

Stressed Assets Stabilization Fund ... Plaintiff

vs.

Damania–I. And Anr. ... Defendants

CORAM : A. K. MENON, J.
DATED : 22nd FEBRUARY, 2022

Chamber Summons No. 1128 of 2018

- Notice of Motion No. 1003 of 2018

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purpose for filing this application according to Mr. Pimple is to bring on record copy of a letter dated 24th September, 2012 which had initially been produced by the defendants and which defendants have not pressed into service as recorded in order dated 7th June, 2018. That letter as seen today is only a photocopy on plain paper which is said to be signed by one Sanjay Kumar. The document is only a copy which is not on the letter head of the plaintiff. On a query from the court Mr. Pimple submits on instructions that defendants have not disclosed the document in its Affidavit of Documents. He submits that at some stage the same should be marked and read in evidence.

2. I have perused the record and I find that on 7th June, 2018 the court while recording evidence of PW-1 has observed that the documents marked Y-1, Y-2 and Y-3 were not being relied upon by defendant no.1. These appear at Sr. No. 9, 10 and 11 to the compilation of documents filed by the defendants. The document in issue was marked Y-1 for identification. It is to be found in 31 of the compilation of documents of defendant no.1. That letter assuming it was so addressed is also seen to have been addressed "Without Prejudice" to the Managing Director of defendant no. 2. It is only this letter Mr. Pimple now seeks to introduce in evidence.

3. On a query from the court as to whether the author of the letter is proposed to be examined, Mr. Pimple states that he proposes to examine a different officer and not Sanjay Kumar. Mr. Pimple has no instructions on whether Sanjay Kumar is available. Meanwhile I notice that the Affidavit in

support of the Notice of Motion is filed by an authorised representative who has averred that PW-1 Sachin Suresh Shenvi was transferred elsewhere and he was not able to depose. Various reasons are given that the plaintiff is a public institution and that the delay caused is beyond the control of the plaintiff without any explanation as to why the delay was caused in the first place.

4. The record of the court indicates that the evidence of the plaintiff was closed on 25th April, 2018. Reasons for closing the evidence are recorded in that order. The order also records that in the suit the list of witnesses had not been filed. The defendants were thereafter requested to file list of witnesses. Defendants have since examined their sole witness who has also been cross examined by the plaintiff. Thus both parties, plaintiffs and the defendants have acted upon the order dated 25th April, 2018.

5. Mr. Pimple has also sought to submit that this Notice of Motion was pending as on date of the defendants witness being cross examined. In my view it was duty of the plaintiff, if at all to urge this Notice of Motion prior to cross examination of the defendants witness. The attitude is casual to say the least. Even today the reason for seeking recall of that order dated 25th April, 2018 is only for introducing the aforesaid document authored by Sanjay Kumar. Plaintiff has made no attempts to file any affidavits of the author of the letter in an attempt to prove the same. The fresh evidence is of a different officer that too after closure after accepting order dated 25th April, 2018. No

appeal has been filed of that order and closed evidence of the plaintiff. On that date subsequent orders passed by this court reveal that the plaintiffs have been sluggish in their conduct of these proceedings.

6. On 11th February, 2021 this court ordered payment of costs which have been paid and the above Notice of Motion was restored after having been dismissed on 7th January, 2020 for non prosecution. No reasons whatsoever have been given to justify the present attempt of the plaintiff, save and except to say that it was a public institution and there have been various reasons beyond its control and that the application is bonafide. This motion is pending since May, 2018,. Reply has been filed in November, 2019 yet there is no rejoinder to controvert any of the statements in the reply.

7. The plaintiff thus have made out no case whatsoever to grant of any relief in the motion. Notice of motion is dismissed in view of the above. Since the plaintiff have repeatedly contended and as canvassed by Mr. Pimple it is a public institution I have refrained from ordering further costs.

(A. K. MENON, J.)