

(2018) 03 KL CK 0062

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 34553 Of 2017

**Santhosh Kannampara @APPELLANT@Hash Security And Exchange Board
Of India And Ors**

Date of Decision : 01-03-2018

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 11, 11(A)

Citation : (2018) 03 KL CK 0062

Hon'ble Judges : Shaji P. Chaly, J

Bench : Single Bench

**Advocate : Johnson Gomez, C.Unnikrishnan, S.Biju, M.Asha, K.Jaju Babu,
Karthika Maria, Vijay V. Paul**

Final Decision : Dismissed

Judgement

1. This writ petition is filed by the petitioner seeking the following reliefs:

"i. To declare that the Initial Public Offer of the 4th respondent is a violation of Securities and Exchange Board of India (Issue of Capital and Disclosure requirement) Regulation, 2009, in view of the failure of 2nd and 3rd respondent , lead merchant Managers failed to discourse the dispute raised by the petitioner with respect to Ext.P1 and P2 agreement in the offer documents for the Public Issue;

ii. To issue a writ of mandamus and any other writ order or direction compelling and commanding the 1st respondent to restrain IPO with respect to the 4th respondent, without disclosing the dispute raised by the petitioner in relation to his claims in the Ext.P1 and P2 agreement;

iii. Issue such other reliefs that this Honourable Court may deem fit; and

iv. Grant cost of the writ petition."

2. Material facts for the disposal of the writ petition are as follows:

3. Petitioner is one of the promoters of the 5th respondent company. According to the petitioner, the 5th respondent company merged with the 4th respondent

company as per Ext.P1 agreement entered into by and between the 4th and 5th respondents and the promoters of the 4th respondent company including the petitioner, and have also entered into Ext.P2 agreement. Petitioner, as per Ext.P3 appointment order, was posted in the Cochin office of the subsidiary company as Co-Founder and Director. Petitioner after resigning from the said position, has claimed amounts in accordance with the terms contained under Exts.P1 and P2 agreements, and also benefits in connection with his employment. However, his request was rejected, following which, petitioner raised a dispute in terms with Clause 16 of Ext.P1 agreement as per Ext.P6 notice dated 13.12.2016. The request for mediation as per the said notice was also not acted upon. Thereafter, petitioner has invoked the arbitration clause as contained in Clause 16 of Ext.P1.

4. The 4th respondent in the meantime, approached the 1st respondent to issue shares under an Initial Public Offer (IPO). The 2nd and 3rd respondents were the lead merchant managers. They have failed to disclose the dispute raised by the petitioner in the offer documents, consequentially, petitioner approached the 1st respondent with a request to include his claim in the offer document, which was forwarded to 2nd and 3rd respondents and the 2nd and 3rd respondents have addressed the petitioner with Ext.P10 letter. However, no steps were taken to include the petitioner's dispute regarding his claims in the offer documents. The 4th respondent is due to make the Initial Public Offer (IPO) on 31.10.2017 as can be seen from Ext.P14 news report.

5. The grievance of the petitioner is that, the 1st respondent failed to exercise its jurisdiction under Sec.11 and 11A of the Securities and Exchange Board of India Act, while the 2nd and 3rd respondents have issued the due diligence certificate without verifying the dispute raised by the petitioner as early as on 13.12.2016. With this background, petitioner seeks the reliefs specified above.

6. Respondents have filed counter affidavits disputing the allegations and claims and demands raised by the petitioner. Most of the contentions are common in nature, and therefore, I do not propose to deal with the same separately. The prime contention advanced by the respondents in the counter affidavits is in respect of the maintainability of the writ petition before this Court for want of territorial jurisdiction to try and entertain the reliefs sought for by the petitioner. It is the contention of the respondents that, admittedly all the respondents have their offices at Mumbai, i.e. outside the territorial jurisdiction of this Court.

7. In the present writ petition, petitioner seeks to raise a grievance that Initial Public Offer (IPO) of respondent No.4 allegedly fails to comply with certain provisions of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR, 2009). It is also submitted that the 4th respondent has its registered office at Mumbai. The Draft Red Herring Prospectus (DRHP) and Red Herring Prospectus (RHP) were filed with respondent No.1, SEBI, in Mumbai. The RHP was filed by ROC in Mumbai. The grievance of the petitioner appears to be that, his purported claims have not been disclosed by respondent No.4 in the DRHP and RHP. It is also submitted

that, within the terms of ICDR, 2009, respondent No.4 approved a Materiality Policy by a Board Resolution dated 25th July, 2017, by which, respondent No.4 decided to disclose litigations above a certain pecuniary value. The said Board Resolution dated 25.07.2017 was passed in Mumbai. Even otherwise, petitioner's purported claims against respondent Nos.4 and 5, appears to arise from Share Subscription and Share Purchase Agreement dated 14th July, 2014 (SSSA). It is submitted that, under the SSSA, it is expressly agreed between the parties, including petitioner, that the Courts at Mumbai, Maharashtra shall have exclusive jurisdiction over all matters arising pursuant to this agreement. It is therefore, submitted that the entire cause of action, if any, has arisen only in Mumbai and no part of cause of action has arisen within the territorial jurisdiction of this Court. Therefore, it is submitted that the writ petition is to be dismissed on that sole ground.

8. In view of the contention with respect to the territorial jurisdiction raised by all the respondents, I am of the considered opinion that, it is to be decided first. Learned counsel for the respondents are relying on Clause 15 of Ext.P1, which deals with "Governing Law". Clause 15.1 reads thus: "This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, the Laws of India, Subject to Clause 16, the courts in Mumbai, Maharashtra shall have exclusive jurisdiction over all matters arising pursuant to this Agreement". So also, Clause 20 of Ext.P2 also deals with 'Governing Law'. Clause 20.1 read thus:

"This Agreement and the relationship between the parties hereto shall be governed by, and interpreted in accordance with, the laws of India. The courts in Mumbai only shall have exclusive jurisdiction over all matters arising pursuant to this Agreement".

9. Therefore, according to learned counsel for the respondents, petitioner is bound by the agreements executed by and between the parties and the Clauses referred to above. As is discussed above, the preparation of the documents and all other steps taken by 4th and 5th respondents in respect of the IPO were taken in Mumbai. Petitioner is not having a case otherwise. The sole case projected by learned counsel for the petitioner is that, the paper publication is carried out throughout India in respect of the IPO, and therefore, the petitioner who is a resident of Cochin has a cause of action consequent to the circulation of the papers in Kerala. The rest of the contentions raised by the respondents in the counter affidavits with respect to the entire transactions that have taken place are not at all under dispute, even though a detailed reply affidavit is filed by the petitioner to the counter affidavits filed by the respective respondents.

10. Now, the sole question to be decided is, whether merely because a paper publication was carried out also in Kerala in respect of the IPO, will this Court get jurisdiction?. It is an admitted fact that, the claims raised by the petitioner under arbitration proceedings in accordance with the benefits accrued to the petitioner as per Exts.P1 and P2 is already initiated and the same is pending consideration.

However, the claims raised by the petitioner so, is not included in accordance with the Materiality Clause agreed upon by and between the parties. It is relevant to note that, whatever violations alleged by the petitioner, are in respect of non-inclusion of the petitioner's claim in accordance with the Materiality Clause agreed upon by and between respondents 4 and 5. Therefore, it is evident that, it is not the publication, but the decision taken by 4th and 5th respondents in not including the claim of the petitioner as per the terms of the Materiality Clause is that matters. It is not under dispute that the said decision was taken by the respondents at Mumbai, outside the jurisdiction of this Court. The material aspect is the decision taken by respondents 4 and 5 at Mumbai in order to avoid the claim of the petitioner from the Disclosure.

11. Moreover, the seat of arbitration agreed upon by and between the parties is at Mumbai, and the claim is raised by the petitioner at Mumbai and consequential to the claim so raised alone, the Materiality Clause comes into play. Looking at any angle, no material cause of action have arisen for lis within the jurisdiction of this Court. Paper publication carried out and circulated in the State of Kerala is only an aftermath of the decision taken, which may not have any serious bearing to the vital issue rendering cause of action.

12. Therefore, in my considered opinion, the contentions advanced by the respondents that this Court is not having territorial jurisdiction to entertain the writ petition has reasonable force, and therefore, the writ petition is not maintainable for want of territorial jurisdiction. Accordingly, the same is dismissed. However, I make it clear that, all the claims raised by the petitioner in respect of his benefits under Exts.P1 and P2 or other claims consequent to the employment as per Ext.P3 appointment order are left open. The observations contained above shall not be construed as, any expression of opinion on merits of the matter pending in arbitration, or any other rival interest by and between the parties. All the questions of fact and law raised by either side are left open to be considered by appropriate Court. The writ petition is dismissed with the aforesaid observations.