

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

Enercon (India) Ltd.. ... Plaintiffs.

ING Vysya Bank Ltd. ... Defendants.

Mr. Rohit Kapadia, Sr. Counsel, Mr. Zubin Behramkamdin, Mr. Dhavan Jumanı, Ms. Parul Kumar i/b. Amarchand & Mangaldas & Suresh A. Shroff & Co. for the Defendants.

DATED : 12th JULY 2010.

Not on Board. Taken on Board at the request of the learned Counsel appearing on behalf of the Plaintiffs in view of order passed by Mr. Justice S.J. Vazifdar on 10th July 2010.

2. Leave to take out the Chamber Summons is granted.

3. The present Suit is filed by the Plaintiffs against the Defendants to recover the sum of Rs.6,84,00,000/- alongwith the interest as and by way of damages. In the present Suit, it has been the case of the Plaintiffs because the Defendants i.e. the Bank hereinafter referred to as a Bank did not transact with the Plaintiffs in a proper manner and did not give necessary facilities at an appropriate time. The Plaintiffs claim that they suffered losses and that is how the claim for recovery of money is filed.

4. The Plaintiffs were liable to pay to Bank to the tune of Rs.85.00 crores and odd. It is noticed that out of the said amount, except Rs.30.00 crores and odd, the monies were paid from time to time and on the day when the Bank lodged the claim with Debt Recovery Tribunal for recovery of money, the claim was for Rs.30.00 crores. As the claim was taken up by Debt Recovery Tribunal, the Plaintiffs showed willingness to pay a sum of Rs.23.00 crores and odd and invited the decree. So far as the sum of Rs.6.84 crores, the Plaintiffs were of the view that they are entitled to claim a set off. The said set of

put up before the Debt Recovery Tribunal was not accepted by the Debt Recovery Tribunal. Hence, present Suit was filed. The Debt Recovery Tribunal, after taking into consideration the willingness of the Plaintiffs to pay about Rs.23.00 crores and odd passed a decree for Rs.7.00 crores and odd or by framing a scheme for payment. It is the case of the Plaintiffs that as per scheme and period granted, the payments have been made to the extent of 23 crores and odd. As the Debt Recovery Tribunal did not entertain the set of, the Plaintiffs have filed the appeal before the Appellate Forum. Those proceedings are pending. The Bank initiated proceedings before the Grievance Redressal Committee so far as the question of the Plaintiffs being willful defaulters. Hearings were conducted before the said Committee and by order dated 7th July 2010, a decision was arrived at by the said Committee to declare the Plaintiffs as a willful defaulter and a letter was addressed to the Plaintiffs accordingly informing the Plaintiffs that the Grievance Committee has decided to declare the Plaintiffs as a willful defaulter and said fact will be made known to Credit Information Bureau (India) Ltd. which is sought to be added as an additional Defendant in the present

Suit. The Plaintiffs have applied for ad-interim relief in terms of the Chamber Summons and the Plaintiffs want that the order dated 7th July 2010 passed by the Grievance Redressal Committee calling the Plaintiffs as a willful defaulters should be stayed.

5. Before this Court, the learned Senior Counsel appearing on behalf of the Plaintiffs took me through the circular issued by the Reserve Bank of India wherein it is mentioned as to under what circumstances a person can be declared as a willful defaulter and what steps should be taken by the Bank before calling a particular person as a willful defaulter.

6. The learned Senior Counsel appearing on behalf of the Plaintiffs submitted that because the Plaintiffs have challenged the action of the Bank in not giving appropriate facilities and causing damages to the Plaintiffs and because the Plaintiffs have claimed a set off to the extent of Rs.6.84 crores, the Plaintiffs cannot be termed as a willful defaulter. According to the learned Senior Counsel for the Plaintiffs, the letter dated 7th July 2010, if read properly, would go to show

that the Bank has taken the decision to treat the Plaintiffs as a willful defaulter without there being any reason and the said decision is contrary to the guidelines laid down by the Reserve Bank of India.

7. The arguments advanced by the learned Senior Counsel for the Plaintiffs were refuted by the learned Senior Counsel for the Defendants by contending that the Plaintiffs were liable to pay to the Bank to the tune of Rs.7.00 crores and odd as per the decree passed by the D.R.T. and if the Plaintiffs have filed a claim for recovery of damages, the said claim will have to be considered by the Court and it is only when the Suit is decided in favour of the Plaintiffs, the contentions raised by the Plaintiffs that the Bank did not treat the Plaintiffs properly will get accepted. According to him, as of today, the Plaintiffs are the defaulters and the Plaintiffs did not pay to the Bank as and when it was due, the Plaintiffs were rightly called as defaulters. He prays for refusal of ad-interim injunction in terms of prayer clause (b).

8. After having heard learned Senior Counsel, I am not inclined to grant ad-interim relief in terms of prayer clause (b) of the Chamber Summons. It is required to be noted that at one point of time the Plaintiffs were liable to pay to the Bank to the tune of Rs.30.00 crores. This itself would go to show that the Plaintiffs did not pay the monies to the Bank as and when it was due. The Bank instituted the application to the Debt Recovery Tribunal for recovery of Rs.30.00 crores and odd. On receipt of the notice as regards the proceedings, the Plaintiffs came out with an idea to have consent decree and accordingly, the sum of Rs.23.00 crores and odd was agreed to be paid to the Bank before the Debt Recovery Tribunal. The Plaintiffs did not pay balance of Rs.6.84 crores on the ground that they were entitled to set off. This will mean that the Bank was entitle to pursue their claim of Rs.6.84 crores. The Plaintiffs have instituted the Suit for damages and this Suit is pending and the claim of the Plaintiffs is yet to be accepted i.e to say there is no decree in favour of the Plaintiffs. This will mean that the claim of the Plaintiffs that they are not liable to pay to the Bank the balance sum of Rs.6.84 crores is yet to be

decided if that is so in the eyes of the Grievance Committee, the Plaintiffs were the defaulters with reference to Rs.6.84 crores.

9. I have perused the order dated 7th July 2010 passed by the Grievance Committee and the said order in detail gives reasons as to how the said Grievance Committee has come to the conclusion that the Plaintiffs were willful defaulters. I have also perused the definition of the term willful defaulter appearing in the guidelines of Reserve Bank of India and in my view, looking to the conduct of the Plaintiffs as a whole, the Plaintiffs will fall in class (a) of the term willful defaulters. Which class (a) runs as under :-

“(a) the unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations,”

The fact that at one point of time the liability was to the tune of Rs.85.00 crores clearly indicates that the Plaintiffs were not

in a position to comply with the monitory obligations. It was never the case of the Plaintiffs that they did not have financial capacity to honour their financial obligations.

10. After having perused the entire matter and after considering the conduct of the Plaintiffs and the order dated 7th July 2010 passed by the Grievance Committee, I am not inclined to accept the argument advanced by the learned Senior Counsel for the Plaintiffs that the decision arrived at by the Grievance Redressal Committee is wrong. In my view, the Plaintiffs have failed to make out the prima-facie case that the decision dated 7th July 2010 is bad in law. If that is so, the Plaintiffs are not entitle to an order of injunction at the ad-interim stage and hence, the prayer for ad-interim relief is required to be rejected.

11. Hence following order is passed :-

- (i) Prayer for ad-interim relief for stay of operation of the order dated 7th July 2010 is rejected.

(ii) The Chamber Summons is made returnable on 16th August 2010.

(iii) Learned Counsel for the Defendants waives service of the Chamber Summons.

(iv) The Plaintiffs to serve the Chamber Summons upon added Defendant i.e Credit Information Bureau (India) Limited. For that purpose, it is made returnable on 16th August 2010.

(v) Adjourned to 16th August 2010.

(R.Y. GANOO, J.)