Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM DIVISION NOTICE OF MOTION NO.116 OF 2016
IN
COMMERCIAL SUIT NO. 67 OF 2015

La Fin Financial Services Pvt Ltd …Plaintiff
Versus
Multi Commodity Exchange Of India Ltd …Defendant

Mr Sameer Pandit, *with Sarrah Khambati and Anuj Jain, i/b Wadia Ghandy & Co, for the Applicant in NMCD/116/2016 and for the Defendant in COMS/67/2015.*
Mr Vikram Nankani, Senior Advocate, *with Darshan Mehta, i/b Dhruve Liladhar & Co, for the Plaintiff in COMS/67/2015.*

CORAM: G.S. PATEL, J
DATED: 20th September 2021

PC:-

1. The Motion is by the Defendant under Order 7 Rule 11 of the Code of Civil Procedure 1908 ("**CPC**"). In my view it deserves to be dismissed. The prayers in the Suit for the purposes of this Application are prayers (a)i, (a)ii, (b) and (c) at pages 30 and 31, which read thus:

"(a) that this Hon'ble Court be pleased to order and declare that:

> i. The Defendant is the sole beneficiary of the Letter dated 20th August 2009 issued by the Plaintiff in favour of IL&FS, and the Plaintiff issued the said Letter of Undertaking dated 20th August 2009 solely at the instance of and for the benefit of the Defendant; and
>
> ii. The Defendant is bound and liable to indemnify and/or compensate the Plaintiff from, by or against any claim, demand, dispute, loss, damages, costs, expenses or liability as may be caused to the Plaintiff on account of any act of IL&FS in respect of the said Letter of Undertaking dated 20th August 2009 (including any order passed in the said Suit No. 449 of 2013);

(b) that, in the event, Suit No. 449 of 2013 is ordered and decreed against the Plaintiff herein, and the Plaintiff herein is directed to purchase 2,71,65,000 equity shares of MCX-SX held by IL&FS or the Plaintiff is directed to pay any such amounts pursuant to its alleged obligation under the said Letter of Undertaking dated 20th August 2009, then, in that event, this Hon'ble Court be pleased to order, direct and decree the Defendant to pay to the Plaintiff all such amounts paid/payable by the Plaintiff herein to IL&FS consequent to any decree passed in Suit No. 449 of 2013;

(c) that in the alternate to prayer (b) above, this Hon'ble Court be pleased to order, direct and decree the Defendant to pay to the Plaintiff such sum as this Hon'ble Court may deem fit and proper so as to ensure that the Plaintiff herein receives full reparation against any liability, claim, loss, damages, costs or expenses as incurred/suffered by the Plaintiff consequent to any decree which may be passed against the Plaintiff herein in Suit No. 449 of 2013.

2. Mr Pandit argues that no case of indemnification against the Defendant is made out in the Plaint.

3. That is clearly a misreading of the Plaint. Paragraph 6 and it sub-paragraphs from (a) to (j), pages 21 to 27, address only this issue, based on a series of documents and on conduct, to claim clearly that the Defendant has, by its conduct, and on a correct reading indemnified or made itself liable to indemnify or compensate the Plaintiff against any claim demand loss etc that may be caused if the Plaintiff is required by ILFS (or by any order that ILFS obtains from a Court) to buy back certain shares as set out in the Plaint.

4. Mr Pandit argues that the documents annexed to the Plaint do not establish that there was any such contract of indemnity. But that is surely a matter of evidence and must await trial. It cannot be said that there is no material in the Plaint to substantiate the Plaintiffs' case against the Defendants on the question of indemnity and sufficient to sustain the prayers in the Suit. It cannot therefore be said that on a facial examination of the Plaint there is no disclosed cause of action against the Defendants.

5. It is then argued that there is question of limitation. That question of limitation can undoubtedly be addressed in an Order 7 Rule 11 application, but not, as the Supreme Court has very recently said,[1] if it is mixed question of fact and law. Now in the Plaint itself, there is an averment in paragraph 11 as regards limitation in which, among other things, the Plaintiff says that it was restrained by orders

1 *Salim D Agboatwala & Ors v Shamalji Oddhavji Thakkar & Ors*, Civil Appeal No. 5641 of 2021, decided on 17th September 2021.

of the Court from dealing with its assets without first securing the buy-back claim of ILFS or furnishing a Court-approved security. Then the next averment is that there was an understanding between the parties to this Suit that the Defendant would indemnify or compensate the present Plaintiff for any claims made by ILFS. The date of the cause of action is pegged to an order of 13th October 2014 passed by this Court in different proceedings. Now it remains to be seen, as a matter of evidence and documentation, whether there was an injunction of the ambit the Plaintiff claims, there was such an understanding, and whether it could fairly be said, at least as a question of fact, whether the cause of action that the Plaintiff pleads in this case could not have accrued to it earlier. This is not a matter that can be decided in the summary fashion.

6. Mr Pandit submits that there is some controversy in law as to whether a suit on an indemnity needs to be brought after the indemnity is invoked or whether it can be done even earlier. But that is surely no ground for holding that there is no cause of action in the Plaint as prayed in this Notice of Motion.

7. The Notice of Motion is without merit and it is dismissed. In the facts and circumstances of the case there will be no order as to costs.

8. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)