



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

INTERIM APPLICATION (L) NO. 11006 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO.91 OF 2022

STATE BANK OF INDIA)...APPLICANT /
ORIGINAL DEFENDANT

IN THE MATTER BETWEEN

BOMBAY IRON AND STEEL LABOUR BOARD)...PLAINTIFF
V/S.

STATE BANK OF INDIA)...DEFENDANT

Mr.Shailesh Naidu i/by Mr.Sanjay Shinde a/w. Mr.Prathmesh
Bharuwanshe, Advocate for the Plaintiff.

Mr.Saurish Shetye a/w. Mr.Ravi Goenka a/w. Mr.Abhijeet Khairware
i/by Goenka Law Associates, Advocate for the Defendant.

CORAM : ABHAY AHUJA, J.

DATE : 10th JUNE 2024

ORAL JUDGMENT :

1. This Interim Application has been filed by the Defendant-State Bank of India (the Defendant – bank) under Order VII Rule 11 of the Code of Civil Procedure, 1908, (CPC) seeking rejection/return of the plaint on the ground that the same is barred under law and cannot be tried under the Commercial Courts Act, 2015 (the “Commercial Courts Act”). The Plaintiff – Board has filed reply to the same.

2. Mr.Shetye, learned Counsel for the Applicant, would submit that the present suit has been filed by the Plaintiff to recover an amount of Rs.36,00,00,000/- along with interest from the Defendant-bank which were placed as fixed deposits by the Plaintiff with the Defendant – bank. However, since as per the plaint, the Plaintiff has lodged a written police complaint dated 15th May 2019 with the Joint Police Commissioner, Economic Offences Wing, Mumbai, alleging that the Manager of the Defendant–bank, Mr.Nikhil Roy, has committed fraud, misappropriated funds and with his active involvement and connivance, an amount of Rs.36,00,00,000/- is alleged to have been withdrawn without the consent of the Plaintiff, pleading fraud and misappropriation, that, the transaction cannot be a commercial transaction since the subject matter of the suit goes on the footing of fraud and misappropriation.

3. Mr.Shetye would submit that the Plaintiff has filed the suit as a Commercial Summary Suit which is primarily governed by the provisions of the Commercial Courts Act and disputes as mentioned in Section 2(1)(c)(i) to (xxii) are treated as commercial disputes and eligible to be tried as commercial suits under the provisions of the Commercial Courts Act, is not maintainable as the dispute which is

subject matter of the present suit cannot be considered as a commercial dispute considering the mandate and provisions of the Commercial Courts Act.

4. Mr.Shetye would submit that the Plaintiff has alleged in the plaint that there was a fraud and misappropriation of funds which were lying in the form of fixed deposits with the Defendant – bank. That, the cause of action to file the suit as per the plaint is on account of fraud, which has allegedly taken place and not as a business transaction.

5. Mr.Shetye would submit that the alleged fraud and misappropriation of funds, as mentioned in the plaint, does not fall under the definition of commercial disputes as per Section 2(1)(c)(i) to (xxii) of the Commercial Courts Act, and therefore, the present suit and the cause of action therein do not qualify to be treated as commercial disputes and therefore the suit cannot proceed as a commercial suit under the Commercial Courts Act.

6. Mr.Shetye relies upon the decision of the Delhi High Court in the case of *IHHR Hospitality (Andhra) Pvt. Ltd. vs. Seema Swami and*

*Others*¹ and would submit that in the said case, it has been clearly held that if the nature of transaction and the recovery is sought on the averments of embezzled amounts, the same cannot be termed as business transaction or having arisen in the ordinary course of business and therefore the suit does not qualify as a commercial suit, as defined under Section 2(1)(c) of the Commercial Courts Act. Learned Counsel, submits that, therefore, the plaint be rejected and returned as the same cannot be filed as a commercial summary suit.

7. On the other hand, Mr.Naidu, learned Counsel for the Plaintiff, opposes Mr.Shetye's submissions. Mr.Naidu would submit that the Plaintiff is an authority of the Maharashtra State Government established under the special statute namely Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of employment and Welfare) Act, 1969 (the "Mathadi Act"), and is a statutory body for regulating the employment of unprotected manual workers such as Mathadi, Hamal etc. employed in certain employments, to make better provision for their terms and conditions of employment, to provide for their welfare and for health and safety measures and to facilitate the welfare of unprotected manual workers. That, the Plaintiff-Board is

1 2022 SCC Online Del 3635

empowered under the Mathadi Act and the Bombay Iron and Steel Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 (the “said Scheme”) formulated by the Government for the protection of the workers to manage its own funds from the monies receivable in the form of fees, wages and levies receivable by the board from the registered employers. That, the Plaintiff – Board receives money by way of interest on investments in securities and deposits. Mr.Naidu would submit that as per Clause 6(4) of the said Scheme framed by the State Government, the Plaintiff – Board is permitted to invest its funds only in State Bank of India or any other nationalized banks.

8. That, by email dated 13th December 2018, the Defendant – bank communicated to the Plaintiff about their best interest rates on fixed deposits. And after considering the interest rates as communicated by the Defendant – bank, vide the aforesaid email, the Plaintiff decided to invest its funds into the fixed deposits with the Defendant – bank.

9. Accordingly, on 15th December 2018, the Plaintiff submitted three mandatory letters dated 14th December 2018 directing the Defendant – bank to invest monies into term deposits as per the terms and

conditions mentioned in the said letters of investment. The mandatory conditions mentioned in the said letters are reproduced as under :

- (i) This account will be operated by the Chairman and Secretary of this Board jointly.
- (ii) No individual person has either the authority to raise any loan on the basis of this deposit or offer this deposit as a security for any loan.
- (iii) FD receipt shall not be mortgaged, no overdraft, pledged, hypothecated or transferred to anybody else. No loan shall be granted against this FD amount or against this FD receipt.
- (iv) Please mark NO LIEN on the certificate issued to us and in your computer system so that the same is displayed prominently. Debit freeze the FD amount till maturity.
- (v) Certificate should be marked as original and signed on the face of the receipt. Also after every 3 three months the Board will approach your branch for verification, you are requested to cooperate and do needful by issuing required certificate.

10. It is submitted that, accordingly, the Plaintiff drew cheques for various amounts for placing deposits with the Defendant – bank. Mr.Naidu would submit that as on 16th February 2019, fixed deposits totalling to an amount of Rs.45,00,00,000/- were placed by the Plaintiff with the Defendant – bank.

11. That, the representatives of the Plaintiff regularly verified the fixed deposits placed with the Defendant – bank. That, on 11th April 2019, the Defendant – bank showed to the Plaintiff's officers the status of fixed deposits of Rs.45,00,00,000/- as outstanding on its computer system. The Manager of the Defendant – bank certified to the Plaintiff that fixed deposits of Rs.45,00,00,000/- as mentioned in the communication by the Plaintiff had been opened by the Plaintiff with the Defendant–bank for two years' duration and the said fixed deposits / accounts were free from any loan, lien and encumbrances.

12. That in the month of May 2019, the Plaintiff once again decided to verify the fixed deposits of Rs.45,00,00,000/- with the Defendant – bank and the Chairman and Secretary of the Plaintiff along with other officials approached the Defendant – bank for verification and confirmation of the said fixed deposits. It is submitted that Manager of the Defendant – bank, after seeing the officers of the Plaintiff, fled away and did not return to the branch. That, the said Manager was absconding for about two years and presently he is behind bars. The Plaintiff registered their oral grievance with the officers of the branch and thereafter two officers were deputed and sent to the Defendant -

bank for the purpose of verification of the fixed deposits of the Plaintiff and confirmation of the same.

13. It is submitted that, thereafter, the Plaintiff, on 13th May 2019 submitted a hand written letter and sought confirmation from the Defendant – bank about the fixed deposits that were outstanding and payable on demand or on maturity and also for the status of the fixed deposits on the computer system. It is submitted that the representative of the Plaintiff was orally communicated that the fixed deposits of Rs.36,00,00,000/- had been allowed to be prematurely withdrawn by the Defendant – bank. That, when the Plaintiff requested for documents pertaining to the said premature withdrawal, the officers of the Defendant – bank refused to furnish any documents, and therefore, the Plaintiff filed Right to Information (RTI) Application with respect to the fixed deposit receipts of Rs.45,00,00,000/- placed by the Plaintiff with the Defendant – bank.

14. Mr.Naidu would submit that on 15th May 2019, the Plaintiff lodged a written complaint with the Joint Police Commissioner of Economic Offences Wing, Mumbai submitting that the then Manager of the Defendant–bank Mr.Nikhil Roy had committed fraud,

misappropriation into the Defendant – bank and with his active involvement and connivance, an amount of Rs.36,00,00,000/- had been withdrawn/siphoned off without the consent of the Plaintiff and without any board resolution or without any KYC of the Plaintiff, which was clearly in breach of the guidelines of the Reserve Bank of India and contrary to the terms and conditions of the mandatory letters of investment.

15. Mr.Naidu would submit that therefore the Plaintiff submitted a letter dated 16th May 2019 to the Defendant – bank for premature withdrawal of the seven fixed deposit receipts of Rs.45,00,00,000/-.

16. That, the Defendant – bank by its letter dated 16th May 2019 communicated to the Plaintiff that they were examining the said letter and they would respond to it by the end of 17th May 2019. Complaint was also made to the higher officer of the Defendant - bank on 20th May 2019.

17. It is submitted that, however, none of the letters were replied to or acted upon.

18. It is submitted that the Plaintiff also communicated the same to the Deputy Secretary, Labour Department, Government of Maharashtra, by its letter dated 17th May 2019.

19. It is submitted that the Plaintiff submitted a letter dated 21st May 2019 to the Chief Manager of the Defendant – Bank containing the aforesaid facts and prayed for credit of the amount as per letter dated 16th May 2019 with accrued interest.

20. That, the Plaintiff also filed a First Information Report (FIR) as well as a consumer complaint.

21. Mr.Naidu would submit that the fixed deposit receipts contain implied contract between the Plaintiff and the Defendant – bank to pay the amount mentioned in the fixed deposit receipts with interest. That, the liability on the part of the Defendant – bank is an admitted liability of Rs.45,00,00,000/- with interest.

22. That, thereafter, on 24th August 2020, the Plaintiff sent a legal notice to the Defendant – bank *inter alia* calling upon them to pay the fixed deposit amounts with interest, which was served on the

Defendant – bank by hand delivery on 1st September 2020. The Defendant – bank replied to the said notice by communication dated 30th September 2020.

23. It is submitted that the Defendant – bank fraudulently on false, frivolous and vexatious grounds refused to pay the said amount.

24. Thereafter, by rejoinder notice dated 28th December 2020, the Plaintiff denied the defences raised against the Plaintiff by the Defendant – bank in their reply.

25. Mr.Naidu, learned Counsel for the Plaintiff, would submit that the Defendant – bank has paid the fixed deposit of Rs.9,00,00,000/- with interest accrued thereon to the Plaintiff on 2nd September 2021, and therefore, the Defendant – bank has failed to pay the fixed deposits of Rs.36,00,00,000/- with interest accrued thereon. That the contentions and the defences raised by the Defendant – bank are sham, bogus and improbable.

26. Mr.Naidu would submit that an amount of Rs.11,39,62,531/- out of the money that was siphoned off has been debit frozen in bank

account no.1002201010590 opened by an accused by the name of Deepak Dayabhai Shah in Akhand Anand Co-operative Bank, Gujarat, by exercise of powers under Section 102 of the Code of Criminal Procedure, 1973. Mr.Naidu would submit that a criminal complaint has also been filed in this regard before the 47th Court of Additional Chief Metropolitan Magistrate, Esplanade, Mumbai and the matter is pending. That, accordingly, this suit has been filed for a total amount of Rs.36,00,00,000/- along with interest as accrued under the fixed deposits on the basis of the Fixed Deposit Receipts as per the Particulars of claim.

27. Mr.Naidu submits that the transaction of placing fixed deposits by the Plaintiff – Board with the Defendant – bank is a commercial transaction and the repayment sought is an ordinary transaction of a banker relating to mercantile documents which are the fixed deposit receipts. Mr.Naidu draws the attention of this court to the definition of commercial dispute in Section 2(1)(c)(i) of the Commercial Courts Act and would submit that the enforcement and interpretation of the said mercantile documents would also constitute a commercial dispute. Referring to the Explanation to the said Section 2 of the Commercial Courts Act, learned Counsel would submit that a commercial dispute

shall not cease to be a commercial dispute merely because one of the contracting parties is the State or any of its agencies or a private body carrying out public functions.

28. Referring to the Banking Regulation Act, 1949, Mr.Naidu would submit that Section 5(b) defines “banking” which means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise; that, therefore, placing of fixed deposits by the Plaintiff – Board with the Defendant – bank is a banking transaction. Mr.Naidu submits that the relationship between the banker and a customer is that of debtor and creditor and the money deposited with a bank cannot be taken to have given to him on trust but it is an amount lent to him. That, placing of fixed deposits by the Plaintiff – Board with the Defendant – bank makes the relationship between the Plaintiff and the Defendant as that of creditor and debtor as the amounts placed with the bank are to be returned by the bank along with interest as per the terms of the fixed deposit receipts. That, therefore, the dispute is a commercial dispute arising out of ordinary transaction of a banker relating to enforcement of fixed deposit receipts which are mercantile documents. Mr.Naidu would, therefore, submit that by no stretch of imagination the dispute cannot be a commercial

dispute or that the suit is not a commercial summary suit. That, the decision of the Delhi High Court in the case of *IHHR Hospitality (Andhra) Pvt. Ltd. vs. Seema Swami and Others (supra)* relied upon by the learned Counsel for the Defendant – bank is clearly distinguishable as the said suit was between a company and wife of the accused, who had embezzled huge amounts through cheques and also made fraudulent direct transactions from the bank account of the Plaintiff – company and siphoned off the money. Therefore, the said suit was held to be based on fraud on the basis of forged cheques and falsification of accounts, which is not the case here, as even though there may have been embezzlement of funds by an employee of the bank along with other co-conspirators, however the present suit is a claim by the Plaintiff – Board against the Defendant – bank for recovery of fixed deposits of Rs.36,00,00,000/- along with interest and not against the employees or persons involved in the fraud or embezzlement, and therefore, the said decision is clearly distinguishable and not applicable to the facts of the case.

29. Mr.Naidu would, therefore, submit that the application under Order VII Rule 11 of the CPC be rejected.

30. I have heard the learned Counsel and considered the rival contentions.

31. Section 2(1)(c) of the Commercial Courts Act, which defines a commercial dispute, is usefully quoted as under :

“2.(1)(c) “Commercial dispute” means a dispute arising out of-

(i) ordinary transaction of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements;

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design domain

names, geographical indications and semiconductor integrated circuits;

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.- A commercial dispute shall not cease to be a commercial dispute merely because-

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

(emphasis supplied)

32. Section 5(b) of the Banking Regulation Act, 1949 defines banking as under :

“5. Interpretation. - In this Act, unless there is anything repugnant in the subject or context,-

(a)

(b) “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

.....”

(emphasis supplied)

33. It is not in dispute that the Plaintiff – Board placed fixed deposits of Rs.45,00,00,000/- with the Defendant – bank upon the terms as contained in the said fixed deposit receipts, as annexed to the plaint. The fixed deposit receipts are term deposit receipts which imply promise to pay the amount mentioned in the fixed deposit receipts with interest on maturity. It is also not in dispute that out of the fixed deposits of Rs.45,00,00,000/-, the Plaintiff – Board has been paid the fixed deposits of Rs.9,00,00,000/- with interest on 2nd September 2021. That, therefore, what remains outstanding is the payment of fixed deposits of Rs.36,00,00,000/- with interest. It is alleged that the fixed deposits of Rs.36,00,00,000/- were fraudulently, prematurely withdrawn and siphoned off. That, some part of it viz. an amount of Rs.11,39,62,531/-, which has been siphoned off and deposited with Akhand Anand Co-operative Bank in Gujarat, has been debit frozen. There are allegations that a Manager of the Defendant – bank had committed fraud and misappropriation due to which the premature withdrawal / siphoning off has taken place. There are criminal proceedings also pending with respect to the same. A perusal of the plaint indicates that the Plaintiff – Board has made a claim of Rs.36,00,00,000/- with interest in prayer clauses 58(a), (b) and (c) along with further interest in prayer clause (d) for the recovery of the

said amounts. It is not in dispute that the Plaintiff – Board had placed the fixed deposits with the Defendant – bank which carries on the business of banking. As can be seen, the Defendant – bank which is a banking company / banker, has in the ordinary course of its business, accepted the deposits of money from the Plaintiff – Board which is repayable on demand or maturity and issued fixed deposit receipts which are mercantile documents and the suit has been filed for enforcement of the fixed deposit receipts, as the Defendant – bank had failed to repay the amounts payable to the Plaintiff – Board, despite demand / legal notice for recovery, therefore, in my view, the dispute is a commercial dispute, squarely falling within the definition of commercial dispute as defined under Section 2(1)(c)(i) of the Commercial Courts Act. That, there are criminal proceedings pending against the Manager of the Defendant – Bank or other co-conspirators for fraud committed on the Defendant – bank or that, there has been a purported siphoning off / embezzlement of funds, would not, in my view, change the character or nature of the dispute, to not being a commercial one. Mention of fraud, forgery, embezzlement in the plaint would not change the cause of action of the suit, which is set out in paragraph 52 of the plaint, which reads thus :

“52) Cause of Action:- The Plaintiff submits that the cause of action for filing of the present suit arisen firstly on 13/5/2019 when the Plaintiff firstly came to know about the fraud taken place about the Plaintiff's Fixed Deposit of Rs.36.00 crore and thereafter when the Plaintiff submitted that letter / notices to the Defendant and thereafter when the Defendant failed to pay the said amount of Rs.36 crore with interest accrued thereon as per FDR's. Thereafter when the Plaintiff sent the legal notice to the Defendant which is not acted upon by the Defendant till date by paying the said amount to Plaintiff. The Plaintiff had filed Pre Institution Mediation in Commercial Disputes No.46 of 2020 wherein the Defendant refused to participate in the said mediation process as per its letter dt. 25/11/2020 submitted before the mediation authority. Hence the Dy. Registrar (Mediation) by its Letter dt. 25/11/2020 was pleased to issue Non-Starter Report into the matter. Thereafter all the F.D.R.'s have been matured in the month of December 2020, January and February 2021. However, the Defendant failed to pay the amounts of F.D.R.'s of Rs.36.00 crore with interest accrued thereon as per FDR's mentioned in the particulars of the claim. The F.D.R. No.38134500590, 38134477683 both dt.18/12/2018 and F.D.R. No.38199175799 dt. 19/1/2019 and F.D.R. No.38264435633 dt. 16/2/2019 in total of Rs.36 crore are not paid. The Plaintiff is therefore, constrained to file the present summary suit in this Hon'ble Court. Hereto annexed and marked as Exhibit "FF" is the true copy of the Letter dt. 25/11/2020 issued by the Dy. Registrar (Mediation) High Court Mumbai. Hereto annexed and marked as Exhibit "GG" is the true copy of the Particulars of Claim of Plaintiff.”

34. It is quite clear that the cause of action is the failure of the Defendant – bank to pay the amount of Rs.36,00,00,000/- with interest

accrued thereon as per the fixed deposit receipts, despite legal notice as well as the pre-institution mediation, which failed, due to the refusal of the Defendant – Bank to participate in the mediation process. The aforesaid paragraph clearly refers to the fixed deposit receipts with numbers and amounts on which the commercial summary suit is based. The relationship between the Plaintiff and the Defendant – bank is that of creditor and debtor and by no stretch of imagination, the said relationship can be said to be not a commercial one. I agree with Mr.Naidu that the dispute is a commercial one, arising out of ordinary transaction between a banker and customer for enforcement of fixed deposit receipts by the customer for recovery of amounts of principal and interest placed under the fixed deposits with the Defendant – bank. I also agree with Mr.Naidu that the decision of the Delhi High Court in the case of *IHHR Hospitality (Andhra) Pvt. Ltd. vs. Seema Swami and Others (supra)* relied upon by the learned Counsel for the Defendant – bank is clearly distinguishable as the said suit therein was between a company and wife of the accused, who had embezzled huge amounts through cheques and also made fraudulent direct transactions from the bank account of the Plaintiff – company and siphoned off the money. Therefore, the said suit was held to be based on fraud committed on the basis of forged cheques and falsification of accounts, which is not

avk

20/21

the case here, as even though there may have been embezzlement of funds by an employee of the bank along with other co-conspirators, however the present suit is a claim by the Plaintiff – Board against the Defendant – bank for recovery of fixed deposits of Rs.36,00,00,000/- along with interest and not against the employees or persons involved in the fraud or embezzlement, and therefore, the reliance by the Defendant – bank on said decision is misplaced.

35. Accordingly, I hold that the dispute is a commercial dispute as defined under Section 2(1)(c)(i) of the Commercial Courts Act. The suit claim is of more than Rs.36,00,00,000/-, which is more than the specified value, and therefore, has correctly been registered under the commercial category as a commercial summary suit.

36. I am, therefore, inclined to dismiss the application as the suit is not barred by the Commercial Courts Act.

37. Interim Application under Order VII Rule 11 of the CPC, accordingly, stands dismissed. The question of rejecting / returning the plaint would, therefore, not arise.

(ABHAY AHUJA, J.)

avk

21/21