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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 21st February, 2022

+ **FAO 51/2021& CM APPL. 4514/2021**

BANK OF BARODA Appellant

versus

UNION BANK OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Arun Aggarwal, Advocate

For the Respondents: Mr. Saurabh with Mr. Rajiv R. Mishra, Advocate for R-1
Mr. Bhaarat Malhotra, Advocate for R-2

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The hearing was conducted through video conferencing.
2. Appellant impugns order dated 10.12.2020 whereby the application filed by the appellant as also by respondent no. 1 under Order 39 Rule 4 CPC have been dismissed.
3. Both applications had sought vacation of order dated 25.02.2013 which had been confirmed by the order dated 13.08.2015.



4. Notice has been served on respondent No. 3, however, none appears for respondent no. 3 (defendant No. 2 in the suit). Learned counsel for the appellant submits that since appellant has already made the payment of the letter of credit to respondent No. 3, respondent no. 3 may not be interested in defending the appeal.

5. In view of the above, respondent no. 3 (defendant no.2 in the suit) is proceeded *ex-parte*.

6. Subject suit was filed by the respondent no. 2 seeking declaration, cancellation of documents and permanent injunction.

7. By order dated 25.02.2013 while issuing summons in the suit, on the application under Order 39 Rules 1 and 2 CPC, the Court had noticed that an order has been placed upon respondent no. 3 for supply of industrial oil and payment was to be paid through letter of credit after 180 days.

8. Respondent no. 3 had approached the bank for encashment of letter of credit. The case of the plaintiff was that goods had not been supplied. As per the plaintiff, the documents attached by respondent no. 3 with the letter of credit, i.e., invoices and lorry receipts were forged.

9. Keeping in view the said submissions on behalf of the plaintiff,



the Court had granted interim injunction on encashment of letter of credit. Said injunction continued from time to time till it was confirmed by order dated 13.08.2015 and the injunction is to continue during the pendency of the suit.

10. Thereafter subject application seeking modification of order dated 25.02.2013 was filed on 14.09.2015 which application has been dismissed by the impugned order.

11. The impugned order notes that an application under Order 39 Rule 4 CPC is permissible only if in the application seeking temporary injunction or in the affidavit supporting such application, a party has made false and misleading statement in respect to a material particular and injunction was granted without notice to the opposite party.

12. Second proviso to Order 39 Rule 4 CPC lays down that where an order of injunction has been passed after giving to a party an opportunity of being heard, said order shall not be discharged, varied or set aside except where such discharge, variations or setting aside has been necessitated by a change in the circumstances or unless the Court is satisfied that the order has caused undue hardship to that party.

13. As noticed by the trial court there is no modification or



variations sought of order dated 13.08.2015 which had confirmed the initial ad-interim order dated 25.02.2013.

14. Further, it is noticed that nothing had been brought on record to show that the appellant had suffered any hardship or that there was any change in the circumstances.

15. Trial court has also noticed that no appeal has been filed by the appellant either against the order of 25.02.2013 or against the order dated 13.08.2015.

16. Since the application filed by the appellant does not satisfy the requirements of the second proviso to Order 39 Rule 4 CPC, the orders dated 25.02.2013 and 13.08.2015 do not warrant any modification or vacation under Order 39 Rule 4 CPC.

17. In my view, the trial court has committed no error in rejecting the application filed by the appellant under Order 39 Rule 4 CPC. Accordingly there is no merit in the appeal. The appeal is dismissed.

18. It is further noticed that the subject suit is a suit challenging the invocation of a letter of credit and has been pending since the year 2013. It is directed that trial court shall expedite the proceedings and endeavour to conclude the same by 31.12.2022.

19. It is further clarified that nothing stated herein shall amount to



an expression of opinion on the merits of the contentions of either party.

20. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

FEBRUARY 21, 2022
'rs'

SANJEEV SACHDEVA, J

