

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.1754 OF 2024
IN
COMMERCIAL SUMMARY SUIT NO. 62 OF 2014**

UNIVERSAL MEDICARE PVT. LTD.)...APPLICANT

IN THE MATTER BETWEEN

UNIVERSAL MEDICARE PVT. LTD.)...PLAINTIFF

V/s.

UCO BANK)...DEFENDANT

**WITH
COMMERCIAL SUMMARY SUIT NO. 62 OF 2014**

Mr.Sameer Pandit with Ms.Sarrah Khambati and Ms.Rozat Akolawala
i/by Wadia Ghandy & Co., Advocate for the Plaintiff/Applicant.

Mr.Rafique Peermohiddin, through Video Conferencing, a/w.
Mr.O.A.Das, Advocate for the Defendant/Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 1st JULY 2024

PC. :

INTERIM APPLICATION NO.1754 OF 2024

1. Pursuant to order dated 10th June 2024, today when the matter is called out, Mr.Pandit, learned Counsel for the Plaintiff/Applicant, submits that the Plaintiff/Applicant has instructed him that it is not necessary to file rejoinder, and that, therefore, the hearing of the Interim Application can proceed without the rejoinder.

2. Mr.Pandit has submitted that the Interim Application seeks amendment of plaint, in view of Section 35A of the Code of Civil Procedure, 1908, (CPC), which provides for compensatory costs, to be awarded by Court in respect of false or vexatious claims or defences.

3. The Interim Application is being opposed on behalf of the Defendant-bank, submitting that the same is not maintainable, in as much as, the compensatory costs are to be considered after the Court comes to a finding that the claim or defence is false or vexatious to the knowledge of the party, by whom it has been put forward, and thereafter, if such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit, may after recording its reasons or holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party, by whom such claim or defence has been put forward, of costs by way of compensation. The order for such costs has to be made by a Court in the case of commercial disputes, of an amount, which the Court deems fits.

4. Mr.Peermohiddin, learned Counsel for the Defendant/ Respondent, has submitted that a perusal of the Interim Application

clearly indicates that the amendment sought seeks a direction to the Defendant-bank to pay a sum of Rs.5 crores and such further costs, as may be assessed by the Court, as compensatory costs. Mr.Peermohiddin would submit that this would mean that the Plaintiff is seeking amendment to the plaint, after the cross-examination has been completed, to include a prayer for damages, and that cannot be permitted in the garb of compensatory costs, which can only be decided by the Court, after it has found that the claim or defence of the Defendant-bank has been false or vexatious and cannot be quantified in this manner.

5. I have heard the learned Counsel and just when this Court was proceeding to decide on the Interim Application, both the learned Counsel submit that, since the hearing of the suit is on the anvil, as recording of evidence is over, whether or not compensatory costs be granted in the matter, can be decided at the time of final hearing of the suit.

6. Accordingly, Mr.Pandit, learned Counsel for the Plaintiff/Applicant, on instructions, seeks leave of this Court to withdraw the Interim Application.

7. The Interim Application is allowed to be withdrawn and stands disposed as such, keeping the issue of compensatory costs open, to be urged and decided at the time of final hearing.

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8. Both the learned Counsel submit that since the Commissioner has submitted his report of cross-examination which is on record, this matter be fixed for final hearing.

9. Mr.Peer mohiddin, learned Counsel for the Defendant-bank, would submit that the bank will rely upon the affidavit of evidence dated 27th September 2023 of Mr.Sandeep Kumar, Deputy General Manager of the Defendant-bank.

10. List for directions on **31st July 2024**.

(ABHAY AHUJA, J.)

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