

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1964 OF 2010
IN
SUIT NO.1965 OF 2010

Jasmine S. Shah .. Plaintiff
Versus
Mallika M. Jhaveri & Ors. .. Defendants

Mr.D.H.Mehta a/w Preeti Gada, Bharti Shivarkar i/b. Sudhir Shah and Associates for the plaintiff

Mr.R.A.Shaikh for defendant No.1

Mr.D.D.Madon, Senior Advocate i/b. Siganporia & Dalvi for defendant Nos. 2 and 7

Mr.C.M.Lokesh i/b. Lex Forum for defendant No.4.

Ms.Neera Chakravarty, Chief Manager Indian Bank, Napean Sea Road, Mumbai present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th January 2011.

P.C.:

1] On 23rd December 2010 this Court had passed an order directing that a sum of Rs.6 Crores be deposited with the Prothonotary & Senior Master/ Registrar (OS).

2] That direction had to be complied with by 7th January 2011. However, the matter was mentioned because it was stated that the Indian Bank, Napean Sea Road Branch was not allowing encashment of FDR for enabling defendant No.1 to deposit the above amount, although, they are lying in the locker with the said bank. Since both sides stated that the bank is not cooperating in implementation of this Court's order, this Court had to direct yesterday that the Registry should communicate orally to the Chief Manager of the Indian Bank, Napean Sea Road branch, the request of the Court to remain present. The Registry brought to my notice that despite oral intimation, there was an insistence that a clear Court direction in writing be forwarded so that the officer will remain present today. Accordingly, specific order was passed and that is how the Chief Manager is present today in court.

3] Mr.Dhond and Mr.Mehta both state that FDRs lying in locker No.546 should be permitted to be encashed so as to comply with this Court's order and enable deposit of entire amount covered by these

receipts.

4] Photocopies of these receipts have been shown to the Chief Manager who is present in the Court and she states that these FDRs are lying in the locker No.546 with the Bank. The bank is directed to permit encashment of these FDRs and for such encashment the bank shall permit physical removal of the receipts from locker no.546.

5] Upon encashment, the sum under these FDRs be deposited with the Prothonotary & Senior Master/ Registrar (OS). This be done on or before 11th January 2011. No further extension under any circumstances will be granted and the breach will be viewed seriously. It is only in the circumstances that are orally brought to my notice by the Chief Manager and she raising pleas about difficulty in understanding the legal consequences of the order of this Court, that for the time being, I am not taking any action against her. However, the Indian Bank is defendant No.5 to this suit. The bank is aware of the orders passed by this Court from time to time. If it has any

difficulty in understanding the court orders or implementing them, the plain duty of the bank is to approach this Court and seek court's assistance. Although repeatedly this was told to the bank's Chief Manager, this course has not been adopted by the bank for the reasons best known to it. Now, no further opportunities will be given and any breach or inaction on the part of the officer concerned will be viewed seriously and in addition to directing initiation of Departmental proceedings against her, the Court will proceed under the Contempt of Courts Act, 1971 as well, against the Bank and the Chief Manager Ms. Neera Chakravarty.

6] The Chief Manager has stated that the order passed by this Court permits operation of a Bank account of M/s. Virgin Metallic Chemicals Pvt. Ltd. A request was made by defendant No. 1 that the said Account be allowed to be operated so as to enable the first defendant to pay salaries, wages and bonus to the employees and workers and also procure raw materials for carrying on company's business. The order passed by this Court, if read in its entirety, does

not present any difficulty and has been understood properly by the contesting parties. They are not complaining that the order is either vague or there are typographical or clerical errors therein.

7] However, the Chief Manager states that the bank does not know as to from whom the raw materials will be procured because the cheques will be issued in the name of such party/ supplier directly and would be encashed by that party/ supplier or its banker. The bank will have no details, therefore, of the transactions and the suppliers. To my mind, the bank has nothing to do with the contest between the plaintiff and first defendant who are daughter and mother. If the court's orders have been correctly understood by the contesting parties, and they permit the operations of a bank account with defendant No.5, at the risk of the first defendant and without prejudice to the rights and contentions of parties and subject to further orders of the Court, I do not see as to how the Branch Manager can request that all details of the transaction be placed on its record before the account is operated. The Bank will definitely know in whose favour the

cheque is drawn, in whose favour or in whose account the proceeds are to be credited or debited. For enabling it to update the account and the pass book of M/s.Virgin Metallics, enough details are available and I am not able to ascertain as to the nature of details the bank or the Chief Manager is entitled to obtain. The Bank would be well advised to stay out of the bitter contest between plaintiff and defendant No.1 or else there will be complications for it.

8] The request of defendant No.5 is rather strange. Therefore, the company whose account is with the concerned branch of Indian Bank will be allowed to operate it in terms of the order passed by this Court and subject to further orders in the proceedings. If the bank has any claims or objections with regard to the operations or it faces any difficulties during the course of its banking operations because of the directions of the Court, it would be at liberty to place the same on record and seek such orders as are permissible in law. Presently, the bank must abide by the orders passed by this Court or else face the consequences.

9] At the request of learned Advocates for parties corrections as to the description of account is made inasmuch as on page 8 para 8 of the order dated 23th December 2010 it is mentioned F.D.No. But it should be read and corrected as Virgin Metallics Chemicals Pvt Ltd, Account No.02400430000188 and S.B.Account No.855922024) at Indian Bank, Napean Sea Road branch (Virgin Metallics Chemicals Pvt Ltd, Account No.417511300). Registry to issue corrected copy of the earlier order to the parties.

(S.C.DHARMADHIKARI, J)