(1995) 09 DEL CK 0023

In the Delhi High Court

Case No : I.A. No. 9317 of 1995 in Suit No. 2249 of 1995

Ram Nanda and Co. APPELLANT

Vs

Delhi Stock Exchange Association Ltd. and others RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Citation : (1996) 86 CompCas 283

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Prag P. Tripathi, for the Appellant; J.R. Midha and Ms. Ritu Bhalla, for the Respondent

Judgement

Jaspal Singh, J.—Ram Nanda and Company claims itself to be a partnership firm registered under the Indian Partnership Act. It is plaintiff No. 1. plaintiff Nos. 2 and 3 are allegedly its partners. They have filed this suit against the Delhi Stock Exchange Association Ltd. and others for a declaration that the letter issued by defendant No. 1 on September 21, 1995, through the Senior Manager, Sandeep Aggarwal (defendant No. 2), is illegal, null, void and vitiated by malice. They have also prayed for a decree of permanent injunction restraining defendant No. 1 from taking any steps pursuant to the said letter. Along with the suit they have moved an application under Order 39, rules 1 and 2 of the Code of Civil Procedure, 1908, for an ad interim injunction restraining defendant No. 1 from taking any action pursuant to the letter referred to above till the disposal of the suit. It is this application which has led to his order.

2. Summons in the suit and notice of the application had been issued to the defendants for September 20, 1995. On that day, appearance was put in on behalf of defendant No. 4. The other defendants were not present despite the fact that the plaintiffs had reported service. Today learned counsel for defendants Nos. 1, 2, 3 and 5 submits that service was actually effected only yesterday at 11 a.m. Anyhow, since appearance has been put is on behalf of the defendants, I need not go into the question, not at least at this stage, as to when the service

was actually effected.

3. Before I proceed further, I may also mention that learned counsel for defendants Nos. 1, 2, 3, and 5 has prayed for adjournment on the ground that she had not been in a position to get instructions. However, learned counsel for defendant No. 4 has addressed arguments.

4. It is not in dispute that the plaintiff and defendant No. 4 happen to be members of defendant No. 1. Learned counsel for defendant No. 4 admits and rightly so that in view of article 127 of the memorandum and articles of association of defendant No. 1, all claims, complaints, disputes and differences between members arising out of or in relation to any bargains, dealings, transactions or contracts made subject to the rules, bye-laws and regulations of defendant No. 1 or with reference to anything incidental thereto or anything to be done in pursuance thereof and any question or dispute whether such bargains, dealings, transactions or contracts have been entered into or not shall be subject to arbitration. The plaintiff firm asserts that no amount is due from it to defendant No. 4 while defendant No. 4 has been constantly making complaints to defendant No. 1 with regard to its claim as against the plaintiff firm. It appears that upon those complaints a special audit was conducted by defendant No. 1 and consequent upon that special audit, the letter of September 21, 1995, was issued. It is this letter which is at the centre stage of this dispute. The relevant portion of this letter runs as under :

"You have also not shown these transactions in the subsequent periods and have not reported this to the exchange contrary to the exchange bye-laws and regulations. The inspection reveals that a sum of Rs. 31,45,199 as claimed by Jain and Co. is due and payable by you to them. I accordance with the procedure of the exchange based on the inspection report and your own books of account, you are called upon to make payment of the sum of Rs. 31,45,199 to Jain and Co. failing which the usual procedures and actions as are provided fir in the Bye-laws and Regulations will be negotiated against you. The payment should be made within 7 days from the date of this letter."

5. It is precisely the threat contained in the letter which has led the plaintiff to institute this suit. I am informed that there is a threat of suspension too. It is contended that this threat is unjustified as the dispute regarding the claim ought to have been referred to arbitration in terms of article 127 which already stands reproduced by me above.

6. Suspension of a member can be ordered under article 99E. Let us have a look at that article too. It runs as under :

"99E. Subject to the control of the board of directors, the executive director shall have the powers in matters which concern disciplining of trading and the members'' activities under the articles of association, bye-laws and regulations of the exchange, including the power to impose penalty not exceeding Rs. 500 and/ or suspension of a member or members from doing business for a period not exceeding seven days in case of violation of any articles, bye-laws and regulations of the exchange."

7. The significance of the words "which concern disciplining of trading and the members'' activity" cannot be lost sight of. How can the plaintiff''s activity be disciplined unless and until it is found as a fact that the sum claimed is actually payable ? That finding can come only after resort is had to article 127. Since the claim has not been adjudicated upon, defendant No. 1 would not, prima facie, be justified in having recourse to article 99E, on the basis of the non-admitted claim of defendant No. 4. But then, this is not the end of the matter. In the letter reproduced above action is proposed to be taken on yet another ground and it is that the plaintiff firm had not shown the transactions in the subsequent period and had also failed to report this to defendant No. 1 exchange. If the plaintiffs have really not reported about this transaction then they seem to have violated bye-law 350(xii). I feel, Therefore, that whereas, prima facie, penal action cannot be taken on the basis of the alleged claim of Rs. 31,44,199, appropriate action on the basis of alleged failure of the plaintiff to report about the transaction may be, prima facie, justified under bye-law 350(xii) read the article 99E of the articles of association.

8. The sum mum bonus would be that till further orders defendant No. 1 shall not proceed to take action under article 99E or under bye-law 350(xii) as far as the claim of Rs. 31,44,199 is concerned. As regards the alleged violation of bye-law 350(xii), I refuse, at this stage, to stay the hands of defendant No. 1. I need say no more. However, merely by way of abundant precaution, I may mention that nothing said in this order shall be read as an expression of opinion on the merits of the case.

