(2019) 05 DEL CK 0289

In the Delhi High Court

Case No : Civil Suits (COMM) No. 186 Of 2019, Miscellaneous Application No. 5196, 5199, 6840 Of 2019

Ridhima M. Doshi & Ors — APPELLANT

Vs

State Bank Of India & Ors — RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Citation : (2019) 05 DEL CK 0289

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Sethi, Chander M., Arvind Nayar, Chirag M. Shroff, Sanjana Nangia, Sudhir K. Makkar, Ekta Choudhary, Saumya Gupta, Kaanan Gupta, Abhishek Choudhary

Judgement

Rajiv Sahai Endlaw, J

1. The plaintiffs viz. (i) Ridhima M. Doshi, (ii) Pooja Bbarot, (iii) Bhavana R. Bbarot, (iv) Rikiin Bbarot, (v) Rajhoo Ambalal Bbarot, and (vi) Atlanta Ltd. have instituted this suit for declaration and permanent injunction.

2. The suit came up first before this Court on 9th April, 2019 when the counsel for the defendants viz. (a) State Bank of India (SBI), (b) Dena Bank, (c) Union Bank of India, (d) Corporation Bank, and (e) SBICAP Trustee Company Ltd., appeared on seeing the matter in the cause list.

3. The plaintiffs on that date were seeking interim relief qua sale by the defendants of the shares of the plaintiff no.6 Atlanta Ltd. Upon the counsel for the defendants not being able to give the status with respect to the shares, the hearing was adjourned to 10th April, 2019 and the statement of the counsel for the defendants that no precipitative steps shall be taken, taken on record.

4. On 10th April, 2019, the suit, on request of the defendants, was adjourned to 15th April, 2019.

5. On 15th April, 2019, the following order was passed:

"1. The counsel for the defendants has filed written statement and documents and has inter alia contended, (i) that the plaintiffs have concealed from this Court the factum of filing of a suit by plaintiff No.6 Atlanta Limited in the High Court of Bombay, plaint whereof is filed at page 1 of Part-III-B file and which inter alia included the same relief as claimed in this suit, as evident from page 28 of the plaint as well as the order in the said suit at page 59 of Part- III-B file not granting the interim relief as sought in that suit; (ii) that the claim of the plaintiffs in the present suit is that though the additional limit was sanctioned to the plaintiffs but was not released and owing whereto the plaintiffs are seeking return of the shares pledged as security; (iii) that the value of the shares is about Rs.6 crores, while Rs.101.98 crores is due from the plaintiffs; (iv) that the procedure for sale of the shares has not been commenced as yet and would require the defendants to have the shares evaluated, seek the permission of Stock Exchange Board of India (SEBI) and thereafter sell the shares in tranches; and, (v) that a proceeding under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) has been initiated against the plaintiffs at Delhi.

2. I have enquired from the senior counsel for the plaintiffs, whether the plaintiffs in the plaint in this suit have disclosed the factum of filing of the suit by plaintiff no.6 and the order therein.

3. The senior counsel for the plaintiffs while replying in the negative states that the same remained to be mentioned owing to the grave urgency in which the suit was filed.

4. Urgency, howsoever grave is not a ground for practising concealment especially when otherwise voluminous documents are filed and when no other plea though favourable to the plaintiffs, which remained to be taken, is disclosed.

5. On the ground of practising concealment alone, the interim arrangement in force is liable to be vacated and the suit dismissed.

6. On request of the senior counsel for the plaintiffs, I have enquired as to how much is the admitted amount according to the plaintiffs.

7. The senior counsel for the plaintiffs, under instructions from plaintiff No.5 Rajhoo Ambalal Bbarot, Indian Inhabitant of Mumbai present in Court states that according to the plaintiffs about Rs.15 crores is due and otherwise the dues are payable till the year 2022.

8. The plaintiff No.5 Rajhoo Ambalal Bbarot, Indian Inhabitant of Mumbai present in Court undertakes to this Court to within one month i.e. on or before 14th May, 2019 deposit in the consortium account of the defendants a sum of Rs.15 crores, without prejudice to his contentions of the deposit being required to be made with the defendant No.1 State Bank of India.

9. The said undertaking of the plaintiff No.5 is accepted and plaintiff No.5 is ordered to be bound therewith and explained the consequences of breach of undertaking given to the Court.

10. If the said amount is not deposited, besides becoming liable for breach of undertaking given to the Court, the interim arrangement shall be vacated.

11. Replication to be filed within thirty days.

12. Interim arrangement to continue.

13. At this stage, the senior counsel for the defendants states that what has been labelled as the written statement is in fact reply to IA No.5196/2019 and the written statement shall be filed within one week.

14. Advance copy of the written statement be forwarded to the counsel for the plaintiffs who may file replication, as aforesaid.

15. The senior counsel for the plaintiffs also states that the value of the shares as of today is Rs.80 crores.

16. List for further consideration on 20th May, 2019."

6. The plaintiffs filed IA No.6840/2019 for extension of time to deposit Rs.15 crores. The said application came up before the Court on 10th May, 2019, when on the ground of non-availability of the counsel for the plaintiffs, the application was also posted for today and it was ordered:

"4. Pendency of this application will not confer any benefit on the plaintiffs or on the plaintiff no.5 for default/breach of undertaking given to the Court.

5. The plaintiff no.5 to remain present in the Court on the next date of hearing."

7. The senior counsel for the plaintiffs, on enquiry states that the amount has not been deposited as yet and further time till 31st July, 2019 is sought to deposit Rs.15 crores.

8. The counsel for the defendants states that the interim order / arrangement in force be discontinued as the value of the shares of the plaintiff no.6 Atlanta Ltd. is falling. It is stated that there has been a fall in the value of the shares since 13th May, 2019 and large number of transactions in the said shares are being undertaken on the stock exchange.

9. I have enquired from the senior counsel for the plaintiffs, why the suit should not be dismissed for the reasons contained in the order dated 15th April, 2019, when the plaintiffs have not complied with the undertaking given to the Court and failed to deposit even the admitted liability and owing to which the suit was not dismissed for abusing the process of the Court by way of re-litigation, in an endeavour to realise the public monies for the defendants banks.

10. The counsel for the defendants states that though on 15th April, 2019 she

stated that a sum of Rs.101.98 crores was due and so recorded but the defendants in the written statement since filed have stated a sum of over Rs.200 crores to be due from the plaintiffs.

11. The senior counsel for the plaintiffs has drawn attention to pages no.627 to 632 of Part-IIIA file, being the Minutes of the Meeting dated 5th October, 2017 of the defendants and the plaintiffs and particularly to page no.631 thereof to contend that as per the tabulation on that page, the loan sanctioned as on that date to the plaintiffs were in the sum of Rs.282.16 crores and the total collateral security with the defendants on that date was Rs.305.11 crores. It is further contended that the shares were deposited as additional security for limits which were to stand enhanced to 344.88 crores and which were never enhanced. It is thus contended that the defendants are well covered. It is further argued that there are reasons for the plaintiffs and particularly the plaintiff no.5 Rajhoo Ambalal Bbarot being not able to comply with the undertaking. It is contended that in another execution proceedings before this Court a sum of Rs.102 crores is lying deposited but to release whereof the defendant no.1 SBI is objecting.

12. Needless to state that the counsel for the defendants has her own explanation therefor and need to go into which question is not felt.

13. The fact remains that the plaintiffs, after avoiding dismissal of the suit on 15th April, 2019 for the abuse practised in filing thereof, by giving an undertaking to pay admitted liability of Rs.15 crores, have now not complied with the undertaking also till now. As far as the reference to page 632 is concerned, the counsel for the defendants has pointed out and it is borne out from a perusal of page 631 that the tabulation referred to were submitted by the plaintiffs themselves in the meeting and do not reflect valuation of collateral security by the defendants. Thus no credence can be given thereto. A perusal of the securities of the value of Rs.305.11 crores mentioned therein also shows the same to be comprising, besides of all stocks and receivables, of immovable properties and it is not even known on what basis valuation thereof has been arrived at. Even otherwise, encashment of the said security is considerably more cumbersome than encashment of security in the form of shares which can be easily traded. It is felt that realisation of public monies due to the defendants should not be allowed to suffer by depreciation of the liquid security in the form of shares.

14. Though the senior counsel for the plaintiffs on enquiry has offered an undertaking of plaintiff no.4 Rikiin Bbarot for the fall if any from today in the value of the shares, but once the plaintiff no.5 Rajhoo Ambalal Bbarot is not found to have taken the undertaking given to the Court in any seriousness, the said undertaking also which may result only in incarceration of plaintiff no.4, will not yield the public monies and has no benefit to the public.

15. As far as the reasons given for not complying with the undertaking are concerned, it will be open to the plaintiff no.5 Rajhoo Ambalal Bbarot to address

on the same in response to the notice being issued to him today and served on him to show cause as to why he should not be punished for breach of undertaking given to the Court.

16. However, as far as the suit is concerned, there is no reason to keep the same pending when the plaintiff no.5 Rajhoo Ambalal Bbarot has not abided by the faith reposed in him by accepting his undertaking.

17. The suit is dismissed. Resultantly, the interim arrangement stands vacated.

18. List on 15th July, 2019 for plaintiff no.5 Rajhoo Ambalal Bbarot to show cause as to why he should not be punished for breach of undertaking given to the Court.

The plaintiff no.5 Rajhoo Ambalal Bbarot who is present in the Court today, to remain present on the next date as well.

