
(2006) 01 DEL CK 0049

Delhi High Court

Case No: IA No. 2916 of 2004 in CS (OS) No. 873 of 2003

Ramesham Ashcrete
(India) Ltd.

APPELLANT

Vs

Mannit Finvest (P) Ltd.
and Others

RESPONDENT

Date of Decision: Jan. 18, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 10 Rule 2, Order 37 Rule 1
- Limitation Act, 1963 - Section 18

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: S.C. Nigam, for the Appellant; Jayant Bhushan and Atul Batra, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

The plaintiff has filed a suit for recovery of Rs. 25,76,250/- under the provisions of Order xxxvII of The Code of Civil Procedure, 1908 (hereinafter to be referred to as, "the said Code").

2. The plaintiff is a limited company incorporated and registered under the Companies Act, 1956. The plaintiff claims that defendants No. 2 and 3 were carrying on business as share brokers under the name and style of defendant No. 1, a private limited company and are also Directors of defendant No. 1. The defendants professed to be sub-brokers of M/s. Ansh Portfolio Kendra (Pvt.) Ltd., which is registered with Delhi Stock Exchange and the National Stock Exchange. It was represented to the plaintiff that a sum of Rs. 13 lakhs was standing to their credit in the account maintained by M/s. Ansh Portfolio Kendra (Pvt.) Ltd. and the same should be got transferred to the account of the defendants for purchase of 5,000 shares of Reliance Industries Limited (for short, "RIL"), which were available at a favorable price. A request was accordingly made by the plaintiff vide letter dated 23.03.2000 to M/s. Ansh Portfolio Kendra (Pvt.) Ltd. for transfer to the account of

defendant No. 1 for the purchase of 5,000 shares of RIL and the said transfer was confirmed by M/s. Ansh Portfolio Kendra (Pvt.) Ltd. by letter of the even date.

3. The plaintiff claims that defendants No. 2 and 3 under the name and style of defendant No. 1 informed the plaintiff by the letter dated 29.03.2000 that instead of purchasing shares of RIL, 20,000 shares of AMI Computers Ltd. valued at Rs. 13 lakhs had been purchased. The same was stated to be unauthorised and it is stated in the plaint that the statement of shares of AMI Computers Ltd. forwarded by the defendants revealed that the said shares stood in the name of the defendants. Defendant No.2 on behalf of defendant No. 1 addressed a letter on the same date, i.e., 29.03.2000 informing the plaintiff that 5,000 shares of RIL of a total value of Rs. 13 lakhs were being delivered to the plaintiff and in the account maintained by the defendants the said amount was being debited to the plaintiff. However, the said shares were never transferred to the D-mat shares account of the plaintiff. The plaintiff protested against the same and the defendants vide their letter dated 01.05.2000 acknowledged to the plaintiff that they were holding 5,000 shares of RIL valued at R.18 lakhs, which was the appreciated sale value on that date and the account of the plaintiff with the defendants was being accordingly credited.

4. The plaintiff demanded the amount of Rs. 18 lakhs, but the same was not paid and it is alleged that defendants No. 2 and 3 have appropriated the amount for their own use and diverted the funds to their own businesses. The liability is sought to be fastened on defendants No. 2 and 3 on the basis that corporate veil should be lifted and the amounts collected in the name of defendant No. 1 are also the liability of defendants No. 2 and 3.

5. The suit is for the principal sum of Rs. 18 lakhs and a sum of Rs. 7,76,250/- as interest @ 15% p.a. totalling to the suit amount. The defendants have entered appearance and have filed the application for leave to defend the suit. The defendants claimed that they are entitled to unconditional leave to contest the suit.

6. Learned senior counsel for the defendants seeks to contend that insofar as defendants No. 2 and 3 are concerned, there is no document executed by them in their personal capacity. Even if the allegation in the plaint is assumed to be correct, the transactions have taken place only with defendant No. 1. Learned senior counsel does not dispute the proposition that in an appropriate case it is always open to the Court to pierce the corporate veil to affix liability on the Directors, but contends that that itself is a matter of trial and no decree can be passed against the said defendants No. 2 and 3 on the basis of a suit filed under the provisions of Order xxxvII of the said Code.

7. Learned counsel for the plaintiff, however, contends that the present case is a fit case for lifting the corporate veil and defendants No. 2 and 3 have been acting on behalf of defendant No. 1.

8. In my considered view, insofar as the claim against defendants No. 2 and 3 is concerned, the said defendants are entitled to unconditional leave to contest the suit. It has to be appreciated that there is no document executed by defendants No. 2 and 3 in their personal capacity. The suit has been filed under the provisions of Order xxxvII of the said Code and, thus, the suit must fall within the category of suits as specified in sub-rule (2) to Rule 1 of Order xxxvII of the said Code, which reads as under:

(1) Courts and classes of suit to which the Order is to apply. ि ½-

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suit, namely:

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising, ि ½-

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

9. In the present case, the suit is sought to be brought within the parameters of a "written contract". This written contract is in the form of really an acknowledgement as contained in the letter dated 01.05.2000. The letter dated 29.03.2000 of the defendant reads as under:

Date : 29/3/2000

Dear Sirs,

We are delivering the following shares to you for which please make the payment at the earliest:

SCRIP DISTINCTIVE NOS. QTY. RATE AMOUNT

RELIANCE IND. LTD.

DE-MAT SHARES 5,000 260.00

13,00,000.00

TOTAL :- 13,00,000.00

AMOUNT : Rs. THIRTEEN LACS ONLY.

We have debited your a/c with the above-mentioned amount.

10. The said letter was followed by the letter dated 01.05.2000, which reads as under:

Date : 1/5/2000

...

Dear Sirs,

We hereby acknowledge receipt of the following shares from you as per details given under:

SCRIP DISTINCTIVE NOS. QTY. RATE AMOUNT

RELIANCE IND. LTD.

DE-MAT SHARES 5,000 360.00

18,00,000.00

TOTAL :- 18,00,000.00

AMOUNT : Rs. EIGHTEEN LACS ONLY.

Your a/c has been credited with the above amount.

11. In view of the aforesaid position, there is no written contract executed directly by defendants No. 2 and 3. In order for the plaintiff to succeed in the suit, the corporate veil would have to be lifted and that itself is a matter which would require trial.

12. The position regarding defendant No. 1 is, however, different. Learned senior counsel for the defendants seeks to contend that the suit does not fall within the parameters of Order xxxvii since the plaintiff has filed a suit jointly against all the defendants, a summary suit is not maintainable against defendants No. 2 & 3 and there cannot be a segregation of the cause of action and, thus, the suit would not be maintainable even against defendant No. 1.

13. I am unable to accept the contention of learned senior counsel for the defendants. The suit is stated to be based on the contract or the acknowledgement of transfer of money to the credit of the plaintiff as mentioned aforesaid. Defendants No. 2 and 3 are sought to be made liable on the basis of the claim that the corporate veil needs to be pierced. This does not imply that the debt is not recoverable as a liquidated amount. The amount is one which is claimed with interest. There is, of course, no agreement in respect of the interest as set out in the contract. The fact that defendants No. 2 and 3 have been held to be entitled to unconditional leave to contest the suit does not imply that the summary suit against defendant No. 1 would not be maintainable.

14. Learned senior counsel for the defendants submits that what is claimed to be a written contract is merely an acknowledgement of the money due and, thus, the suit is not maintainable under the provisions of Order xxxvII of the said Code in view of the judgment of this Court in J.S. Sood v. Mrs. Prem Lata Mehta and Anr. (1984) 2 (Delhi) 716. The facts of the said case are, however, somewhat different. An oral agreement was pleaded and money was stated to have been advanced in pursuance of the oral agreement for financing the production of a film. The defendant agreed and acknowledged in writing a part of the amount and the question which arose was whether the said writing constituted a written contract between the parties. It was held that the document in question merely acknowledges the money due in a verbal contract and, thus, can be treated at best to be a written acknowledgement which extends the period of limitation u/s 18 of the Limitation Act, 1963. It was held that such a document would not fall within the definition of a "written contract" and, thus, the provisions of Order xxxvII of the Code would not apply. The words "written contract" were held to envisage some sort of formal document between the contracted parties. It was observed in para 12 as under:

12. As to whether the written contract may be signed by both the parties does not call for decision in the present case though it appears that the words, "written contract" envisage some sort of a formal document between the contracting parties. I would rather think that it would be a condition precedent that there should be a formal agreement executed by the parties and signed by them. plaintiff's own version is that it was a verbal contract and the document on the basis of which the suit has been filed merely acknowledges the money due under the aforesaid verbal contract. Such a writing may at best be a written acknowledgement which extends the period of limitation u/s 18 of the Limitation Act, 1963, but no more. Thus, I do not think that such a document would fall within the definition of written contract and the provisions of Order xxxvII would not apply. It must, Therefore, be held that the present suit is not maintainable under the summary procedure prescribed under Order xxxvII.

15. In the present case, the transaction is not in doubt as the document in question relied upon by the plaintiff being the letter dated 01.05.2000 states that the amount of Rs. 18 lakhs has been credited to the account of the plaintiff. This letter was preceded by the letter dated 29.03.2000 stating that D-mated shares were being given to the plaintiff numbering 5,000 and seeking payment for the same of Rs. 13 lakhs, which amount was undisputedly transferred by M/s. Ansh Portfolio Kendra (Pvt.) Ltd. The plaintiff had issued a letter to M/s. Ansh Portfolio Kendra (Pvt.) Ltd. dated 23.03.2000 pointing out that the credit amount in their account of Rs. 13 lakhs should be transferred to defendant No. 1 and such transfer was confirmed by M/s. Ansh Portfolio Kendra (Pvt.) Ltd. by the letter of the even date. The extract of the sundry debtor account of M/s. Ansh Portfolio Kendra (Pvt.) Ltd. has also been filed in this behalf.

16. Learned senior counsel for the defendants contends that there were multifarious transactions carried out by the plaintiff or the Directors of the plaintiff, who were indulging in forward-trading against margin money. It is, however, to be noticed that the document

issued of the credit of Rs. 18 lakhs is not disputed.

17. The Explanation given in the application is as under:

21. ... However, on the asking of Shri Akshat Jaipuria, a certificate was issued that the sale was for Rs. 18,00,000.00 (Rupees Eighteen Lacs Only) as he (Shri Akshat Jaipuria) wanted to satisfy his father and tell his father, i.e., Shri Rajinder Jaipuria that he (Akshat) had made good some of the losses. ...

18. Learned senior counsel also sought to rely upon the account of M/s. Ansh Portfolio Kendra (Pvt.) Ltd. for certain transactions, which was seriously disputed by learned counsel for the plaintiff.

19. In my considered view, the fact that the plaintiff was transacting in shares is not in dispute. The plaintiff had numerous transactions with M/s. Ansh Portfolio Kendra (Pvt.) Ltd., but that is not the subject matter of dispute here. The subject matter of dispute relates to a particular transaction in question.

20. The principles for grant of leave to contest a suit were succinctly set out by the Apex Court in [Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation](#), as under:

- (a) If the defendant satisfies the Court that he has a good defense to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.
- (b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defense although not a positively good defense the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.
- (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defense, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defense to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.
- (d) If the defendant has no defense or the defense set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
- (e) If the defendant has no defense or the defense is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to have to sign judgment. The Court may protect the plaintiff by only allowing the defense to proceed if the amount

claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defense.

21. The aspect which has to be kept in mind is that the matter relates to transaction of shares and the plaintiff has been buying and selling the shares. There is some defense raised by the defendant which may require trial, though a clear defense is not made out in the application for leave to defend the suit. There is also dispute about the rate of interest. There can, however, be no substantive dispute in respect of the amount of Rs. 18 lakhs unless the defendants are able to prove some of the averments made in the application, weak as the defense maybe.

22. I am, thus, of the considered view that defendant No. 1 is entitled to a conditional leave to contest the suit on deposit of Rs. 18 lakhs. The said amount be deposited by defendant No. 1 within 30 days from today and be released to the plaintiff on furnishing security for restitution to the satisfaction of Registrar General of this Court.

23. The application stands disposed of.

CS (OS) No. 873/2003

1. Written statement be filed within 30 days.
2. Parties to file their original documents within the same period of time.
3. List before the Joint Registrar on 06.03.2006 for admission / denial of documents when the parties shall ensure the presence of their authorized representatives to complete the admission / denial.
4. List before the Court for framing of issues on 28.04.2006. Defendants No. 2 & 3 shall remain present in Court for recording of statement before framing of issues under Order X Rule 2 CPC.