

IN THE SPECIAL COURT AT BOMBAY
Constituted under the Special Court [Trial of Offences
Relating to Transactions in Securities] Act, 1992

MISCELLANEOUS APPLICATION NO.6 OF 2018

IN

MISCELLANEOUS PETITION NO.2 OF 2016

Jyoti MehtaApplicant

In the matter between

National Housing BankPetitioner

V/s.

Standard Chartered BankRespondent

Mr. Anoshak Daver, i/by Negandhi Shah & Himayatullah, for the Applicant in SPMA/65/2016.

Mr. Tushaad Cooper, Sr. Advocate, with Mr. Samarth Choudhary, i/by Hariani & Co., for Respondent No.2 in SPMP/2/2016 & SPMA/6/2018 and Respondent No.1 in SPMP/2/2016-Standard Chartered Bank.

Mr. Hormaz Daruwalla, i/by Leena Adhvaryu Associates, for the Custodian.

Mr. Ashwin Mehta for the Notified Party.

CORAM : A.K. MENON, J.
JUDGE, SPECIAL COURT

DATE : 19TH MARCH, 2021.

P.C. :

1. In MA/6/2018, the applicant seeks to be impleaded in Miscellaneous Petition No.2 of 2016. MP/2/2016 has been filed by respondent no.1 (NHB) against respondent no.2 (SCB) on a Letter of Indemnity dated 1st October 1993.

Respondent no.1 has claimed from the respondent no.2 a sum of Rs.142,58,32,219/- and also seeks an order for securing that amount in this court pending the disposal of MP/2/2016. During the pendency of MP/2/2016, in which pleadings are said to be complete, the present MA/6/2018 has been filed on or about 2nd January 2018.

2. The applicant in MA/6/2018 represented by Mr. Mehta has submitted that she is a necessary and proper party. She has deliberately not been joined as a respondent in MP/2/2016, despite knowing that her late husband was involved in the transaction forming subject matter of MP/2/2016. It is contended that in the event NHB succeeds in recovering the amounts claimed under the Letter of Indemnity, the applicant would have a claim against NHB. It is on this basis that the MA has been canvassed by Mr. Mehta today.

3. Mr. Mehta further contended that NHB has made a dishonest claim of set-off against the applicant's late husband and in respect of which Suit No.2 of 1995 has been heard and decided. NHB has reportedly secured an order of set-off from the court against the valid claim in relation to certain bonds of IRFC, as set out in the application. It is further contended that owing to a complete break-down of all business and upon demise of the late husband of the applicant, she could not keep track of these proceedings and other litigation and her Advocates could not continue to render services and therefore no action has

been taken thus far. Mr. Mehta submits that should NHB succeed in MP 2 of 2016, the applicant will have a claim against NHB, especially since her late husband was the broker in the transaction concerned. It is for these reasons, according to Mr. Mehta, that impleadment of the applicant is necessary.

4. Mr. Daver, learned counsel for NHB has submitted that the Letter of Indemnity, copy of which appears at Exhibit-S to MP/2/2016, is clearly a contract of indemnity as between the respondents in this application inter se and that the applicant herein has no role to play as far as the obligations under the letter of indemnity are concerned. Merely because the applicant's husband claims to be the broker in the transaction, the applicant is neither a necessary nor a proper party. He therefore submits that the application may be rejected; moreso since it is for the applicant to decide what relief is to be claimed and against whom. Mr. Daver confirms, on instructions, that NHB has no claim against the applicant herein.

5. As far as the 2nd respondent is concerned, Mr. Cooper, learned Senior Advocate also opposed the application on the basis that merely acting in a capacity as a broker to the transaction would not make the applicant necessary or a proper party. In that respect, he relies upon a judgment of the Special Court in the matter of *Standard Chartered Bank Vs. Canara Bank and Ors.*, (4 Bom.C.R. 167) and the observations in paragraphs 32 and 33. He submits that merely

because the late husband of the applicant was a broker would not make the applicant a necessary party.

6. In Miscellaneous Application No.35 of 2017, this court has already examined the claims of the applicant, who was also the applicant in that miscellaneous application filed inter alia against respondent no.1. That claim has been rejected and Mr. Mehta states that he has filed an appeal against that order. The basis of the applicant's claim therefore cannot be now imported into this Miscellaneous Petition. Nothing on record shown to me that leads me to believe that the applicant is either a necessary or a proper party for determination of the issues that would arise in MP/2/2016. The application has no merit.

7. In view thereof, I pass the following order :-

- (i) MA/6/2018 is dismissed.
- (ii) No order as to costs.

[A.K. MENON, J.]