
(1999) 09 AP CK 0118
In the Andhra Pradesh High Court
Case No : Appeal No. 2272 of 1984

M.M. Hussain and others

APPELLANT

Vs

Laminated Package (P) Ltd., Madras and others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Companies Act, 1956 — Section 125, 318
Constitution of India, 1950 — Article 31
Contract Act, 1872 — Section 2
Specific Relief Act, 1963 — Section 14

Citation : (1999) 6 ALD 248 : (1999) 6 ALT 529

Hon'ble Judges : I. Venkatanarayana, J

Bench : Single Bench

Advocate : Mr. C.V. Rajeeva Reddy, for the Appellant; M/s. P. Ramachandra Reddy, P.V. Sanjaya Kumar, Mr. B. Damodar Reddy, Mr. P. Laxma Reddy and Mr. A. Sambrajam Advs., for the Respondent

Judgement

1. The plaintiffs are the appellants. OS No.188 of 1978 on the file of the Principal Subordinate Judge, Visakhapatnam has been filed by the plaintiffs for a declaration that the plaintiffs are entitled to a sum of Rs.5,000/- per month under an agreement with a charge on the 1st defendant-company and personal liability of the Directors of the 1st defendant-company and to direct the defendants to pay the 1st plaintiff a sum of Rs. 14,000/- with a charge on the 1st defendant-company and also to direct the defendants to pay Rs.3,500/- to the 1st plaintiff with a charge on the 1st defendant-company and to direct the defendants to pay a sum of Rs.1,500/- to the 2nd plaintiff every month with a charge on the 1st defendant-company and make the Directors personally liable.
2. For the sake of convenience the parties to this appeal will be referred to in accordance with their ranking in the suit.
3. The averments in the plaint, in brief, are as follows:--The 1st plaintiff was running "Kamal Steel Industries". In 1967 there was a proposal to start

Coromandel Fertilisers Company at Visakhapatnam and the 1st plaintiff conceived the idea of manufacturing laminated jute bags as an ancillary business to supply to the Coromandel Fertilisers Company. In pursuance of his idea, the 1st plaintiff applied to the National Small Scale Industries Corporation, New Delhi, through the Industries Department, Hyderabad for import of machinery from West Germany. After spending a lot of amount for the formalities, he finally obtained the import license on 14-2-1968. When he wanted to instal the machinery and run the business, he felt short of funds and hence the 1st plaintiff wanted to approach some financiers to promote a Private Limited Company and hence he entered into a preliminary agreement with M/s. General Credit Corporation, Calcutta and at the juncture the 2nd defendant, who happened to be the friend of the 1st plaintiff, met the 1st plaintiff and talked about business and hence the preliminary agreement with General Credit Corporation was cancelled and an agreement was entered into between the 2nd defendant and the 1st plaintiff. They agreed to incorporate the conditions of the agreement in the memorandum and articles of association of the Private Limited Company. Under this agreement it was agreed that 25% of the subscribed capital of Rs.3 lakhs should be given as fully paid up shares to the 1st plaintiff and the 1st plaintiff shall be a permanent Director and he shall also receive a sums of Rs.1,500/- per month for the services already rendered by him. After the agreement the Private Limited Company with the name of the 1st defendant was promoted by the 1st plaintiff and incorporated under the Companies Act. The 2nd defendant became the Managing Director and defendants 3 to 5 were the Directors and defendants 2 to 5 were paying Rs.1,500/- per month to the 1st plaintiff till 1974 and the 1st plaintiff was acting as an occupier-cum-Resident Director of the 1st defendant-company till 1974. Subsequently the Directors were gradually neglecting the 1st plaintiff and were not keeping him informed about the affairs of the company and they were not even showing the balance sheet and other details. They "entertained an evil design and the 2nd defendant wrote a letter on behalf of the 1st defendant on 12-4-1969 to the 1st plaintiff stating that the interest of the 1st plaintiff is only Rs.86,972-00 but not any shareholdings in the company and that the abovesaid amount represents the value of the money deposited for purchasing the machinery towards 10% of its value and that the remaining 15% of its value was given by bank security. The 1st plaintiff on inquiry from the Registrar of Companies learnt that all the shareholders are family members of the 2nd defendant and that no shareholdings were allotted to the 1st plaintiff and hence the 1st plaintiff was constrained to raise a dispute with the 2nd defendant and others. After some discussion between the parties on a number of occasions, both sides felt that it is proper for them to decide the matter amicably and that as per desire they entered into an agreement dated 6-11-1974, (Ex.A33) signed by the 2nd defendant on behalf of the 1st defendant. As per the said agreement the 1st plaintiff shall be paid Rs.3,500/- per month for his life and the 2nd plaintiff shall be paid Rs. 1,500/- per month for her life and after their life similar amounts shall be paid to two of their sons for their life and there shall be a charge for

those amounts on the assets of the 1st defendant and also the Directors shall be personally liable for the payment of those amounts. Subsequently defendants 2 to 5 sold their shares to defendants 6 to 10 and they have declined to pay the amount as per Ex.A33 and payment of the amounts was stopped from March, 1978. Hence the plaintiffs are constrained to file the present suit.

4. The 1st defendant resisted the suit. It is his contention that the plaintiffs never worked as Liaison Officers of the 1st defendant-company for which the remuneration of Rs.3500/- and Rs. 1500/-to plaintiffs I and 2 respectively were agreed to be paid. The 1st defendant has no knowledge of the agreement dated 6-11-1974 and the 1st defendant is not a party to the said agreement and hence the agreement is not enforceable under law and is not binding on the 1st defendant. It is also further contended that the agreement has not been registered with the Registrar of Companies and hence it is unenforceable.

5. Defendants 6 to 10 filed a separate written statement similar to that of the 1st defendant. Defendants 2 to 5 filed a memo adopting the written statement filed by the 1st defendant and defendants 6 to 10.

6. An additional written statement was filed by the 5th defendant, which was adopted by defendants 2 to 4. In substance the contentions of the defendants are that the agreement Ex.A33 is not supported by any consideration and cannot be enforced in a Court of law and the Companies Act does not provide for payment of money for giving up directorship.

7. Based on the above pleadings, the trial Court framed appropriate issues and mainly addressed itself as to whether the suit agreement dated 6-11-1974 is binding on the defendants and whether the plaintiffs are entitled to claim the amounts with a charge on it and personally from the Directors of the 1st defendant. The trial Court, based on oral and documentary evidence, dismissed the suit. Hence the present appeal.

8. Sri K, Subrahmanya Reddy, the learned senior advocate, strived hard to bring home the contention that the agreement dated 6-11-1974 (Ex.A33) is valid and supported by consideration as is evident from Exs.A8, A18, A23, A24 and A32. It is his contention that the shareholders and Directors of the company agreed under Ex.A32 to enter into an agreement Ex.A33 and as such it cannot be questioned as not being supported by consideration. He placed strong reliance on Ex.A6 under which the plaintiffs are entitled to 25% share out of the paid up capital of Rs.3 lakhs, and a sum of Rs.1,500/- per month as remuneration for the services as founder and director and profits on his 25% shareholding in the company. He placed strong reliance on the agreement dated 6-11-1974 (Ex.A33) and submitted that the valuable rights accrued to the plaintiffs were bona fide settled under Ex.A33. The rights given up under the settlement should be considered as "consideration" and forbearance to sue even for a short time may be proper consideration. He assailed the finding of the trial Court on the ground that the trial Court having held that Ex.A33 is a genuine document and that it

cannot be questioned by the defendants, grossly erred in dismissing the suit.

9. Sri P. V. Sanjay Kumar, the learned Counsel for the respondents, submitted that the suit seeking for enforcement of contract of personal service is hit by Section 14 of the Specific Relief Act and hence the suit is not maintainable. He further contended that Ex.A33 has not been registered with the Registrar of Companies as contemplated u/s 318 of the Companies Act and hence unenforceable. He also drew my attention that the 1st defendant-company is paying the plaintiffs till March 1978 and it is his contention that the plaintiffs did not invest any money in the company and hence Ex.A33 is without any consideration.

10. Now I shall address myself to the question as to what constitutes "consideration" and whether Ex.A33 was supported by consideration. The 1st plaintiff was doing business at Visakhapatnam in industrial estate in the name of "Kamal Steel Industries" during 1967. The plaintiffs entertained the idea of manufacturing laminated jute bags for supplying them to M/s. Coromandel Fertilizers. It is an admitted fact that the plaintiffs corresponded with the relevant authorities and finally obtained import license for importing laminated jute bags. It is not in dispute that the spade work for importing the machinery for manufacturing laminated jute bags was done by the 1st plaintiff as is evident from Exs.A1 to A4, A9, A10, A11, A13 to A17. Admittedly the 1st plaintiff and the second defendant have agreed to join together and run the 1st defendant-company. Ex.A12 is the memorandum of articles of association and the 1st plaintiff has been shown as permanent Director for the services already rendered by him. Strangely no shares were allotted to him by the 1st defendant. As per Article 31 (a) and (b) of the Articles of Association makes it clear that the 1st plaintiff is the permanent Director and he shall not be liable for retirement. The 1st plaintiff has been kept as a permanent Director since he is entitled to 25% of subscribed capital of Rs.3 lakhs as fully paid up shares. The 1st defendant-company for some reason or the other did not allot shares and the 1st plaintiff was not aware of it. The 1st plaintiff is also entitled for a sum of Rs.1500/- every month for the services already rendered by him. This amount was being paid till March 1974. Later disputes arose between the parties and the 1st plaintiff on inquiry learnt that no share was allotted to him as agreed under Ex.A7. Then there was some correspondence between the parties in which defendants 2 to 5 made the 1st plaintiff to understand that he did not invest any money. In view of the attitude of defendants 2 to 5 the 1st plaintiff wanted to take legal remedies. At the intervention of the well wishers and elders a compromise was arrived at between the parties. In view of the compromise another agreement Ex.A33 dated 6-11-1974, was executed. Under this document the 1st plaintiff relinquished all his rights in the 1st defendant-company in favour of defendants 2 to 5. He also resigned his post as permanent Director. As a consideration of this, the company agreed to give Rs.3,500/- per month to the 1st plaintiff and Rs.1,500/- to the 2nd plaintiff on the condition that they shall act as Liaison Officers. It would appear that the amounts were paid for some time till 1978 and

later the shareholding of defendants 2 to 5 and others were sold to defendants 6 to 10. Thereafter no amounts were paid to the plaintiffs as per Ex.A33. Then there was exchange of notices between the parties and the plaintiffs were constrained to file OS No.188 of 1978 for giving effect to the terms of the agreement.

11. Now it has to be examined what is the nature and scope of "consideration" as contemplated under the Indian Contract Act. Cheshire, Fifoot and Furmston "s Law of Contract Act (Eleventh Edition) Cheshire, Fifoot and Furmston's Law of Contract (Eleventh Edition) at page 7, a leading authority on Law of Contract, dealt with the "doctrine of consideration" as stated hereunder:

"The Doctrine of Consideration :--The other principal achievement of the sixteenth and early seventeenth centuries was the evolution of a body of doctrine to define the scope of the newly recognised promissory liability. Where assumpsit was merely taking over a long established liability, previously remedied by debt sur contract -- such as liability to pay the price of goods sold --new doctrine was not urgently required; where the innovation in the form of recognition of new contractual liabilities was involved it was. The answer given to the problems posed was the doctrine of consideration, which is found in assumpsit cases around the mid-sixteenth century. A "consideration" meant a motivating reason, and the essence of the doctrine was the idea that the actionability of a parol promise should depend upon the examination of the reason why the promise was made. The reason for the promise became the reason why it should be enforced, or not enforced. In contemporary thought a promise was a declaration of will, and the effect of the doctrine was to deprive a bare declaration of will of legal effect. Only a declaration of will supported by a good reason or motive bound the declarer to performance.

12. Hence the consideration need not be by way of investment in monetary terms but it can be in other ways as long as it is not opposed to public policy as defined under the Indian Contract Act. In fact consideration is the material cause of any contract without which it will not be generally effectual and binding. It may take the form of money payment, delivery of goods, a promise of money payment. The definition of "consideration" as given in Section 2(d) of the Indian Contract Act shows that "consideration" means an act, abstinence or promise made by the promisee or some other person at the desire of the promisor. Even surrender of a disputed title is also a good consideration for a contract. In fact the term "consideration" as defined in the Indian Contract Act is wider in its signification than the requirements of English law.

13. Anson, a leading author on the Law of Contract Anson "s Law of Contract, 24th Edition at Page 88, dealing with the concept of "consideration" relied on the definition given by Lush, J in the case of Currie v. Misa, 2 QB 851, which is as follows:

"A valuable consideration, in the sense of the law, may consist either in some

right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other."

14. In *Km. Sonia Bhatia Vs. State of U.P. and Others*, , the Supreme Court, while dealing with "consideration" as defined in Section 2(d) of the Contract Act (Act 9 of 1872), has held as follows:

"Consideration" means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. Similarly, when the word "consideration" is qualified by the word "adequate", it makes "consideration" stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case."

15. Hence consideration need not necessarily be in monetary terms. On this aspect the trial Court appears to have misdirected the inquiry on the issue of consideration relating to Ex.A33.

16. From the aforementioned discussion, I am of the opinion that "consideration" need not be by way of investment of money. In the present case the 1st plaintiff, who was instrumental in starting the industry in the industrial estate at Visakhapatnam, has surrendered all his rights and good will in favour of the 1st defendant and that itself constitutes the "consideration". It is also necessary to look into Ex.A6 entered into between the 1st plaintiff on the one hand and defendants 1 and 2 on the other. Under clause (6) the Board of Directors of the 1st defendant-company approved the agreement (Ex.A6) and authorised the Directors to enter into the agreement. Under clause (7) the Directors of the 1st defendant-company in their personal capacity jointly and severally guaranteed the payment by the company of a sum of Rs.5000/- per month and also confirmed the payment in the event of the company neglecting or unable to pay the said amount for any reason whatsoever. It is obvious that the 1st defendant-company has approved the payment and the Directors gave personal guarantee for such payment. On the face of such clear terms, it is not open to the defendants to resist the claim of the plaintiffs on the ground that the subsequent agreement Ex.A33 is devoid of consideration. I find that there is a valid consideration for Ex.A33 and it is binding on the defendants.

17. Sri P. K Sanjay Kumar resisted the claim of the plaintiffs on the ground that what is claimed is a contract of personal service and hence it is hit by Section 14 of the Specific Relief Act. According to him, it is a contract that cannot be enforced and the plaintiff can only sue for compensation. He relied on the decision of the Supreme Court reported in *Nandganj Sihori Sugar Co. Ltd., Rae Bareli and another Vs. Badri Nath Dixit and others*, , wherein it has been held that the contract of employment cannot be enforced. But in the present case the plaintiffs are not enforcing contract of employment but they are seeking a declaration that they are entitled to the amounts as agreed to by the defendants under Ex.A33. It is also contended that defendants 6 to 10 become the Directors of the 1st Defendants Company from 1978 and hence they stopped paying the

remuneration to the plaintiffs as contemplated under Ex.A33. It is his contention that defendants 6 to 10 have dispensed with the services of the plaintiffs. It is not open to defendants 6 to 10 to dispense with the payment to the plaintiffs, which they are entitled under Ex.A33. When defendants 6 to 10 took over the company they have also taken the rights and liabilities of the company. The trial Court approached the entire issue on a wrong perspective that the plaintiffs are seeking to enforce the contract of personal services. The inquiry on that aspect is totally unwarranted. The plaintiffs' rights flow out of Ex.A6 which was later crystallised under Ex.A33 by way of compromise. As discussed earlier there is a valid consideration and it is binding on the defendants. Hence it is incorrect to state that what is sought to be enforced is a contract of personal service. Mere mention that they shall render liaison service does not become a contract of personal service. It is also not the case of the defendants that they have demanded liaison services from the plaintiffs and it was refused. In any event, Ex.A33 cannot be termed as a contract for enforcement of services. The evidence of PW3 Mr. Justice V.V. Raghavan, former Judge of the High Court and a senior advocate of the Supreme Court, shows that in the interests of both the parties compromise was evolved and he was responsible for bringing out Ex.A33. His evidence clearly shows the circumstances under which Ex.A33 came into existence after both the parties have agreed and Ex.A32 is the document, which authorises the 1st defendant-company to enter into such agreement. DW2 another senior advocate of Visakhapatnam Bar has also stated that the disputes were amicably settled. The argument that defendants 6 to 10 became the Directors of the 1st defendant-company from 1978 and hence payments were stopped is devoid of any substance. As stated earlier, when defendants 6 to 10 took over the assets and liabilities of the 1st defendant-company they are also bound by Exs.A6 and A3 3.

18. The other contention raised on behalf of the defendants is that Ex.A33 is liable to be registered u/s 125 of the Companies Act for the purpose of creating a charge over the company. A reading of this section makes it clear that such registration is necessary only for the purpose of proceeding against the Official Liquidator. Further, the Supreme Court in a case reported in *M. L. Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others*, , dealing with the question of charge, has held that a charge may be made by the act of the parties or by operation of law and that no restriction is put on the manner in which a charge can be made. Hence, I find that the argument that it requires registration u/s 125 of the Companies Act is devoid of merits. The Supreme Court in a case reported in *A. Lakshmanaswami Mudaliar v. Life Insurance Corporation*, (1963) 33 Company Cases 420, dealing with the powers to carry out acts in an incidental or conducive to main object, has observed as follows:

"A company is competent to carry out its objects specified in the memorandum of association and cannot travel beyond the objects, where a company does an act, which is beyond the objects mentioned in the memorandum of association and therefore ultra vires, no legal relationship or effect ensues therefrom. Such

an act is absolutely void and cannot be ratified even if all the shareholders agree. (Birkbeck Permanent Benefit Building Society in Re,(1912)2 Ch. 183, followed).

The power to carry out an object undoubtedly includes the power to carry out what is incidental or conducive to the attainment of that object, for such extension merely permits something to be done which is connected with the objects to be attained, as being naturally conducive thereto.

Acts incidental or naturally conducive to the main object are those which have a reasonably proximate connection with the object, and some indirect or remote benefit which the company may obtain by doing an act not otherwise within the object clause will not be permitted by this extension. (Tomkinson v. Soul Eastern Railway, (1887) 35 Ch.D. 675, followed).

The memorandum of association must, like any other document, be construed according to accepted principles applicable to the interpretation of all legal documents, and no rigid canon of construction is to be applied to such a document. It must be read fairly and its import derived from a reasonable interpretation of the language, which it employs. (Egyptian Salt and Soda Co. v. Port said Salt Association, (1931) Ac 677, followed)."

19. Thus it is clear that Ex.A33 is a valid document and valuable rights flow out of it in favour of the plaintiffs and consequently the plaintiffs are entitled for the declaration as prayed for.

20. For the aforementioned reasons, I set aside the judgment and decree of the trial Court and decree the suit of the plaintiffs with costs as prayed for. The appeal is accordingly allowed with costs throughout.