shah i/b. Kalpesh Joshi Associates for defendant.

CORAM : K.R.SHRIRAM, J.

DATED : 17th FEBRUARY 2021

P.C. :

1 This is a notice of motion praying for affidavit of evidence of plaintiff be taken on record. Defendant has filed an affidavit in reply opposing the notice of motion. A rejoinder has also been filed.

2 By an order dated 26th February 2013, after settling the issues, this Court was pleased to direct plaintiff to file its affidavit of evidence, affidavit of documents and compilation of documents. Pursuant to the said order, in April 2013, plaintiff filed its affidavit of documents and compilation of documents. On 24th April 2013 the documents were also marked as Exhibits. In the meanwhile, as stated in the affidavit in support, a draft of the affidavit in lieu of examination in chief had been forwarded to the affiant. Since the documents were marked, plaintiff did not realise that the affidavit of evidence was not filed.

3 In the meanwhile, defendant had also taken out a chamber summons being chamber summons no.575 of 2013 for a direction to plaintiff to produce certain documents. This chamber summons was dismissed by an order dated 28th February 2014. Thereafter, plaintiff had also taken out a notice of motion for stay of criminal proceedings that defendant had initiated against plaintiff and its officers, which came to be disposed as infructuous in view of an order dated 31st January 2014 that had been passed by the Court of Sessions, Greater Bombay at Mumbai. Defendant had also taken out a notice of motion for stay of the suit during pendency of the criminal proceedings initiated by defendant against plaintiff and its officers, which also came to be disposed as infructuous in view of the order dated 31st January 2014 mentioned earlier. In this confusion, the evidence affidavit remained to be filed until 14th June 2019 when the board indicated *“Remark :- === ipr === issues framed as per order dt.26/02/2013 per Shri Justice S.J. Kathawalla w/s filed on 30/09/09. per registrar/pro. & sr. master dt. 27/04/2009 transferred to c.c. suit. aff . Of evidence a/w. aff. of documents a/w list of document a/w list of witness dtd. 01/04/2013 (checked as per index) filed on 01/04/2013. aff. of documents a/w compilation of documents dtd. 15/04/2013 per shri anoop v. mohta dtd. 17/04/2013 filed on 18/04/2013. sealed packet (original documents) per Shri S.J. Kathawalla, J. order dated 24/04/2013 filed on 26/04/2013”*.

4 The fact that these remarks as appeared in the board has not been denied but it is defendant's case that if plaintiff misread the remarks then plaintiff has to pay for the mistake. At that stage, when plaintiff took inspection of the records and proceedings, it came to light that plaintiff has not filed the affidavit in lieu of examination in chief. Plaintiff immediately prepared the affidavit in lieu of examination in chief of its first witness Navendu Sharadchandra Saxena, which evidence affidavit plaintiff is now seeking leave to be filed in the Court records.

5 I am inclined to allow this notice of motion for two reasons. First of all, plaintiff's documents having been received in evidence and exhibited, plaintiff should be permitted to file the affidavit in lieu of examination in chief. Secondly, if the notice of motion is rejected, the documents would have been received in evidence but defendant would have been deprived of an opportunity of cross examining plaintiff's first witness. Therefore, it will be beneficial to defendant if the notice of motion is allowed so that defendant can freely cross examine the witness of plaintiff. Moreover, nothing has happened between July 2019 till date.

6 In the circumstances, the notice of motion is allowed and accordingly disposed in terms of prayer clause – (a).

7 Ms. Shah is pressing for cost. Plaintiff to give, within two weeks from today, a donation of Rs.10,000/- High Court Legal Aid Fund, Account No.60045304283, IFSC – MAHB0000002 of the Bank of Maharashtra,

Branch – Fort, Mumbai 400 032, maintained by the High Court Legal Services Committee, Mumbai, Room No.105, 1st Floor, PWD Building, High Court, Mumbai and to furnish the details of such cost to the High Court Legal Services Committee, Mumbai and obtain the receipt thereof physically or through Email, i.e., hclsc.mumbai@gmail.com which shall be the proof of such payment/deposit. Plaintiff shall also provide proof of payment to defendant.

8 Mr. Kane states that the affidavit in lieu of examination in chief of plaintiff's two witnesses is ready and will be filed in the registry during the course of this week. Mr. Kane states that a copy will also be served on defendant before the end of this week.

9 Ms. Shah states that by 24th February 2021 defendant will give his statement of admission and denial with reasons for denial to plaintiff. If plaintiff wishes to file any further affidavit to prove the documents of their witnesses, which have been denied, they may do so and serve a copy thereof by 5th March 2021. By 10th March 2021, plaintiff shall also file its list of witnesses with copy to defendant.

10 Stand over to 10th March 2021 at 2.30 p.m. for marking of documents/recording of evidence on which date plaintiff's both witnesses shall remain present in Court either in person or through online as the case may be on that date.

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date: 2021.02.20
13:39:14 +0530

(K.R. SHRIRAM, J.)