

(2009) 06 KL CK 0078
In the High Court Of Kerala
Case No : A.S. No. 395 of 1995

Joseph P. Joseph

APPELLANT

Vs

Markose

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Citation : (2009) 06 KL CK 0078

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : A.N. Rajan Babu, for the Appellant; P.F. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—The defendant in O.S. No. 562 of 1993 on the file of the Second Additional Sub Court, Ernakulam is the appellant in this appeal. The said suit was one for realisation of a sum of Rs. 33,320/- with interest thereon at the rate of 18% per annum from 04.02.1993 till realisation and for a mandatory injunction directing the defendant to hand over 100 equity shares of Reliance Capital and Finance Trust Ltd. ("Reliance Company" for short) to the plaintiff .

2. The case of the plaintiff can be summarised as follows:

The plaintiff namely M/s. Marcos & Co. is an authorised stock and share broker at the Cochin Stock Exchange having its office at Kacheripadi, Cochin-18. The plaintiff has been a member of the Cochin Stock Exchange for the past several years and has earned high reputation and goodwill among its dealers, share brokers and investors. Transactions in the share market are highly competitive. The business of stock and share brokers in the share market is largely based on the mutual trust between the brokers and their clients as also the efficiency, goodwill and reputation of the stock and share broker. The defendant Joseph P. Joseph sold 100 equity shares of the Reliance Capital through the plaintiff on 06.02.1992. The original share transfer deed was later returned by the buyer to the plaintiff on the ground that the Reliance Company refused to transfer the

shares for the reason that the defendant's signature in the transfer deed differed from the specimen signatures lodged with the Reliance Company. Thereupon, the plaintiff sent Ext.A4 letter dated 21.12.1992 to the defendant enclosing copies of the original share transfer deed, letter from the Reliance Company and a fresh transfer deed and requested the defendant to return the fresh transfer deed duly executed by him and attested by his Bank Manager. The plaintiff also requested the defendant to send the renounced application form for the rights issue for the aforesaid shares which he had received as the buyer had to claim the rights within the stipulated time. The defendant was requested to send the above documents without delay. The defendant did not reply to Ext.A4 letter. The plaintiff then issued Ext.A5 reminder dated 06.01.1993 informing the defendant that his account will be debited for the rights when the plaintiff's account is debited for the same by the Cochin Stock Exchange. The defendant did not reply to the said letter also. Thereupon, the plaintiff sent Ext.A6 final request dated 19.01.1993 to the defendant by registered post informing him that unless the fresh transfer deed duly executed was received by the plaintiff at least by 23.01.1993, the 100 equity shares would be auctioned by the Cochin Stock Exchange and the plaintiff's account will be debited resulting in a consequent loss to the defendant. The defendant was further informed that the plaintiff's account was already debited with Rs. 220/- towards dividend, share transfer stamps, postage stamps etc. and the defendant was requested to pay the said amount to the plaintiff. The defendant was also informed that there would be consequential loss to the defendant when the plaintiff's account is debited for the rights also by the Stock Exchange. Finally, the defendant sent Ext.A7 reply dated 22.01.1993 raising untenable contentions. The said reply was received by the plaintiff on 23.01.1993 after the shares were already auctioned by the Cochin Stock Exchange against the plaintiff at Rs. 81/- per share. The defendant has wilfully defaulted in acting upon the requests made by the plaintiff resulting in financial loss of Rs. 8,100/- to the plaintiff towards the amount debited to the plaintiff's account. Consequent on the auctioning of the shares by the Cochin Stock Exchange, the plaintiff had also incurred an additional loss of Rs. 220/- towards the transfer stamps, postage stamps etc. The defendant had fraudulently and dishonestly received the dividends upon those shares even after the sale. Despite the repeated demands, the defendant wilfully refused to execute the transfer deed resulting in considerable embarrassment and loss to the plaintiff. It had also affected the goodwill and reputation of the plaintiff in all business circles particularly in regard to the transactions with the Cochin Stock Exchange. The plaintiff caused Ext.A9 lawyer notice dated 23.02.1993 to be sent to the defendant calling upon him to pay Rs. 8,100/- towards the amount debited in the plaintiff's account and Rs. 220/- towards the share transfer stamps, postage stamps etc. and Rs. 25,000/- as damages for the loss of goodwill and reputation. The plaintiff also demanded the defendant to hand over to the plaintiff the 100 equity shares of Reliance Company in lieu of the shares which a share holder was entitled to purchase the rights issue. The defendant caused Ext.A10 reply notice raising untenable contentions. Hence the suit.

3. The suit was resisted by the defendant contending inter alia as follows:

This defendant retired from a private company service and he is a casual investor who is not familiar with the formalities of Stock Exchange. It is admitted that the plaintiff is a stock broker having office at Kochi during January/February, 1992. When this defendant entrusted his business with the plaintiff, the speed at which the services were rendered by the plaintiff arose suspicion in the mind of the defendant who had abruptly withdrawn all works given to the plaintiff on 21.02.1992. It is true that as per contract dated 06.02.1992, 200 equity shares of Reliance Company were sold by this defendant at the rate of Rs. 59.50 per share. At the time of the said contract, this defendant had handed over the share certificates along with the blank share transfer deed dated 31.01.1992 duly signed by this defendant as directed by the plaintiff at his office. This was witnessed by Linda Fernandez, an employee of the plaintiff. It was due to the mutual trust between this defendant and the plaintiff that the blank transfer deed was executed by this defendant. The reason for rejection of one of the transfer deed forms is not known to this defendant. It is unfortunate that the Reliance Company rejected the signature in one transfer deed whereas accepted the other in spite of the fact that the signatures on both were identical. This defendant had fallen ill during December, 1992 while on a holiday tour and this defendant had to return prematurely during the weekend of January, 1993 due to the sickness. It was while he was lying sick that this defendant received the plaintiff's letters. The letter dated 21.12.1992 along with a Photostat copy of share transfer deed dated 19.10.1992 was received by this defendant only later. Neither the buyer nor the plaintiff cared to inform this defendant the details such as the date, the time limit for re-lodging the documents etc. On receipt of Ext.A6 letter dated 19.01.1993 from the plaintiff, this defendant replied offering a fresh transfer deed in the place of the earlier one on the plaintiff agreeing to return the original transfer deed on 23.01.1993. This defendant renewed his offer over telephone. But the plaintiffs refused to part with the original signed transfer deed executed by this defendant. When nothing was heard of from the plaintiff, this defendant sent another registered letter to the plaintiff requesting the latter to send back the original transfer deed. Thereafter, what this defendant received was Ext.A9 lawyer notice. On receipt of the said lawyer notice, this defendant took the attested transfer deed to the plaintiff's counsel. When the plaintiff was contacted over the phone, the plaintiff did not stick to his earlier stand. All situations happened due to the wilful concealment of vital information by the plaintiff. The plaintiff did not inform this defendant about the time limit within which the transfer deed had to be forwarded. There has been no wilful and deliberate refusal on the part of this defendant in renouncing the shares since no application in that behalf had been received from the Reliance Company. This defendant does not admit that the plaintiff has a goodwill and reputation. This defendant is not liable for the financial losses or damages claimed by the plaintiff by retaining the share certificates. There is no basis for the claim of Rs. 8,100/- nor Rs. 220/- nor the sum of Rs. 25,000/- claimed as damages. This defendant

has no liability to hand over 100 equity shares as this defendant had not received any right offers. This suit only to be dismissed with costs.

4. The learned Subordinate Judge framed three issues for trial. On the side of the plaintiff, its proprietor was examined as PW1 and Exts.A1 to A14 were got marked. On the side of the defendant, he examined himself as DW1 and got marked Exts. B1 to B4.

5. The learned Subordinate Judge after trial, as per judgment and decree dated 23.08.1994 decreed the suit in part allowing the plaintiff to recover Rs. 8,100/- debited to the plaintiff's account as a result of auctioning the shares in question by the Cochin Stock Exchange in addition to Rs. 200/- debited on account of dividend and share transfer stamps and interest thereon from 23.02.1993, that is, the date of issue of Ext.A9 notice which works out to Rs. 1,466/-. As against the claim of Rs. 25,000/- as damages, the court below awarded Rs. 5000/- only. Thus a total amount of Rs. 14,766/- with 12% future interest from the date of suit till realisation and proportionate costs was decreed in favour of the plaintiff. Hence this appeal by the defendant.

6. I heard the learned Counsel appearing for the appellant as well as the learned Counsel appearing for the respondent.

7. Adv. Shri. Rajan Babu, the learned Counsel appearing for the appellant/defendant made the following submissions before me in support of the appeal:

If any loss had resulted to the plaintiff on account of the delay in delivering fresh transfer deed by the defendant, the plaintiff was not entitled to get any damages since it is an admitted fact that the plaintiff did not send the returned original transfer deed to the defendant. As per Clause 166 of the Bye-laws and Regulations of the Cochin Stock Exchange, it was mandatory on the part of the plaintiff to tender the returned original transfer deed to the defendant for getting a fresh signed transfer deed. As the plaintiff did not return the original transfer deed, there was no obligation on the part of the defendant to issue a fresh transfer deed. The plaintiff was therefore not entitled to get a fresh signed transfer deed for the alleged loss accrued to the plaintiff by reason thereof. It was at the risk and peril of the plaintiff himself. The defendant was not obliged to issue a fresh transfer deed without having returned the original transfer deed duly forwarded to him. The plaintiff was not entitled to have two signed transfer deeds simultaneously. The return of the original transfer deed by the Reliance Company and the reasons for such return were to be conveyed to the defendant before requesting him to issue a fresh signed transfer deed. During December, 1992, the defendant had a holiday tour in the course of which he took ill while on journey and he could return home only in the weekend of January, 1993. The defendant had not received Ext.A4 letter dated 21.11.1992. He had received only Ext.A5 letter dated 06.01.1993. The said letter did not contain sufficient information. It was only when the defendant traced out Ext. A4 letter dated 21.12.1992 in his residence that he came to know of the complete facts on

21.01.1993. The defendant received Ext.A6 letter dated 19.01.1993 only on 21.01.1993. Thus, prior to 21.01.1993, the defendant was not having sufficient knowledge regarding the details of the refusal by the Reliance Company to register the shares and the reasons for the same. The defendant was also not informed that 23.03.1993 was the last date for sending fresh transfer deed. As per bye-law 166 of the Bye-laws of the Cochin Stock Exchange, it was mandatory for the broker (plaintiff) to return the original transfer deed to the seller before demanding fresh transfer deed. Since the plaintiff failed to return the original signed transfer deed, the plaintiff is precluded from claiming any amounts including damages. The court below was wrong in applying bye-law 222 which is applicable only in cases where the contract is not concluded. The seller was not bound to present all the documents at Kochi. When the notice by the defendant was not accompanied by the original transfer deed, the defendant was not bound to transfer the documents before the plaintiff. As long as the cause of action was not due to the fault of the defendant, the defendant had no duty to indemnify the plaintiff with regard to the value of the auctioned shares. The court below was wrong in awarding a sum of Rs. 5,000/- as damages. Neither the goodwill nor the reputation of the plaintiff was affected by any action of the defendant. Without adducing any oral or documentary evidence to show that the plaintiff had incurred bad reputation, no amount could be claimed as damages. For his goodwill also, the plaintiff was not entitled to any damages.

8. I am afraid that I cannot agree with the above submissions. The plaintiff namely M/s. Marcos & Co. is a stock and share broker mainly transacting business with the Cochin Stock Exchange. There is no dispute that out of the 200 equity shares of the Reliance Company entrusted by the defendant/appellant with the plaintiff for sale, transfer of 100 shares could not be effected by the plaintiff since the Reliance Company returned those shares on the ground of bad delivery due to the difference in the signatures of the transferor/defendant contained in the original transfer deed. Thereupon, the plaintiff issued Ext.A4 letter dated 21.12.1992 to the defendant informing him about the fact that the signature of the defendant with regard to the said 100 shares was differing from the specimen signatures of the defendant lodged with the Reliance Company and requested the defendant to sign the enclosed fresh transfer deed and return the same to the plaintiff after attesting the same by the defendant's Manager. The defendant was further informed that the buyer company had claimed the rights over the shares and therefore requested the defendant to renounce those rights. There was no response to Ext.A4 letter from the defendant who was taking an intransigent and arrogant attitude. Thereupon, the plaintiff sent Ext.A5 registered letter dated 06.01.1993 to which also there was no response from the side of the defendant. Subsequently, Ext.A6 registered letter dated 19.01.1993 was issued by the plaintiff informing the defendant that unless the plaintiff gets the new transfer deed signed by the defendant latest by 23.01.1993, the sold position of the 100 shares of Reliance Company would be auctioned by the Cochin Stock Exchange and the plaintiff's account would be debited for the sale

proceeds which may result in loss to the defendant. The plaintiff also informed the defendant that the plaintiff's account was already debited with Rs. 220/- towards the dividend, share transfer stamps and postage charges. The defendant turned Nelson's eye towards the repeated requests. He did not send the fresh transfer document duly signed and attested. Thereafter, the Cochin Stock Exchange auctioned the 100 shares of Reliance Company for Rs. 81/- per share. A sum of Rs. 8,100/- was debited to the plaintiff's account. It was only as per Ext.A7 letter dated 22.01.1993 that the appellant, for the first time, responded to the repeated requests made by the plaintiff and called for the original signed transfer deed which was defective. As per bye-law 158 of the Bye-laws and Regulations of the Cochin Stock Exchange Ltd., it is for the selling member responsible for the defective documents to rectify the defects or in the alternative, deliver to the buyer regular, genuine and valid documents in the place of defective documents within 15 days of intimation regarding the objection or defects in the documents. Thus, it was for the defendant, the seller who was bound to rectify the defect. Under bye-law 222(b), it was for the defendant to come to the office of the plaintiff and surrender the defective documents. Without responding to Exts.A4 and A5 letters, it was not open to the appellants to press into service bye-law 166 to contend that he was not bound to sign a fresh transfer deed without getting back the original defective transfer deed. His conduct of not responding to Exts.A4 and A5 letters and then calling for the defective transfer deed as an afterthought, cannot be justified at all. If he was not conversant with the procedure of transfer of shares, nothing prevented him from saying so in response to Exts.A4 and A5 letters. But, he kept quiet and was taking umbrage under the pretext of the plaintiff not forwarding the defective original transfer deed which was not necessary for further action on the part of the appellant to sign a fresh transfer deed. By the defendant not responding to Exts.A4 and A5 letters from the plaintiff and by not issuing a fresh transfer deed in time, the Cochin Stock Exchange was constrained to auction the 100 shares at the rate of Rs. 81/- per share and to debit the plaintiff's account for Rs. 8,100/-. The plaintiff was justified in claiming the said amount from the defendant.

9. As for the claim of the plaintiff for damages due to loss of reputation and goodwill, the court below has awarded a sum of Rs. 5000/- as against the plaintiff's claim of Rs. 25,000/-. The discussion in this behalf is found in paragraph 14 of the judgment of the trial court. There is no dispute that the plaintiff is a reputed stock and share broker. When a transaction by way of sale of shares is put through the plaintiff and a bad delivery takes place due to the attitude of the seller (the defendant/appellant), it is quite understandable that there is bound to be loss of confidence in the customers and clients of the plaintiffs. If so, the award of Rs. 5000/- by way of damages by the court below is perfectly justified.

The result of the foregoing discussion is that this appeal is devoid of any merit and the same is accordingly dismissed with costs.

Dated this the 9th day of June, 2009.