(2007) 02 RAJ CK 0038

In the Rajasthan High Court

Bombay Stock Exchange Ltd. and Another APPELLANT

Vs

Vikas WSP Ltd. and Others RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Securities Contracts (Regulation) Act, 1956 — Section 22A, 22E, 23L

Citation : (2007) 2 RLW 1701 : (2007) 78 SCL 62

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The petitioners are aggrieved against the order dated 12.1.2007 by which the trial court decided the issue No. 7 about the civil court''s jurisdiction against the petitioner-defendants and held that the civil court has jurisdiction to try the suit filed by the respondent-plaintiff No. 1.

3. Brief facts of the case are that respondent No. 1-plaintiff submitted an application before petitioner No. 1-Bombay Stock Exchange Limited (for short ''BSE'') for listing its equity shares. In consequence thereof, ultimately an agreement was executed between plaintiff respondent No. 1 and the BSE on 18.2.1994. It is alleged that the plaintiff- respondent No. I did not comply with the certain clauses of the listing agreement, therefore, the BSE issued show cause notice to respondent No. I on 21.8.2001 and sought explanation as to why trading in the securities of the plaintiff company may not be suspended by BSE. It is alleged that even after exchange of correspondence between the defendant-the BSE and the plaintiff, the plaintiff failed to comply with the requirements and fulfill the conditions of listing agreement. Again notice was issued to the plaintiff by the BSE on 18.9.2001. Ultimately, the trading in the plaintiff''s securities were suspended by the BSE w.e.f. 1.10.2001. It appears that the plaintiff-respondent No. I Company submitted representation for revocation of the suspension order before the BSE. It appears from the facts mentioned in the plaint that there were

several disputes cropped up with the government authorities and also among the promoters of the Company. It is submitted by the plaintiff that in some matters, the plaintiff-Company was. exonerated and because of those proceedings, the plaintiff did not suffer any disqualification for trading in its securities through BSE. However, because of dispute among the Directors of the Company who were brothers in relation, Union of India approached the Company Law Board at New Delhi by filing petition Nos. 51/2000 and 50/2003. The Company Law Board, New Delhi, disposed of the C.P. No. 50/2003 and passed specific order in C.P. No. 51/2000 on 2.4.2004. By this order dated 2.4.2004, the Company Law Board directed the Central Government to appoint three Directors on the Board of Directors of the respondent Company for maximum period of three years from the date they assume office. The said order was challenged by the plaintiff-respondent No. l- Company by filing appeal before the Punjab and Haryana High Court. This fact is relevant because of the reason that there is allegation that a forged order of the Punjab and Haryana High Court was submitted by the plaintiff-respondent No. l- Company before the BSE. However, subsequently, the plaintiff submitted a letter before the BSE stating therein that the said order was forged one and communicated to the plaintiff-Company by one advocate for which he has already lodged criminal case. So far as order to appoint three Directors by the Central Government that was in fact stayed by the Punjab and Haryana High Court. The plaintiff submitted representation to the BSE that no matter against the plaintiff-Company is pending in any government department and that has been made clear by the plaintiff by its earlier letter dated 7.4.2005 also. Ultimately, on 17.8.2005, in the meeting of the Listing Committee of the BSE, the plaintiff''s representative was also invited to put his case. The Listing Committee thoroughly enquired the matter and thereafter on 17.8.2005, decided to revoke the suspension order, suspending trading in securities of the plaintiff Company, That revocation order was conditional and three conditions were put by the BSE for revocation of the suspension order passed against the plaintiff. The three conditions were that the plaintiff will give restoration fee of Rs. 2,40,000/-, the plaintiff shall put the Directors'' share in lock-in of the plaintiff-Company and that he will also put the said shares in demat form and will produce the appropriate certificate evidencing lock-in of the Directors'' shares and putting those shares in demat form. The plaintiff- Company was further directed to furnish a certificate declaring that "all fillings/report made with stock exchange (BSE) and Registrar of Companies are the same with respect to the content and informations contained in these filling/reports." According to the plaintiff, the plaintiff complied with all those conditions put by the Listing Committee of the BSE in its decision dated 17.8.2005 and the plaintiff informed the BSE vide its letter dated 5.9:2005 of compliance of all the conditions. The plaintiff''s case is that despite this revocation of the suspension order and compliance of the plaintiff of all the conditions, which were imposed by the decision dated 17.8.2005, the plaintiff''s shares are not permitted to be traded in the BSE. Ultimately, on 26.7.2006, the plaintiff gave last letter to the BSE and requested them to permit the trading in the equity shares of the plaintiff-

Company within 15 days lest, the plaintiff Company will initiate legal proceedings against the BSE. In the background of these facts, the plaintiff in the present suit claimed that it may be declared that there is no legal proceeding pending against the plaintiff on the basis of which the BSE can deny the trading in shares of the plaintiff-Company. The plaintiff sought relief of injunction against the BSE that the BSE be restrained from interfering in the share trading of the plaintiff-Company. The plaintiff also claimed damages of Rs. 57,500/- on the basis of the grounds mentioned in the plaint. The plaintiff also prayed that the personal responsibility of the officers of the BSE be fixed who are responsible for putting restriction in trading.

4. The defendant BSE submitted detail written statement and raised objection about the territorial jurisdiction of the court below and also raised objection in entertaining the suit by the civil court by taking help of Section 23L of the Securities Contracts (Regulation) Act, 1956 (for short ''the Act of 1956'') read with Rule 19(5) of the Securities Contracts (Regulation) Rules, 1957 (for short ''the Rules of 1957'') framed under the Act of 1956. It was prayed before the trial court that the question of jurisdiction of civil court be decided before any issue. The trial court refused to decide the question of jurisdiction of civil court as preliminary issue, therefore, the petitioner-defendants preferred S.B. Civil Writ Petition No. 7477/2006 before this Court. According to the petitioner-defendants, the question of jurisdiction was pure question of law and, therefore, it could have been decided without evidence of the parties. It was contended before this Court that the issue of jurisdiction goes to the root of the matter. It appears that the writ petition was not seriously contested by the plaintiff and, therefore, this Court by order dated 20.12.2006 passed in the above writ petition No. 7477/2006 allowed the writ petition of the present petitioners-defendants and directed the trial court to take up the issue with regard to the objection as to the maintainability of the suit as pointedly raised in para No. 5(b) of the written statement as a preliminary issue. This Court also observed that so far as the objection with regard to the territorial jurisdiction raised in para 5(a) of the written statement, that shall be taken up along with other issues.

5. It will be worthwhile to mention that the trial court framed several issues and proceeded to decide issue No. 7 in pursuance of the order passed by this Court in the said writ petition No. 7477/2006 dated 20.1.2.2006. Issue No. 7 is as under:

7- vk;k bl U;k;ky; dks oknh dEiuh dk okn lquus dk {ks=kf/kdkj ugha gS\\

6. It will be worthwhile to mention here that the trial court also framed two more issues which are relevant for deciding this revision petition which are issues No. 1 and 5. Issues No. l and 5 are as under:

1- vk;k oknh dEiuh bl vk''k; dh ?kks"k.kk djokus dh vf/kdkjh gS fd mlds fo:) fdlh izdkj dh dksbZ dkuwuh dk;Zokgh fopkjk/khu vFkok yfEcr ugha gS] ftlls fd mlds ''ks;jksa dh V?sfMax pkyw djus esa fdlh izdkj dh dksbZ :dkoV gks\\

5- vk;k izfroknhx.k ds tokc nkok esa vafdr rF;ksa ,oa dkj.kksa ij oknh dEiuh dks okn fujLr fd;s tkus ;ksX; gS\\

7. The trial court, since there was no evidence on record, decided issue No. 7 on the basis of the pleadings of the parties as well as on the basis of the documents which were placed on record by both the parties irrespective of the fact whether these facts mentioned in the pleadings and the documents are admitted by other party or not ? The trial court while deciding issue No. 7, considered the defence of the defendants taken by the defendants in the written statement and thereafter rejected the defence of the defendants and held that the suit is triable by the civil court.

8. The learned Counsel for the petitioners vehemently submitted that the bar against the civil court''s jurisdiction is very clear from the bare reading of Section 22E read with Section 23 L of the Act of 1956 and Sub-rule (5) of Rule 19 of the Rules of 1957. According to the learned Counsel for the petitioners, the BSE has jurisdiction to suspend the trading in the shares of any Company who is its member and this fact is not in dispute. In the present case, the BSE suspended the trading in the shares of the plaintiff-Company is also an admitted fact. If the plaintiff is aggrieved against the said action of the BSE then the plaintiff could have preferred appeal u/s 23L of the Act of 1956. Not only this but in a case where the suspension in trading of a Company continues beyond the period of three months, then also the Company can prefer appeal as provided in second proviso to Sub-rule (5) of Rule 19 of the Rules of 1957. Therefore, when there is no order of continuation of suspension beyond the period of three months then also the Company can prefer appeal. It is submitted that the language of Section 22E is very wide and covers all matters on which the Securities Appellate Tribunal is empowered by or under the Act of 1956 to determine the dispute. The Section 22E of the Act of 1956 further provides that in such matters no injunction shall be granted by any Court or other authority and it has been made wide by making the provision that no injunction will be granted, not only in respect of any action taken but against the action which is to be taken in pursuance of any power conferred by or under the Act of 1956. Therefore, the injunction cannot be granted against the proposed action under the Act of 1956 which may be taken by the BSE.

9. The learned Counsel for the petitioner vehemently submitted that the trial court went astray and failed to appreciate the facts of the case and, therefore, considered the Section 22A and did not consider second proviso to Sub-rule (5) of Rule 19 of the Rules of 1957. It is also submitted that it was nobody''s case that the listing of the shares of the plaintiff-Company has been stopped by the BSE whereas the trial court proceeded to decide on the basis of presumption that in the present case, listing of shares of the plaintiff-Company has been suspended by the BSE and, therefore, the trial court did not consider the relevant section. It is also submitted that the trial court has recorded the finding on the question of fact against the petitioner- defendants when there was no evidence available on record on the basis of which such finding of fact could have

been recorded by the trial court on the question of fact against the defendants.

10. The learned Counsel for the plaintiff-respondent vehemently submitted that the plaintiff is not challenging any order of the BSE. The plaintiff in fact is claiming his civil right which accrued to the plaintiff on the basis of the contract between the BSE and the plaintiff. The Act of 1956 gives statutory recognition of plaintiff''s right of having trading in its equity shares through BSE, though on compliance of all conditions by the plaintiff under the Act of 1956. The plaintiff-Company is member of the BSE. It shares were permitted to be traded through BSE. Because of some disputes among the Directors of the Company who are members of one family, trading in plaintiff''s Company''s shares were suspended by the BSE. That suspension of trading continued upto 17.8.2005 for almost more than four years. That suspension order was revoked by the BSE itself and that fact is admitted fact, therefore, the plaintiff cannot prefer any appeal under second proviso to Sub-rule (5) of Rule 19 of the Rules of 1957. Therefore, the plaintiff has right to claim through civil suit that the BSE or any of its authorised persons, have no right to prevent the trading in shares of the plaintiff-Company through BSE. It is emphatically submitted that the plaintiff is not challenging any of the orders of the BSE, rather say, the BSE itself has passed order in favour of the plaintiff Company and revoked the earlier passed suspension order for trading of securities. It is submitted that Section 23L clearly provides that any person aggrieved, by the order or decision of the recognised stock exchange, may prefer appeal u/s 23L. Since there is no order against the plaintiff-respondent, therefore, the plaintiff-respondent could not have preferred any appeal and, therefore, the Securities Appellate Tribunal cannot adjudicate on the claim of the plaintiff and in that situation, the bar of Section 22E is not applicable to the plaintiff''s suit. The learned Counsel for the plaintiff-respondent further submitted that the plaintiff has not raised grievance against the continuation of its suspension beyond three months'' period which is apparent from the averments made in the plaint, as the suspension in trading of the plaintiff''s share continued for about four years. However, when the suspension of trading in plaintiff''s share was revoked by the BSE then only the cause of action accrued to the plaintiff when despite revocation, the trading was not allowed by the BSE. In such facts only, remedy available to the plaintiff is by way of suit only.

11. The learned Counsel for the plaintiff-respondent heavily relied upon several judgments of the Hon''ble Apex Court wherein it has been laid down that the ouster of jurisdiction of civil court cannot be readily inferred even in case specific exclusion of jurisdiction of civil court by statutory provision has been made and contrary to it, the presumption is always in favour of civil court''s jurisdiction. It is also submitted that Hon''ble Apex Court held that for determining the civil court''s jurisdiction only, the plaint allegations can be looked into. It is also submitted that the plaint can be rejected under Order 7 Rule II, C.P.C. provided it is barred by law, may it be because of exclusion of the civil court''s jurisdiction by law but in that situation also, the burden lies upon the defendant to plead and prove the exclusion of jurisdiction of civil court from the plaint allegations. For

this purpose the learned Counsel relied upon the earliest judgment of the Hon''ble Apex Court delivered in the case Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, and three judgments of the Hon''ble Apex Court which are (1) Ramesh Chand Ardawatiya Vs. Anil Panjwani, (2) Dwarka Prasad Agarwal (D) by Lrs. and Another Vs. Ramesh Chandra Agarwala and Others, and Sahebgouda (dead) by L.Rs. and Ors. v. Ogeppa and Ors. AIR 2003 SC 2743.

12. The learned Counsel for the plaintiff-respondent further vehemently submitted that the defence put by the defendant in the written statement based on question of fact, cannot be considered while deciding the civil court''s jurisdiction at preliminary stage. The learned Counsel for respondent No. 1-plaintiff submitted that the plaintiff-Company''s trading suspension order and its revocation by the BSE are admitted fact by the defendant in the written statement itself. So far as revocation of revocation of suspension order is concerned, firstly that is not an admitted fact and for that the trial court clearly held that the defendants failed to produce any document evidencing the revocation of revocation order dated 17.8.2005. Otherwise also, in the present case, not only the written statement has been Tiled by the defendant-petitioner but the issues have already been framed and at this stage if the defendants insisted for decision on issue of civil court''s jurisdiction without producing relevant document and without proving facts pleaded in defence then the civil court can look into only plaint allegations and/or at the most admitted documents for deciding the issue of jurisdiction. The trial court, therefore, rightly decided the issue in favour of the plaintiff. The defendants failed to produce any adverse order which the defendants say, has been passed by the BSE against the plaintiff, before the trial court and even could not produce any document before this Court evidencing revocation of revocation order. In these facts and circumstances, all allegations levelled against the plaintiff by the defendants are nothing but the defence without there being any proof.

13. The learned Counsel for the respondent further vehemently submitted that as per the plaint averments, the plaintiff clearly stated that the suspension order was revoked and the conditions which were put by the BSE upon the plaintiff for revocation of the suspension order, the plaintiff has complied with all the conditions. It is also submitted that the plaintiff put in "lock- in" the shares of the promoters who were the promoters on the date when the revocation order was passed. It is submitted that even on the website of BSE, the promoters have been shown and the plaintiff has submitted that he already locked-in all those promoters'' share. So far as the contention of the defendant that the shares put in lock-in by the plaintiff-Company are about 13% of the shares of the promoters is concerned, that is factually wrong. It is also submitted that on the basis of disputed question of facts which the defendants want to rely upon, the suit of the plaintiff cannot be rejected or cannot be held barred by law. The learned Counsel for respondent No. I also vehemently submitted that the plaintiff in its suit itself nowhere mentioned that the plaintiff is aggrieved against any order of BSE and, nor has stated that any order suspending trading in plaintiff company''s share is

in force or such suspension is continued beyond three months and that is illegal as presumed by the petitioner BSE.

14. I considered the submissions of the learned Counsel for the parties and perused the facts of the case.

15. It appears from the facts pleaded by the plaintiff in the plaint that his entire case is that though trading of plaintiff''s shares was suspended by the order of the BSE but on plaintiff''s representation, that suspension order was revoked on 17.8.2005. The revocation order was dated 17.8.2005 is unambiguously clear and by this order, the suspension order was revoked by the BSE. This fact is not in dispute and the question remains is that whether that revocation order come into force or not. For this, according to the plaintiff, the plaintiff complied with the conditions imposed in the order dated 17.8.2005, whereas according to the defendants, those conditions have not been complied with. The conditions imposed in the order dated 17.8.2005 are with respect to making payment of Rs. 2,40,000/-, which admittedly has been deposited by the plaintiff. So far as furnishing of declaration as contained in condition No. 3 is concerned, that declaration has been furnished by the plaintiff- Company. So far as condition No. 2 is concerned, by this condition, the plaintiff was directed to put all shares of promoters in lock-in so that they may not be traded for three years. In the revocation order, according to the plaintiff, it is mentioned that the shares of those promoters who were promoters on the date of revocation order, their shares should be put in "lock-in". The learned Counsel for the petitioner disputed this and submitted that the plaintiff was required to submit the certificate of lock-in of all shares of all promoters irrespective of fact that whether the some of the Directors separated from the company before the order of revocation, was passed. The learned Counsel for the petitioner pointed out that words used in revocation order is that the entire promoters'' shares holdings shall be in lock-in for a period of three years from the date of revocation. By this it cannot be inferred that the persons who were promoters of the Company and separated from the Company, their shares also should have been put in "lock-in" for three years.

16. There is a defence of the defendants that said revocation order dated 17.8.2005 itself was revoked by the BSE in its meeting dated 16.12.2005. The plea was taken by the defendant- petitioner in the written statement but, that is defence of defendant and cannot be looked into to find out the merit in the claim of the plaintiff at this preliminary stage. Admittedly, the said decision or any order withdrawing revocation order dated 17.5.2005 has not been placed on record by the defendant, much less to proving it. In fact the petitioner is seeking rejection of the plaint of the plaintiff on the basis of the defence taken by the defendants and which is about the non-compliance of the conditions which were imposed by the BSE upon the plaintiff by order dated 17.8.2005. Neither the defence which was taken by the defendant in the written statement can be treated to be a fact proved merely because those facts have been pleaded in the

written statement, nor they can be rejected, without permitting the defendant-petitioner to prove the facts. It appears that the defendant-petitioner ignoring this aspect of the matter whether the factual plea taken in the defence in written statement can be considered for the purpose of finding out about the jurisdiction of the civil court, they insisted for decision of issue of jurisdiction and, therefore, preferred writ petition before this Court. The learned Counsel for the petitioner though submitted that the suit of the plaintiff is liable to be dismissed being barred by law but also in alternative, submitted that the defendant-petitioner pleas taken in the written statement, cannot be rejected summarily and, therefore, it appears that despite the order which the petitioner-defendants obtained from this Court in S.B. Civil Writ Petition No. 7477/2006, now the defendant- petitioner realized that the issue should have been decided after evidence. In fact this Court while deciding Writ Petition No. 7477/2006 had no occasion to consider the detail facts of the case before directing the trial court to decide the issue of jurisdiction as preliminary issue and obvious reason is that the caveat was entered by respondent No. 1-plaintiff in S.B.Civil Writ Petition No. 7477/2006 and did not dispute proposition which was advanced by the petitioner defendants for getting the decision on issue from the trial court before trial and that situation ultimately went against the petitioner because if case is decided without evidence then defence of the defendant petitioner will remain not proved.

17. If the mere plaint allegations are looked into then the entire suit of the plaintiff is only for enforcement of his right which the plaintiff is claiming as accrued to the plaintiff by virtue of the agreement entered into between the plaintiff and defendant No. 1 -BSE, whereby the plaintiff got right to have trade of his shares through BSE and for which according to the plaint allegations, earlier the trading of shares of plaintiff-Company was suspended by the BSE and thereafter, on plaintiff''s representation, the suspension order was revoked and, therefore, the plaintiff is enforcing his civil right only and not challenging any of the orders of any authority passed under the Act of 1956 and it is not the case of the plaintiff that any suspension of trading in his equity share is being continued beyond the period of three years for which he could have prepared appeal.

18. In view of the judgment of the Hon''ble Apex Court referred above, it is clear that inference of ouster of civil court''s jurisdiction cannot be readily inferred unless the same is barred by a statute either expressly or by necessary implication. The persons who alleges want of jurisdiction of civil court, is required to prove that fact or in case plea is based on law, then by law. It is also the law laid down by the Hon''ble Apex Court that for determining the jurisdiction of civil court u/s 9 of the Civil Procedure Code, the plaint allegations alone can be looked into. In view of the above, on the basis of the averments made in the plaint, it cannot be held that the suit of the plaintiff is barred by law. However, if other facts are proved which have been pleaded by the defendants, the defendants may succeed in proving ouster of civil court''s jurisdiction which is entirely depend upon proving the facts by the defendant.

19. It will be worthwhile to mention here that the trial court also framed issue No. 5 and in fact issue No. 5 is relevant issue and issue No. 7 was in fact the issue in relation to the territorial jurisdiction of the trial court. However, both the parties in the trial court, proceeded on assumption that under issue No. 7, the question of jurisdiction on the basis of the plea taken by the defendant u/s 22E and 23L read with Sub-rule (5) of Rule 19 can be decided and the trial court decided the issue in the manner assuming that issue No. 7 is in relation to the plea taken by the defendants. Since no prejudice has been caused to any of the parties, because of that reason, the order of the trial court cannot be set aside on this ground. But, because of the order dated 12.1.2007 passed by the trial, there will be difficulty before the trial court in deciding issue No. 5, which relates to the question of jurisdiction of civil court on the basis of the pleas taken by the defendant in the written statement. The finding as recorded by the trial court by order dated 12.1.2007, if remains as it is, then that will substantially cover the issue No. 5 also. None of the party ever prayed that issue No. 5 may be decided as preliminary issue. In view of the above, when it is not the case of the defendants- petitioners that issue No. 5 could have been decided by the trial court, as preliminary issue, then the order dated 12.1.2007, if will remain, that will cause legal complication, therefore, the order dated 12.1.2007 so far as rejection of all the pleas of the defendants taken in the written statement on the basis of the facts pleaded by the defendants, or ouster of civil court''s jurisdiction is required to be decided after evidence and under issue No. 5. Issue No. 5 also cannot be treated decided because of the reasons mentioned above, that is, this issue is not pure issue of law.

20. The learned Counsel for the petitioners also pointed that the trial court has not framed specific issue about compliance and noncompliance of the conditions of revocation order which entitles the plaintiff to claim his right of trading of Company shares through BSE. It is true that the issue is not very specific but issue No. l is wide enough and covers all the pleas which have been taken by the plaintiff and which have been rebutted by the defendants and covers the defence of the defendant that the plaintiff has not complied with the conditions of revocation order because of the reason that the plaintiff claimed and asserted that he complied with conditions of revocation order whereas the defendants-petitioners are claiming that the plaintiff has not complied with the conditions. Therefore, the plea of the defendant is rebuttal of the plaint allegations only. In view of the above, no additional issue is required.

21. In view of the above, the revision petition is partly allowed and the order dated 12.1.2007 is set aside so that the civil court may not feel influenced by any of the reasons given in the impugned order while deciding issue No. 5 and question of jurisdiction of the civil court and other issues. It is directed that trial court shall proceed with trial of suit and shall decide all issues after evidence.