

(2011) 09 SHI CK 0267
In the High Court Of Himachal Pradesh
Case No : O.S.A. No. 4 of 2007

Himachal Pradesh State Industrial Development Corporation Limited APPELLANT

Vs

PAMWI Tissues Limited and Another RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Securities Contracts (Regulation) Act, 1956 — Section 13, 16, 16(1), 16(2), 2

Citation : (2011) 09 SHI CK 0267

Hon'ble Judges : Surinder Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The Appellant-Corporation filed Civil Suit No. 43 of 2000 for the recovery of Rs. 44,72,831/- against the Respondents, was dismissed by the Hon"ble Single Judge vide a detailed judgment dated 19.12.2006, hence present appeal by the Appellant-Corporation.

2. The case of the Appellant, hereinafter to be referred as "the Plaintiff", has been that Respondent No. 1-Company, hereinafter to be referred as "Defendant No. 1" approached the Plaintiff for providing financial assistance to the tune of Rs. 60 lacs for setting up a project at Barotiwala. The request was acceded to consequently and Defendant No. 1 allotted six lacs shares each of the value of Rs. 10 to the Plaintiff and it was agreed that the shares would be bought back by the said Defendant on expiry of five years period from the date when the project would start its commercial production.

3. Vide letter Ext. PW2/D, Defendant No. 1 sent the acceptance letter alongwith copy of its resolution Ext. PW2/E. The agreement Ext. PW2/F to this effect was executed on 9.9.1981. But in the year 1987 the said Defendant-Company became sick. Reference was registered with Board for Industrial and Financial Reconstruction (BIFR). A rehabilitation package Ext. PW2/G was sanctioned on 2.11.1992 by the BIFR. The Industrial-Unit of the Defendant-Company was given

on lease to Respondent No. 2, hereinafter to be referred as "Defendant No. 2". The agreement was arrived at between the Plaintiff and Defendant No. 2 for buying back the shares of Defendant No. 1-Company vide agreement Ext. PW2/J dated 26.7.1993. Defendant No. 2 sent resolution Ext. PW2/A with respect to the buying back the shares of Defendant No. 1-Company. As per the terms, Defendant No. 2 was to buy the shares of Defendant No. 1 from the Plaintiff-Corporation in 32 quarterly installments of Rs. 2,95,781. 25 paise each inclusive of interest. The installments were to start in April, 1993 and the last installment was payable on 31.1.2002. Defendant No. 2 only paid 18 installments together with interest and committed default with respect to the remaining installments, hence the present suit for the recovery of the total remaining installments minus the amount already paid alongwith the interest.

4. The Defendants resisted and contested the suit by filing their separate written statements. Defendant No. 1 raised preliminary objections that there was no enforceable right and cause of action against the replying Defendant and the original agreement relating to buy back six lacs shares was not between the Plaintiff and the Defendant-Company, but infact it was between the promoters of the said Company, namely Shri S.S. Khaitan and Shri M.L. Vohra, who are not alive, thus the suit was not maintainable, inter alia also put-up the point of limitation and the agreement aforesaid is not enforceable under the law, vis-?-vis took up the objection of misjoinder of Defendant No. 1 and non-joinder of the LRs of the promoters aforesaid, as alleged, fraud, misrepresentation of the agreement aforesaid by contravening the provisions of Sections 13 and 16 of the Security Control (Regulation) Act, 1956 and the notification issued thereunder, also contended that the suit was filed by a person not authorized by the Plaintiff-Corporation. Further on merits, contested liability of the said Defendant being not a party to any of the agreements.

5. Defendant No. 2 raised almost the similar objections, but however, additionally took up the objections that the suit based upon the subsequent agreement was time-barred and the Court lacks the territorial jurisdiction. On merits, they also denied their liability to pay the suit amount and the statements of accounts are alleged to be fabricated. Thus prayed for the dismissal of the suit.

6. On the pleadings of the parties, the Learned Single Judge framed the following issues:

1. Whether the Plaintiff company is Company duly incorporated under the Companies Act, 1956 & whether Rajinder Parshad Gautam is competent to file the present suit on behalf of the Plaintiff Company as alleged? OPP.
2. Whether the Plaintiff Company is entitled to recover the suit amount alongwith interest as claimed, if so from whom? OPP.
3. Whether the suit of the Plaintiff is within time? OPP.
4. Whether the suit is not properly valued for the purpose of court fee and

jurisdiction? OPD.

5. Whether the Plaintiff is estopped from filing the suit on account of its acts, deeds, acquiescence etc. as alleged? OPD.

6. Whether the suit is not maintainable? OPD.

7. Whether the agreement dated 26.7.1993, is a result of misrepresentation and fraud? OPD.

8. Whether the suit is barred under the provisions of Securities Contract Regulation Act, 1956? OPD.

9. Whether the Court has no jurisdiction in the matter as alleged? OPD.

10. Whether the Plaintiff has no cause of action against Defendant No. 1, if so, its effect? OPD.

11. Whether the suit is bad for non-joinder and mis-joinder of necessary parties as alleged in preliminary objection No. 7? OPD.

12. Relief.

7. The parties led their evidence and upon hearing the matter finally the Learned Single Judge held that the suit was not maintainable and it was barred under the provisions of Securities Contract Regulation Act and as such Plaintiff was held not entitled to recover the suit amount. Consequently, on the findings on issues No. 2 and 8, the suit of the Plaintiff was dismissed.

8. Having felt aggrieved by the impugned judgment and decree, the present Original Side Appeal (OSA) has been filed by the Plaintiff-Corporation precisely on the grounds that the Learned Single Judge has erroneously decided the issues against the Plaintiff and in favour of the Defendants, thus acted with material irregularity and illegality by drawing far-fetched assumptions, presumptions and inferences which are neither warranted by evidence on the file nor by law. Therefore, findings on issues No. 2, 6 and 8 were wrong and incorrect.

9. Shri Ajay Kumar, Learned Counsel for the Plaintiff-Corporation, submitted that the contract for sale of the shares was complete and a concluded contract with respect to the ascertained goods and the time of payment was also fixed as per the agreement which fact was not appreciated by the Learned Single Judge. The Learned Counsel led us through the documentary evidence on record to make his point and prayed for reversal of judgment and decree in his favour.

10. Contra, Shri R.L. Sood, Learned Senior Advocate duly assisted by Ms. Askshi Chauhan, Mr. Arjun Lall and Mr. Sanjeev Kumar, Advocates, for Defendant No. 2 and Shri Rahul Mahajan, Learned Counsel for Defendant No. 1 supported the impugned judgment and decree. Further submitted that the suit of the Plaintiff was not filed by the competent person, this Court has no jurisdiction to try and determine the suit and it was barred by limitation. According to the Learned Counsel the filing of the cross-objections was not necessary in view of the

judgment of the Apex Court rendered in Pannalal Vs. State Bombay and Others, and prayed for the dismissal of the appeal.

11. We have given our thoughtful consideration to the rival contentions of the parties and have carefully reappraised the evidence on record.

12. In the instant case, the Defendants did not file the cross-objections with respect to the findings on the issues against them, but the suit against them was dismissed. Therefore, in the circumstances aforesaid, in our opinion it shall not be relevant to discuss the scope of considering other issues the findings whereof are against the Defendants, as it would simply burden the record for the simple reason that Clause 1 of the agreement Ext. PW2/J, which was also taken note of by the Learned Single Judge, covenants to buy the equity shares by Defendant No. 2 over the period of eight years from the date of the execution of the agreement aforesaid, which is neither a spot delivery nor contract for cash etc. Thus, in our considered opinion that the appeal filed by the Plaintiff-Corporation is liable to be dismissed on the ground that Section 16 of the Securities Contracts (Regulation) Act, 1956, prohibits the contract in certain cases and the Central Government has issued Notification dated 27.6.1969 under Sub-section (1) of Section 16 of the aforesaid Act, declining that no person in the territory to which the act stands extended shall, save and except with the permission of the Central Government, enter into any contract for the sale or purchase of securities, other than such "spot delivery" contract or contract for cash or hand delivery or special delivery in any securities, as is permissible under the said Act, rules, bye-laws and Regulations of a recognized stock exchange. Since the Plaintiff-Company has not been notified as a Banking Company, therefore, it is not exempted from the operation of the notification dated 27.6.1969 referred to above.

13. Further, Section 2(h) of the Securities Contracts (Regulation) Act, 1956 defines securities, which reads as under:

(h) "Securities" include--

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) Government securities;

(ia) Such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

14. The perusal of the definition of the Securities shows that it does not make any distinction between listed securities and unlisted securities and therefore, it is clear that the circular dated 27.6.1969 also applies to the securities which are even not listed in stock exchange. Admittedly, the contract alleged to have been entered with Defendant No. 2 by the Plaintiff does not reveal that it was a "spot

delivery" contract. Therefore, the transaction was clearly contrary to the circular aforesaid. Consequently, in terms of provisions of Sub-section (2) of Section 16 of the Securities Contracts (Regulation) Act, the transaction was illegal and is not capable of being enforced. To come to the above conclusion, we are also supported by the judgment of the Apex Court rendered in Naresh K. Aggarwala and Co. Vs. Canbank Financial Services Ltd. and Another,

15. For the reasons aforesaid, we do not find any infirmity in the judgment and decree passed by the Learned trial Court dismissing the suit of the Plaintiff-Corporation. As such, the present Original Side Appeal sans merit and is accordingly dismissed with costs throughout.