

970

[2009(1) Mh.L.J.]

SUIT FOR RECOVERY OF THE AMOUNT OF BILLS OF EXCHANGE :
HAS TO BE FILED BEFORE TRIBUNAL

(*R. Y. Ganoo, J.*)

STANDARD CHARTERED BANK

Plaintiff.

vs.

INDIA FINTRADE LTD.

Defendant.

(a) Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), SS. 2(d) and 17 — *Jurisdiction — Suit for recovery of the amount of bills of exchange amounting to Rs. 1,14,83,881.20 by the plaintiff foreign bank — Suit not maintainable as summary suit before High Court and ought to have been filed before the Tribunal established under the Debts Recovery Act. (Para 6)*

(b) Civil Procedure Code, O. 37, R. 2 — *Summary suit for recovery of the amounts covered by three bills of exchange on the basis of the Deed of Assignment executed in favour of the plaintiffs — Defendants not party to the Deed of Assignment — Suit not within parameters of O. 37, R. 2 and as such not maintainable as summary suit. (Para 4)*

(c) Civil Procedure Code, O. 37, R. 2 — *Summary suit to recover amounts on the basis of three bills of exchange executed in London — Bills found to be without payment of stamp duty and penalty on the date of institution of the suit — Plaintiffs derived right to recover the amount by a Deed of Assignment to which defendants are not party — Triable issues arising in the suit — Defendants granted unconditional leave to defend. (Paras 4 to 7)*

For plaintiff : *Zubin Behram Kamdin with Paulose Abraham* instructed by
M/s Amarchand and Mangaldas and Suresh A. Shroff and Co.

For defendant : *Vivek Kantawala* instructed by *Vivek Sharma* with
Ms. Amrim Saheed

P. C. :— The present suit is filed for recovery of the diverse amounts on the basis of three bills of exchange coupled with the Deed of Assignment dated 9-3-2006 purported to have been executed in favour of the plaintiffs. Summons for Judgment is taken out. Parties have completed the pleadings.

2. M/s Ransat plc executed three bills of exchange dated 6-3-2003, 17-3-2003 and 9-3-2003 for the respective amounts payable at 90 days and those bills of exchange were said to have been accepted by India Fintrade Ltd. According to plaintiffs by Deed of Assignment dated 9-3-2006 the rights in respect of the three bills of exchange came to be assigned to the plaintiffs, pursuant to that the present suit is filed on 19-5-2006 after completing the formalities like issuance of notice etc.

3. I have extensively heard learned advocates on both the sides and propose to give reasons for the points which have been raised before the Court.

4. Bills of Exchange came to be executed in London, they were not stamped at all. Noting of protest was done in May 2006. On each of the Bill of Exchange endorsement is made by the Stamp Office of the Government of Maharashtra showing that a particular amount has been paid with stamp and date. The said endorsements are of 24-7-2006. According to the learned Counsel for the plaintiffs these amounts have been paid after determination of penalty

Summons for Judgment No. 332 of 2007 in Summary Suit No. 2341 of 2006 decided on 10-11-2008. (O.O.C.J., Bombay)

amount. No endorsement showing that adjudication proceedings were finalised and penalty has been paid is found. Even otherwise according to plaintiffs themselves, provisions of section 18 of the Indian Stamp Act, 1899 permit bringing bills of exchange executed out of India for the purpose of due transaction and stamp duty is required to be paid within three months. If noting of protest, was done in the month of May 2005, stamp duty or penalty ought to have been paid within three months from May 2005. The very fact that certain amount of stamp duty is being paid only in July 2006, would clearly go to show that provisions of section 18 is not been complied with. The present suit is filed on 19-5-2006. Stamp duty having been paid on 24-7-2006 (with or without penalty) would clearly go to show that on the day when the suit came to be filed, the bills were without payment of any stamp duty much less penalty. This is a point which goes in favour of the defendants. It is required to be noted that the present suit is not filed on the strength of three bills of exchange. The plaintiffs claim that they derived right to recover the amounts covered by three bills of exchange, pursuant to the Deed of Assignment purported to have been executed in their favour on 9-3-2006. The transaction dated 9-3-2006 would go to show that actionable claim came to be transferred in favour of the plaintiffs. If this be so, considering the provisions of Order XXXVII, Rule 2 of Civil Procedure Code, institution of the present suit as summary suit on the strength of Deed of Assignment to which the present defendants are not a party will have to be termed as suit not within the parameters of Order XXXVII Rule 2 of Civil Procedure Code and hence institution of suit on the basis of Deed of Assignment dated 9-3-2006 and three bills of exchange as summary suit is not maintainable.

5. Notice of transfer, as envisaged under section 131 of the Transfer of Property Act has not been given by the plaintiffs and this point is also in favour of the defendants.

6. The plaintiff is a bank as understood within the meaning of section 2(d) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. If this is so, the provisions of section 17 require that the claim of recovery of dues of the bank are required to be instituted before the Tribunal established under the aforesaid Act when the claim is for an amount more than Rs. 10 lakhs. The plaintiffs have prayed for decree in terms of U.S. Dollars 1,68,240.08 and have valued the suit at paragraph 14 at Rs. 1,14,83,881.20 which is in any way more than Rs. 10 lakhs. The learned Counsel for the plaintiffs could not point out to the Court any provision under the aforesaid Act which would exempt a foreign bank as is argued by the learned advocate for the plaintiffs. If this be so, the claim for recovering amount, based on recovery of the amount of bills of exchange ought to have been filed before the Tribunal established under the said Act. This also goes to the root of the matter.

7. The discussion aforesaid clearly indicates that triable issues are raised by the defendants in the present case and that the defendants are entitled to unconditional leave. Hence the Order.

ORDER

- i. Defendants are granted unconditional leave.
- ii. Defendants to file written statement on or before 7th January, 2009.

972

MARJORIE vs. MUMTAZ

[2009(1) Mh.L.J.]

- iii. Original Bills of Exchange are returned to the learned Counsel for plaintiffs.
- iv. Suit to appear on board on 8-1-2009. To be shown in the column of directions.

Order accordingly.

STAY TO THE EXECUTION OF DECREE OF EVICTION :
DETERMINATION OF REASONABLE COMPENSATION
AS A CONDITION

(A. A. Sayed, J.)

MARJORIE PASSANAH and another

Petitioners.

vs.

MUMTAZ IQBAL SHAIKH

Respondent.

Civil Procedure Code, O. 41, R. 5, Maharashtra Rent Control Act, 1999 (18 of 2000), S. 11 and Constitution of India, Art. 227 — *Petition by tenant against grant of eviction — Stay to the execution of the decree of eviction — Parameters to arrive at the reasonable figure of compensation as a condition to grant of stay.*

The suit premises are residential and the statutory rent is Rs. 645 per month and the eviction suit was decreed in favour of landlord. By the impugned order the Appellate Bench of Small Causes Court, while allowing the prayer of stay of the execution of the decree imposed the condition of deposit of the amount of compensation @ Rs. 15,000/- per month in addition to the monthly rent and permitted increases till the decision in the appeal. The said amount being too exorbitant and roughly 23 times the statutory rent, in petition impugning the order of the Appellate Bench of Small Causes Court,

Held, that the High Court under Article 227 of the Constitution of India can exercise supervisory jurisdiction so as to examine the issue of 'reasonableness' itself and lay down certain parameters or guidelines so as to avoid manifest injustice. A balance would have to be struck in weighting the equities so that there is no substantial loss to either party. The Court may, for example, consider examining (1) what percentage of the market value in terms of license fee, the premises in question can fetch could be termed as 'reasonable' (2) would this percentage be different in respect of residential premises vis-à-vis commercial premises, (3) which of the parties would be liable to pay the property taxes and other taxes/cess/charges, (this can go to more than 50% of the compensation for commercial premises in Mumbai) (4) whether the amount can be worked out on the basis of rateable value of the suit premises or number of times of the statutory rent or any other method of valuation (5) how is the amount to be adjusted in case of inquiry under Order XX, Rule 12 of the Civil Procedure Code relating to mesne profits (6) when can the amount awarded said to be unreasonable or oppressive or resulting in manifest injustice, (7) whether any report from an expert is necessary at that stage (8) would this figure of 'reasonable' compensation be different in case of occupants who are trespassers or licensees who have lost protection of the rent control legislation or tenants holding over, etc.

W. P. No. 3332 of 2008 decided on 16-6-2008. (Bombay)