

(2012) 12 CAL CK 0049
In the Calcutta High Court
Case No : CO. No. 4187 of 2012

Securities and Exchange Board of India and Another	APPELLANT
Vs	
Satya Ranjan Baidya and Others	RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9
Securities and Exchange Board of India Act, 1992 — Section 11(2)(c), 20A

Citation : (2013) 1 CALLT 287 : (2013) 2 CHN 465 : (2013) 2 WBLR 589

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : H.K. Mitra, P.K. Dutt, Rupak Ghosh and Susanta Kr. Dutt, for the Appellant; Bidyut Banerjee, Ashoke Banerjee and Suny Nandy for the Respondent No. 1, for the Respondent

Judgement

Sanjib Banerjee, J.—Even as civil Courts should be alive to the fact that Section 9 of the Code embraces the world of civil matters except those expressly prohibited by law or excluded by necessary implication, a pedantic approach to assess a suit or the substance thereof cannot be permitted to make a mockery of the provision. Every civil Court should be aware of the judgment reported in *T. Arivandandam Vs. T.V. Satyapal and Another*, that instructs that a Court should assess a plaint on a meaningful -- not a formal -- reading thereof to ascertain the true substance of the claim. The trial judge in this case has fallen woefully short of the duty that was cast on him by law.

2. Two of the defendants in the fanciful suit complain of the mechanical application of Order VII Rule 11 by the trial Court and the rejection of the petitioners' application under that provision. The petitioners refer to Section 20A of the Securities and Exchange Board of India Act, 1992 to say that the jurisdiction of a civil Court to receive a matter covered by such provision has been expressly excluded. Section 20A of the said Act of 1992 provides that no civil Court shall have jurisdiction in respect of any matter over which the Securities and Exchange Board of India (SEBI) is empowered by, or under, such

Act to pass any order. It also mandates that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the SEBI under the said Act of 1992, but the second limb of the provision is irrelevant in the present context since the order of injunction subsisting in the suit is an Appealable order and, as such, not revisable. Section 20A of the 1992 Act in so far as it operates as a bar on the civil Court's jurisdiction to receive a suit has to be seen in the context of the wide authority of SEBI u/s 11(2)(c) of the 1992 Act, inter alia, to regulate the working of collective investment schemes.

3. The plaintiff, an employee of the first defendant, carried the suit before the City Civil Court complaining primarily of the orders dated May 11, 2012 and May 15, 2012 passed by the SEBI. Those orders were not passed against the plaintiff but were directed against the first defendant in the suit. The plaint is a model of deceit.

4. The plaintiff has spun a yarn in the self-adulatory opening paragraphs of the plaint to highlight his industry in motivating tribunal folk and like people to invest in a lucrative savings scheme for their ultimate good. The plaint avers that the plaintiff would dutifully deposit the money collected from less privileged depositors into a collective investment scheme operated by the first defendant. The first defendant employer, the plaint says, is authorised by its memorandum of association to invest in teak bonds, agro bonds and like investments. The first defendant apparently sought permission from the SEBI to continue the collective investment scheme and was granted a conditional licence. Several paragraphs of the plaint speak of all the requirements having been met by the first defendant save the key condition. The plaintiff makes out a case that his life and livelihood are at stake and if the business of the first defendant is affected by any order passed by SEBI, he would be prejudiced. It is on such reasoning that the plaintiff has assailed the orders passed by SEBI, not against the plaintiff but against the plaintiff's employer, the first defendant in the suit. The substance of the plaint, the ulterior and sinister motive thereof and the mockery that it makes of the judicial system are all there to see upon a casual reading thereof. Yet the trial Court referred to some judicial precedents of convenience and adopted an obtuse and clerical approach in holding that if some of the reliefs appeared to be barred by law and the other reliefs did not, the plaint could not be dissected for a part of it to be rejected and the other retained. It does not appear from the order impugned that there was any attempt at a meaningful reading of the plaint, far less an endeavour to ascertain what the motive of the plaintiff actually was.

5. The trial Court betrayed a singular lack of judicial sensitivity and the need to sift the grain from the chaff in failing to recognise the atrocious enterprise of a maladroitness litigant. The judgment in T. Arivandandam commands a judge to guard against limitative acrobatics and to be alive to the possibility of clever drafting creating an illusion of a cause of action when there is none. The judgment requires bogus litigation to be shot down at the earliest stage and be nipped in

the bud; and, dexterous litigants presenting a chimera of a case without there being one, needing to be seen through and appropriately dealt with.

6. So that there is no further suspense, it must immediately be said that no intelligent reader would mistake the plaint for anything but a vicarious complaint made by one on behalf of another. It is a claim made by the first defendant using an employee as its mouthpiece. The plaintiff cannot have the remotest cause of action against SEBI or the orders passed by it in exercise of its authority under the 1992 Act.

7. It is also necessary to see the nature of the first of the two orders which are assailed in the suit. In the order of May 11, 2012, the SEBI narrated the entire history of the first defendant company illegally continuing its collective investment scheme, of the first defendant company not complying with the conditions attached to the licence granted to it and of the scheme being against public interest and to the detriment of the depositors and prospective depositors. The purport of the order and the proxy complaint by the plaintiff on behalf of the first defendant company were completely lost on the trial Court.

8. The SEBI order of May 11, 2012 referred to a long-standing order of September 3, 2002 which found that the first defendant had raised money in violation of a SEBI circular of 1998 and a Delhi High Court order by which all plantation companies, including the first defendant, were directed to strictly comply with the circular. The order referred to the first defendant collecting money without obtaining a certificate of registration from SEBI and of the conduct of the first defendant being detrimental to the interest of the investors. By the said order SEBI observed that the first defendant had failed to wind up its existing schemes despite the 2002 order and despite the several failed attempts by the first defendant to have SEBI's 2002 order annulled. In the trial Court's myopic reading of the plaint, it failed to notice the public harm that it was perpetuating in allowing the first defendant to hide behind the plaintiff and obtain orders which were detrimental to the interest of public investors. The trial Court acted with material irregularity in missing the wood for the trees and failing to recognise the mischief that was set afoot by the first defendant through the agency of the plaintiff.

9. Notwithstanding the several decorative reliefs adorning the plaint to disguise the action as genuine and some of them being ostensibly directed against the first defendant, it is evident that the substance of the action is to negate the orders passed by the SEBI in public interest in discharge of its statutory duties and to arrest the corrective measures sought to be put in place by the watchdog. Apart from the fact that the orders were issued on the first defendant and not on the plaintiff -- and consequently, the plaintiff having no cause of action in respect thereof -- the suit is a blatant essay to bypass the first defendant's disability to directly challenge the SEBI orders.

10. The order impugned dated October 12, 2012 in so far as it rejects the

petitioners" application under Order VII Rule 11 of the Code is set aside and the plaint relating to Title Suit No. 790 of 2012 is rejected with all the attendant consequences.

11. The plaintiff will pay the petitioners costs assessed Rs. 10 lakh for the audacious misadventure. Urgent certified photocopies of this order, if applied for, will be made available to the parties subject to compliance with all requisite formalities.