IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11329 OF 2022

Bank of Baroda .....Petitioner
V/s.
Gujarat Cables and Enamelled Products
Pvt. Ltd. ....Respondent

Mr. Anant B. Shinde i/by Anant B. Shinde and Co., Advocate for the Petitioner.
Mr. Harinder Toor i/by Mr. Nainesh Amin, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 10TH OCTOBER, 2022.
PRONOUNCED ON: 10TH NOVEMBER, 2022

JUDGMENT:

1. **Rule.** Rule made returnable forthwith. With consent of the Parties, Petition is taken up for final hearing.

2. This Petition under Article 227 of the Constitution of India takes exception to, the order dated 13th July, 2022, by which the learned Judge, City Civil Court, Greater Bombay refused leave, sought by the petitioners-defendants, to rely on the documents, which were not filed along with the Written Statement, in the Commercial Suit No.274 of 2019 instituted by the respondents.

3. Facts in brief are as under:

Respondents/Plaintiff instituted Commercial Suit No.274 of 2019 in the City Civil Court, Bombay, against the petitioners-defendants, to recover the sum of Rs.83,66,242/- together with interest @ 14% p.a. Suit was instituted, on 14th November, 2019. For the sake of brevity, hereinafter, petitioners and the respondents shall be referred as per their original nomenclature as defendants and plaintiffs respectively. It is plaintiffs case that since 1977, defendants/bank had sanctioned and granted working capital facility. It was renewed, over the years upon plaintiffs executing necessary security documents required for utilisation of facility. Plaintiffs' case is that the defendants have made unauthorised; (I) excess debit on the L/C charges for the period from September, 2008 till December, 2010; (ii) excess debit of 3% p.a. by charging higher rate of interest from September, 2008 till December, 2010; (iii) charged unauthorised and recovered excess processing fees. As such the plaintiffs were constrained to institute the suit to recover the amount of Rs.83,66,242.50 paise which were illegally debited and recovered by the defendants from the plaintiffs.

4. Defendants filed Written Statement on 13th February, 2020 and relied on following documents;

(I) Risk based internal audit report;

(ii) Statement of account of the plaintiffs' cash-credit account;

(iii) Letter dated 23rd February, 2021 addressed by the defendant to the plaintiff;

(iv) Letter dated 9th April, 2021 addressed by the plaintiff to the defendant;

(v) Letter dated 23rd April, 2021 addressed to the defendant by the plaintiff;

(vi) Any other relevant documents correspondence with permission of the Court.

5. Thereafter on 5th April, 2021, plaintiffs filed affidavit of evidence of Mr. Chetan A. Jain, Director, which was marked Exhibit 34 on 3rd February, 2022.

6. Mr. Jain was cross-examined by the defendants on, 22nd February, 2022, 24th February, 2022, 2nd March, 2022 and cross-examination was complete on 4th March, 2022. Thereafter, defendants filed their, affidavit of evidence, on 23rd March, 2022 and sought to produce twelve documents, as per list annexed thereto.

7. As such, after cross examination of Plaintiffs' witness, on 5th April, 2022, defendants took out Notice of Motion No.1337 of 2022, seeking leave of the Court to rely and produce documents, as per the list, filed along affidavit of evidence.

8. Defendants would contend that documents, viz., (i) statement of cash credit account maintained at the Ankleshwar Branch; (ii) Statement of cash-credit account maintained at Dulalwadi Branch, Bombay; and (iii) certificates under Bankers' Book Evidence Act, (iv) acknowledgment of debt, (v) Boards Resolution were not filed due to 'oversight'. Defendants would further contend that since plaintiffs have, disputed debit entries in these two accounts, no prejudice will be caused to the plaintiffs, if the leave is granted to produce statements of cash-credit accounts and the certificates under the Bankers' Book Evidence Act. Defendants would also contend that plaintiffs' witness, Mr. Jain, since, admitted execution of various documents in favour of the bank for availing credit facilities, no prejudice will, cause to the plaintiffs if leave is granted to produce acknowledgment of debt executed by the plaintiffs and the board's resolution. It was, therefore, urged that in the

interest of justice defendant Bank may be permitted to rely and produce documents, list of which has been filed along with evidence affidavit. Defendants would further urge that refusal of leave shall cause grave prejudice to the bank and, therefore, in the interest of justice and for arriving 'just' decision, leave may be granted to rely and produce those documents.

9. Learned trial Court vide order dated 13th July, 0222 declined the leave on the ground that defendants could not establish 'reasonable cause' for not disclosing the documents sought to be produced, though these documents were in its power, possession and control.

10. Aggrieved by the order dated 13th July, 2022, defendants have filed this petition under Article 227 of the Constitution of India.

11. The provisions of Order 11 Rule 7 of the Code of Civil Procedure, 1908 as applicable to the commercial suits, mandates defendants to file list of documents and photo-copies of all the documents, in its power, possession, control or

custody pertaining to the suit, including the documents referred to and relied on in the Written Statement and the documents relating to any matter in question in the proceedings irrespective of whether same is in support of or adverse to the defendants' evidence. However, this rule is not applicable to the documents produced by the defendants and relevant only;

(i) for cross-examination of the plaintiffs' witnesses;

(ii) In answer to any case set-up by the plaintiff subsequent to the filing of the plaint or;

(iii) handed over to the witness merely to refresh his memory.

Yet, Rule 10 is an exception to Rule 7. In terms of this Rule, defendant is allowed to rely on the documents with the leave of the Court, but only upon establishing 'reasonable cause' for non-disclosure along with the Written Statement. Sub-rule 10 of the Order 11 of the CPC applicable to commercial suits reads as under;

> *"(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed alongwith the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure alongwith the written statement or counter-claim."*

12. In the case at hand, since the defendants could not establish, 'reasonable cause', for non-disclosure of the documents along with the Written Statement and trial court refused the leave.

13. Question is whether the trial Court while declining the leave as sought, has committed error in exercise of the jurisdiction.

14. The only ground on which the leave sought was, though the documents were in its' custody, possession and control, same were not filed along with the Written Statement, inadvertently AND, since the plaintiffs have relied upon, the statements of cash-credit accounts, no prejudice will be caused to the plaintiffs, if such statements and certificates under the Bankers' Book Evidence Act are permitted to be produced on record.

15. In the context of the omission and/or inadvertence on the part of Petitioners' in in filing documents along with the Written Statement is concerned, Mr. Harinder Toor, Learned

Counsel for the Respondents/plaintiffs, supported the impugned order and relied upon the judgment of the Apex Court in the case of **Ambalal Sarabhai Enterprises Limited v. K.S.Infraspace and Anr. (2020) 12 SCC 585** wherein the Apex Court has noted that '*a purposive interpretation of the Statement of Objects and the Reasons of the Commercial Courts' Act, 2015, leaves no room for doubt that the provisions of the Act require to be strictly construed*.' In paragraph 36, the Apex Court has held thus, '*If we take a closer look at the Statement of Objects and Reasons, words such as 'Early' and 'Speedy' have been incorporated and reiterated. Object shall be fulfilled only if the provisions of the Act are interpreted in narrow sense and not hampered by usual procedural delays plaguing our traditional legal system.'* Mr. Toor learned counsel submitted that test to assess reasonableness of the cause for default is, to find whether in the judgment of the common prudent man, the cause is such that any normal man would, in the same or similar circumstances be also defaulter. Mr. Toor relied on the decision of the Bombay High Court in **Eknath Kira Akhadkar and Ors. v. Administrative Tribunal and Ors. AIR 1984 Bombay 144**. Mr. Toor would also rely on the decision of the Full Bench in the case of **Commissioner of Wealth Tax, Bihar-1 v. Jagdish Prasad Choudhary AIR 1996 Patna 58** wherein it was held that '*reasonable cause means a cause, which prevents a reasonable man of a ordinary prudence acting under normal circumstances, without negligence or inaction or want of bonafide from furnishing the return in time*.'

16. No doubt, reasonableness of a cause depends upon the facts and circumstances of the each case. However, looking at object and reasons of the Act of 2015, Sheer 'oversight' on the part of Bank, in not disclosing document along with Written Statement, would not furnish ground to grant leave. Moreso, when Petitioner is the 'Bank'.

17. Mr. Shinde, learned counsel appearing for the Petitioners relied on the judgment in the case of **Sugandhi and Anr. v. P. Rajkumar (2020) 10 SCC 706**. In the said decision, High Court of Judicature of Madras dismissed the revision petition challenging refusal to entertain the application under Order 8 Rule 1-A(3) of the CPC seeking leave of the Court to

produce additional documents. In the said case, Petitioners/defendants could not produce documents along with the Written Statement as documents were missing and were only traced at the later stage. In consideration of these facts, the Apex Court granted leave to produce these documents. The decision in the **Sugandhi (Supra)** has no application to the facts of the case at hand. Reason being, said decision was not rendered in the suit filed in the commercial division and further in the said decision, documents could not be produced since, were missing when the Written Statement was filed. However, in the case at hand, leave is sought on the ground that documents, were not produced inadvertently, although documents were in possession, control and custody of the defendant/bank. Next judgment relied on by Mr. Shinde was in the case of **Namdev Krishna Ghadage 2016 SCC Online Bombay 12251**. Facts in the said judgment relates to rejection of the amendment sought for in the plaint by the petitioner. Therefore, decision in the **Namdev (Supra)** has no application to the fact in the case at hand.

18. In consideration of the facts stated above, in my view, sheer “inadvertence” or “oversight”, would not furnish or constitute ‘reasonable cause’ for granting leave under Rule 10 of Order 11 of CPC as applicable to the Commercial Suits. For all these reasons, I hold that trial Court has not committed error in the exercise of the jurisdiction while refusing the leave. Question is answered accordingly.

19. In the result, petition is dismissed, with no order as to cost. Rule is discharged.

(SANDEEP K. SHINDE, J.)