
(2011) 04 CAL CK 0080
In the Calcutta High Court
Case No : C.O. No. 2733 of 2008

Saket Khaitan

APPELLANT

Vs

J. Thomas Investment Services Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 7 Rule 10, Order 7 Rule 11

Citation : (2011) 3 CALLT 53

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : S. Ghosh and Mr. A. Bhomick, for the Appellant; A. Chatterjee, for the Respondent

Judgement

Prasenjit Mandal, J.—These two applications are disposed of by this common judgment as both the applications relate to the common question of law.

2. For convenience, I am discussing the CO. No. 2733 of 2008 first.

3. This application is at the instance of the plaintiff and is directed against the order dated May 27, 2008 passed by the learned Civil Judge (Senior Division), Ninth Court, Alipore in Money Suit No.79 of 2007 thereby disposing of the two applications; one under Order 7 Rule 11 and under Order 1 Rule 10 of the CPC filed by the defendant No.2 and the other under Order 7 Rule 10 & 11 of the CPC filed by the defendant No. 1.

4. The plaintiff/petitioner herein invested money with the defendant Nos. 1&2 to the tune of Rs. 17 lac with interest payable at the rate of 24% per annum. The defendant No. 1 cannot function independently and it is under the control and guidance of the defendant No.2. The defendant Nos.3 to 17 is the directors of the two companies. After investment, some repayment was made to the petitioner and the plaintiff was yet to get a sum of Rs. 7,11,044.10. The defendant did not repay the balance amount as per terms of the agreement between the parties

and, as such, the plaintiff instituted the suit for recovery of money to the tune of Rs.7,11,044/-, interest and other reliefs.

5. The defendants entered appearance and they are contesting the said suit. Thereafter, the above two applications were filed on behalf of the defendant Nos. 1 & 2 as stated above praying for rejection of the plaint. Alternatively, deletion of the name of the defendant Nos.2 to 17 on the ground stated in the petition. The plaintiff filed an objection against that petition.

6. Upon hearing both the sides in details, the learned Trial Judge allowed the application under Order 7 Rule 11 and Order 1 Rule 10 of the CPC of the defendant No.2 directing the deletion of the name of the defendant Nos.2 to 17 from the cause title of the instant suit. The other petition under Order 7 Rule 10 & 11 filed by the defendant No. 1 was disposed of holding that the suit is not barred by limitation. Being aggrieved, this application has been preferred.

7. Now, the point for consideration is whether the impugned order should be sustained.

8. Upon hearing both the sides and on consideration of the materials on record I am of the view that in order to dispose of the applications under Order 7 Rule 11 and Order 1 Rule 10 and another one under Order 7 Rule 10 and 11 of the CPC, the plaint in its present form along with the annexure are to be looked into. There is no scope of looking after the defense version at all. Therefore, whether the learned Trial Judge was justified in disposing of the said two applications in the manner as stated above, the prime consideration is the averments as made in the plaint. If, on perusal of the averments made in the plaint, it appears that the plaintiff was not required to add the defendant Nos.2 to 17 as parties to the suit, they maybe excluded from the plaint. On the other hand, if on perusal of the plaint, as a whole, it appears that the plaintiff has stated functions or parts played by the defendants with regard to the claim of the plaintiff and that they did so with regard to the claim of the plaintiff-in the suit, then the question of deletion of the name of the defendant Nos.2 to 17 does not arise at all. Similarly, if on perusal of the plaint, it appears that all the defendant s, are involved in the matter as alleged in the plaint, then the quest ion of all wing the application under Order 7 Rule 11 of the CPC does not arise.

9. The learned Advocate for the plaintiff has referred to the decisions of Gunendra Kumar Das Vs. Dura Steamship Ltd. and Another, and submits that unless a written statement is filed, the question whether the defendant is necessary party, cannot be decided. The plaint cannot be rejected on the ground that the defendants are maliciously impleaded, before the written statement is filed. It is the established principle that in order to consider whether the plaint should be rejected, the averments in the plaint along with annexure are the main considerations. Therefore, this decision is not of much help to the plaintiff.

10. In the instant case, the plaintiff has clearly stated in the plaint that the defendant No.2 is the holding company of the plaintiff No. 1 company and the

defendant Nos.3 to 17 are the directors of both the defendant Nos. 1 and 2. Thus, I find that the defendant Nos.3 to 17 are the directors of both the companies i.e. defendant Nos. 1 and 2 and that it is the allegation of the " plaintiff that these defendants controlled the affairs of the two companies.

11. The plaintiff has also contended that he invested money in the defendant No. 1 in 2000 to the tune of Rs.17 lac. Thereafter, the defendant No. 1 expressed to the plaintiff that his account will be settled and that defendant No.2 is the holding company of the defendant No. 1 The plaintiff has also averred that he agreed to the terms offered to him for repayment of dues on the understanding that there would be no default on the part of the defendants in making the payment of his dues.

12. In para No. 10 of the plaint, the plaintiff has asserted that there were various representations and/or meetings with the defendant Nos. 1, 2, and/ or directors, the defendants have Jailed and/or neglected and/or refused to " pay any part of the said money and that the defendants have colluded and conspired with each other to defraud the plaintiff. There are other paragraphs involving all the defendants with regard to the repayment of the money invested by the plaintiff in the company of the defendant No.1. Lastly, in paragraph No. 18, the plaintiff has prayed for a decree for realization of money against all the defendants holding an enquiry as to loss suffered by the plaintiff due to wrongful acts of the defendants etc.

13. On perusal of the plaint as well, it appears that the plaintiff has clearly stated how the defendants are involved in the matter of the investment and repayment of loan by the defendants to the plaintiff. For that reason, the findings of the learned Trial Judge and conclusion that the application under Order 7 Rule 11 and Order 1 Rule 10(2) should be allowed, is without jurisdiction. The learned Trial Judge has failed to exercise this jurisdiction properly leading to errors of law in allowing the said application. The other application relating to Order 7 Rule 10 and 11 of the CPC filed by the defendant No. 1 has been rejected and no revision has been preferred against that order. So, that portion of the order should be supported. But the earlier portion of the impugned order allowing the application under Order 7 Rule 11 and under Order 1 Rule 10 of the CPC filed by the defendant No.2 cannot be supported. The findings and conclusion on that application should be set aside. The application under Order 7 Rule 11 and under Order 1 Rule of the CPC stands dismissed.

14. The revisional application is disposed of with the above observations.

15. Considering the circumstances, there will be no order as to costs. CO. No. 2735 of 2008

16. The other revisional application has been filed by Sajjan Kumar Khaitan, the plaintiff/petitioner herein, against the defendants/opposite parties. The facts of that case are similar to that one of the application under Order 7 Rule 11 and Order 1 Rule 10 of the CPC filed by the defendant No.2. The said application

stands rejected for the selfsame reasons as discussed above. The other part of the order rejecting the application under Order 7 Rule 10 and 11 of the CPC filed by the defendant No. 1 has been rejected and no revision has been preferred against that order. So, the other part of the order sustains.

17. So, this application is also disposed of in the light of the observations made in the earlier revisional application.

18. Considering the circumstances, there will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, is supplied to the learned Advocates for the parties on their usual undertaking.