

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

[COMMERCIAL DIVISION]

IA No. GA-COM/2/2024
In CS-COM/4/2024

M/S BAKYASHWRI SEA FOOD PVT LIMITED
-VS-
K.G. INVESTMENT AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : July 29, 2024.

Appearance:

Mr. Ajay Krishna Chatterjee, Sr. Adv.

Mr. Debdatta Sen, Adv.

Ms. Suchishmita Ghosh Chatterjee, Adv.

...for the plaintiff

The Court: Mr. Ajay Krishna Chatterjee, learned Senior Counsel,
is appearing for the plaintiff.

None appears on behalf of the defendants.

The defendant no.1 was introduced to the plaintiff by the other defendants as one of the pioneer finance company in the market and that the said defendant would provide loan to the plaintiff to the tune of Rs.50 crore on a condition that the plaintiff would have to pay a sum of Rs.2.25 crore to the defendant no.1 as advance interest through RTGS/NEFT and further in addition thereto the plaintiff would have to pay a sum of Rs.10 lakhs to the defendant no.1 and/or other charges. As per the discussion between the plaintiff and the defendants, the plaintiff has believed that the defendants will make necessary arrangement for a sum of Rs.50 crore as loan and, accordingly, the plaintiff has paid 2.25 crore to the defendant no.1. As the defendants fail to make necessary arrangement for the loan as

agreed by the defendants and, accordingly, the defendant no.1 has returned an amount of Rs.1,76,25,000/- keeping the balance amount of Rs.58,75,000/-. The plaintiff had also paid Rs.1,91,95,000/- to the defendant no.4 on the different occasion but in spite of receipt of the said amount, the defendants have failed to make necessary arrangement for the loan of Rs.50 crore in favour of the plaintiff and neither the defendants have returned the amount of Rs.1,91,95,000/- or Rs.58,75,000/- as stated above.

Subsequently, the plaintiff has made several requests for return of the said amount but the defendants have not come forward for return of the said amount which has been paid by the plaintiff to the defendants as interest for making the necessary arrangement for loan amount of Rs.50 crore. Notices were sent to the defendants but no reply has been sent. The matter was listed on 21st June, 2024 and on the said date counsel for the defendant nos. 2, 3 and 4 prayed for time to file affidavit-in-opposition and accordingly, this Court has extended the time to file affidavit-in-opposition. The matter was again taken up for hearing on 22nd July, 2024 and on the said date neither any affidavit was filed nor the defendants have appeared before this Court. Accordingly, by an order dated 22nd July, 2024, this Court made it clear that on the date fixed if no affidavit is filed, the application filed by the plaintiff will be taken up for hearing without affidavits.

Today also when the matter is called, none appears on behalf of the defendants. No accommodation is sought for. Accordingly, the application is taken up for hearing.

Considered the submission made by the counsel for the plaintiff.

Perused the materials on record.

From the record, it reveals that initially the plaintiff has paid a sum of Rs. 2.25 crore out of which the defendant no.1 has returned an amount of Rs.1,76,25,000/- by keeping the amount of Rs.58,75,000/- and in the meantime the defendants have also taken a sum of Rs.1,91,95,000/- but neither the defendants have returned the said amount to the plaintiff nor they made arrangement for loan as agreed by the defendants. The amount paid by the defendants has been reflected in the statement of account from which it reveals that amount has been transferred in the account of the defendants. It is found from record that the defendants have taken the amount as interest for loan amount of Rs.50 crore but have not made any arrangement for the loan and have also not returned the amount taken from the plaintiff. Accordingly, this Court finds that the plaintiff has made out a prima facie case and balance of convenience and inconvenience is in favour of the plaintiff. The plaintiff has also specifically made out a case that the defendants are going to siphon off the amount if an interim order is not passed. This Court also finds that there is every chance that the defendants will transfer or siphon off the amount.

Considering the above, the defendants are restrained from operating their respective bank accounts without keeping the amount of Rs.2,50,70,000/-.

The plaintiff is directed to send the copy of the application, documents and the plaint and to file affidavit-of-service on the returnable date.

List the matter 30th August, 2024.

(KRISHNA RAO, J.)

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