COMMERCIAL COURT AT ASANSOL

(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN, PASCHIM BARDHAMAN, PURULIA AND BANKURA)

Present :- Shaikh Kamal Uddin.
Judge, Commercial Court at Asansol.

J.O. Code :- WB01311.

Money Suit No. :- 19/2021

CNR No. :- WBBD17-000036-2021

Plaintiff(s) :- M/s. TESCON and Another.
Petitioner(s)

V/s.

Defendant(s) :- Punjab National Bank and 2 Ors.
Opposite party(s)

Order No. – 28
Dated – 13/07/2023

Today stands fixed for passing order on the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiffs / applicants being I.A. No.12 of 2022, dated 31/10/2022.

The parties filed Hazira.

The plaintiffs filed the instant suit praying for a decree of Rs.2,00,62,312.78/- against the defendants/ opposite parties and a decree for interest on the aforesaid sum of Rs. 1,23,38,322.36/- against the defendants @18% for the period on and from 1st November, 2017 to 31st March, 2021 and a decree for damage of Rs.5,00,00,000/- only against defendants for their illegal act of holding all the original papers and documents of the Schedule – A (schedule assets) in their custody preventing its plying and using and a further decree for permanent injunction restraining the defendants, their men, agents, subordinates, employees from resorting to any illegal or unethical methods of recovery of the

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claimed purported amount lying in the cash credit account being account No.0464210031514 with the defendant No.2.

The defendants / opposite parties entered appearance in the suit on 7th October, 2021 and filed written statement on 25th November, 2021 and subsequently on 31/10/2022 the plaintiffs / petitioners filed the present application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 seeking amendment of the prayer portion as well as incorporating certain facts.

By way of amendment the plaintiffs / petitioners seek to amend the cause title by incorporating the word ‘Chief Manager’ instead of ‘Chief Regional Manager’ and also amend the address. The plaintiffs also seek to amend paragraph Nos.2, 4, 5, 6, 10, 11, 12, 14, 15, 17, 18, 19, 21, 24, 25, 26, 28, & 33 of the plaint as mentioned in the schedule of the proposed amendment. The plaintiffs also seek to amend the prayer portion of the plaint by deleting the word ‘schedule assets’ in prayer (c). In prayer (d) the plaintiffs seek to insert the word term loan account No.0464306631741 and also seek to insert new Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5. Similarly in the payer (e) also of the plaint the plaintiffs seeks to insert the said term loan account number as well as Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 after deleting the word Schedule – A. In prayer (f) of the plaint also the plaintiffs / petitioners seek to insert Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 and also seek to delete the word ‘schedule assets’ in the seventh line of page No.15 of the plaint and after the 13th line at page No.15 of the plaint insert the new schedule as Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5.

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It is submitted by the Learned Advocate for the plaintiffs / petitioners that after filing the suit as well as the written statement by the defendants / opposite parties some additional facts and or new facts has come up which have been more specifically and particularly described in the schedule of the proposed amendment and as such unless the instant petition for rectification of those mistakes are allowed and unless the undisclosed facts that have surfaced during the pendency of the suit are allowed to be incorporated by amendment, the plaintiffs / petitioners will suffer irreparable loss and injury. He also submit that the proposed amendment is only to amplify the pre-existing facts with proper enhancement and clarification of the plaint and for determining the real controversial issues without changing the nature and character and cause of action of the suit.

Written objection has been filed by the defendants / opposite parties. At the time of argument it is submitted by the Learned Advocate for the defendants / opposite parties that the proposed amendment as stated in paragraph 11 of the amendment application is not at all permissible in law as the same is barred by provision of the SARFAESI Act, 2002 and accordingly the Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 cannot be inserted in the plaint by way of amendment. It is also submitted that the proposed amendment will change the nature and character of the suit also and therefore the same is not permissible at this stage.

I have heard the Learned Advocates and have considered their submission.

It has been submitted by the Learned Advocate for the defendants / opposite parties that so far as the amendment of the prayer portion and the amendments in paragraph 11 and 13 of the plaint are

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concerned the same cannot be allowed as the same is barred by the provision of Section 34 of the SERFAESI Act, 2002 inasmuch as the bank has already taken possession of the Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 properties under the SARFAESI Act, 2002. In support of such submission the Learned Advocate for the defendants / opposite parties produced the notice under Section 13(2) as well as Section 13(4) of the SARFAESI Act, 2002. The Learned Advocate also produced the sell notice of the Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 property published in a daily Newspaper on 24th February, 2023. The Learned Advocate for the plaintiffs / petitioners did not deny that possession of the proposed Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 property have already been taken by the bank under the SARFAESI Act, 2002.

Section 17 of the SARFAESI Act, 2002 lay down that a person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer may make an application to the debts recovery tribunal having jurisdiction in the matter within 45 days from the date of which such measures had been taken.

Section 34 of the SARFAESI Act, 2002 stipulates that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of which debt recovery tribunal is empowered to decide.

Admittedly, the plaintiffs / petitioner herein have not approached the debt recovery tribunal against the possession of the Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 property taken by the bank. Since Schedule – A1, Schedule – A2, Schedule – A3, Schedule – A4 and Schedule – A5 property which the plaintiffs are now seeking to insert in the prayer portion

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by way of amendment are subject matter to the proceedings initiated by the bank under the provisions of the SARFAESI Act, 2002, the proposed amendment as mentioned in paragraph 11 and 15 as well as in prayer (d), (e), (f) and at page No. 15 of the plaint after the 13th line cannot be allowed and accordingly the prayer for amending the same is rejected.

So far as the schedule of proposed amendment in the cause title and in paragraph No. 2, 4, 5, 6, 10, 12, 14, 17, 18, 19, 21, 24, 25, 26, 28 and 33 are concerned the same are allowed.

I.A. No. 12 of 2022, dated 31/10/2022 is disposed of in the manner as indicated hereinabove.

The plaintiffs / petitioners are directed to file amended copy of the plaint on or before the next date of hearing which is fixed on 03/08/2023.

To date for hearing of I.A.No.11 of 2022, dated 02/09/2022.

D/C by me.

Judge, Commercial Court
At Asansol

Judge, Commercial Court
At Asansol