

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

INTERIM APPLICATION (LODGING) NO. 1912 OF 2024  
IN  
COMMERCIAL SUIT (LODGING) NO. 1889 OF 2024

Mr. Aspan Loveji Cooper

...Applicant/Plaintiff

**Versus**

IIFL Finance Limited & Ors.

...Defendants

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- Mr. Dinyar Madon, Senior Counsel a/w Mr. Jamshed Master i/b Natasha Bhot, for Applicant/Plaintiff.

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**CORAM : MANISH PITALE, J**

**DATE : 24<sup>th</sup> JANUARY, 2024.**

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MALANI

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**P. C. :**

1. Heard, Mr. Madon, learned senior counsel appearing for the applicant / plaintiff.

2. The plaintiff has filed the present suit for declaring that a personal guarantee dated 21<sup>st</sup> September, 2021, executed by the plaintiff stands discharged and that the plaintiff ought to be released from any further liabilities thereunder.

3. On 21<sup>st</sup> September, 2021, the plaintiff had executed a personal guarantee in favour of IDBI Trusteeship Services Limited i.e. defendant No. 2. According to the applicant / plaintiff, by executing Share Purchase Agreement dated 09<sup>th</sup> September, 2022, on a demand made by the defendant No. 1 and purchasers introduced by defendant No. 2, the liability of the plaintiff stood wholly discharged and that no

further steps could have been taken against the plaintiff in respect of the aforesaid personal guarantee.

4. The plaintiff has placed on record voluminous documents to show as to the manner in which the plaintiff was pursuing the matter with defendants for issuing appropriate documents to acknowledge the fact that with execution of the said Share Purchase Agreement, the liability of the plaintiff had been fully discharged and that the plaintiff was to be released from the personal guarantee. It is submitted that response to such communications addressed by the plaintiff, indicates that only the formality of placing the resolution for the board remained and that no further action on the personal guarantee was expected.

5. Yet, on 09<sup>th</sup> August, 2023, the plaintiff received a demand notice under the personal guarantee, indicating that there were outstanding amounts due and that the plaintiff was liable to pay under the aforesaid personal guarantee.

6. In response to the said demand notice, by a communication dated 31<sup>st</sup> August, 2023, the plaintiff made it clear that no further steps could be taken in pursuance of the personal guarantee, *inter alia*, in the light of the aforesaid Share Purchase Agreement already executed. There were further communications

exchanged between parties and recently on 13<sup>th</sup> January, 2024, a further demand notice for alleged unpaid debt was received by the plaintiff. It is stated in the said notice that unless the plaintiff unconditionally pays the alleged unpaid debt in default within 14 days from the receipt of the notice, Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016, would be initiated against the Applicant.

7. The applicant / plaintiff served notice and papers on the defendants by e-mail and also informed them about circulation of the present application for today. An affidavit of service along with proof of having sent the aforesaid e-mail is tendered.

8. Despite service, the defendants have chosen not to appear before this Court. In that light, having perused the documents placed on record along with the plaint, since as on today, the statements made in the plaint, on the basis of such material have remained uncontroverted, this Court is inclined to grant ad-interim relief till the next date of listing.

9. The documents on record, particularly execution of the Share Purchase Agreement dated 09<sup>th</sup> September, 2022, make out a *prima facie* case in favour of the applicant / plaintiff and therefore, till the next date of listing, there shall be ad-interim reliefs in terms of

prayer clauses (a) and (b).

10. The affidavit of service shall be e-filed within one week from today.

11. List for further consideration on **27<sup>th</sup> February, 2024.**

**(MANISH PITALE, J.)**