IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1174 OF 2023

Stationary Point India Ltd ..Petitioner

Versus

State Bank of India Through Deputy General Manager …Respondent

Mr. Nikhil Wadikar (through VC), i/b Nandu Pawar, for the Petitioner.
Mr. Ishan Gambhir, with Amisha Upadhyay, i/b India Law LLP, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 22nd JANUARY 2025

P.C.:

1. Heard learned Counsel for the Petitioner.

2. The challenge in this Petition is to an Order dated 3rd February 2022 passed by the learned District Judge, Satara, presiding over the Commercial Court at Satara on an Application for return of the Plaint as the dispute does not fall within the ambit of the definition of 'Commercial Dispute' under Section 2(1)(c) of the Commercial Courts Act 2015.

3. The Petitioner has instituted a Suit seeking damages to the tune of Rs.403.52 crores along with interest thereon at the rate of 18% per

annum for the non-issue of No-Objection Certificate (NOC) by the Respondent/Defendant bank to raise the finance from another lender before the account of the Petitioner was designated as a Non Performing Asset. The Respondent-Defendant bank had purportedly taken a stand that the NOC could not have been issued as there was outstanding amount. In the Plaint, the Plaintiff has made an endeavour to explain the circumstances which prevented the Plaintiff from making the payment and how the stand of the Defendant bank not to issue a NOC was unjustified and unlawful.

4. Before the learned District Judge, the Plaintiff preferred an Application (Exhibit “59”) for return of the Plaint to the Civil Court.

5. The Defendant had also filed an Application (Exhibit “59”) raising objection to the jurisdiction of the Commercial Court on the very ground that the dispute was not of commercial nature. By an Order dated 3rd July 2019, the learned Judge was persuaded to reject the said Application (Exhibit “59”).

6. Adverting to the said order, dated 3rd July 2019, the learned Judge was persuaded to reject the Application preferred by the Plaintiff (Exhibit “93”) as well, opining that the said aspect was already considered by the Court. In addition, the learned Judge observed that, if the Plaint is read as a whole, the dispute would fall within the ambit of

the 'commercial dispute' as defined under Section 2(1)(c) of the Commercial Court Act, 2015.

7. Mr. Wadikar, the learned Counsel for the Petitioner urged that the learned Judge misconstrued the nature of the Plaintiff's case. The Plaintiff is not questioning the legality and correctness of the documents and the action of the bank in relation to the loan agreement. The action of the bank, in not issuing NOC is the principal ground for seeking damages. Attention of the Court was invited to the averments in paragraphs 4, 5, 9 and 10 of the Plaint.

8. On the perusal of the aforesaid paragraphs of the Plaint, one may get an impression that the challenge of the Plaintiff is primarily to the non-issue of NOC. However, if the Plaint is read as a whole and in a meaningful manner, it becomes abundantly clear that the dispute between the parties arose out of the banking transaction. The genesis of the dispute is in the loan which was advanced by the Defendant bank to the Plaintiff. In the plaint, there are a number of averments which assail the legality and correctness of various actions of the Defendant bank.

9. The jural relationship between the parties, which arose out of the loan facility extended by the bank to the Plaintiff, is the basis of the claim for damages for non issue of NOC. The action of recovery of loan and enforcement of security interest cannot be completely disengaged from the refusal to issue NOC to avail finance from another lender,

which seems to be the primary cause of action for the claim for damages. In these circumstances, it cannot be said that the dispute between the parties does not fall within the ambit of the definition of 'commercial dispute' as defined in 2(1)(c) of the Act, 2015. Therefore, I am not inclined to entertain the Petition.

9. The Petition stands dismissed.

10. By way of abundant caution, it is clarified that the consideration is confined to determine as to whether the dispute between the parties partakes the character of "Commercial Dispute" and this Court may not be construed to have expressed any opinion on the merits of the case.

[N. J. JAMADAR, J.]