
(2013) 05 DEL CK 0054
In the Delhi High Court
Case No : C.S. (OS) 6 of 2004

Sh. Bhartesh Kumar Jain

APPELLANT

Vs

Phoenix International Ltd. and Another

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 11, Order 2 Rule 2, Order 2 Rule 2(3), Order 7 Rule 11, Order 7 Rule 11(d)
Companies Act, 1956 — Section 84(4), 84(4)

Citation : (2013) 05 DEL CK 0054

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Manoj Sharma and Mr. Kapil Kaushik, for the Appellant; B.K. Singh, for the Respondent

Judgement

M.L. Mehta, J.—The present suit is filed by the plaintiff, claiming damages against defendant no. 1 to the tune of Rs. 1,01,77,560/- (Rupees One Crore, One Lakh, Seventy Seven Thousand, Five Hundred and Sixty Only) with interest @ 18% p.a., pendente lite, till realization of the demand, and a mandatory injunction against defendant no. 1 to issue all the bonus shares, dividends and warrants accrued on the distinctive shares and warrant certificates to the plaintiff. The plaintiff's case is that it had purchased 5100 shares of defendant no. 1 company from M/s. ESS GEE Associates (defendant no. 2). These shares were registered in the name of Shri Suren Goel, Shri J.S. Malik and Smt. Jagjeet Kaur Malik, who were the original allottees of the said shares. The plaintiff further purchased 2550 warrant certificates from defendant no. 2 firm which were registered with the defendant no. 1 company. The defendant no. 1 is a registered company engaged in the business of manufacturing and export of foot wears and defendant no. 2 is a proprietor firm which acts as a share broker. That the plaintiff, through the defendant no. 2 purchased the said shares for a consideration of Rs. 7,61,400/- (Rupees Seven Lakh Sixty One Thousand Four Hundred Only). Two sale confirmation letters dated 08.02.1995 and 14.02.1995

were issued by the original allottees in favour of defendant no. 1 on receipt of full consideration amount from it. The shares and warrant certificates continued to be registered in the name of the original allottees in the record of defendant no. 1.

2. The plaintiff contends that around January 1995, the original certificates issued for the said shares and warrant certificates got lost from his possession of before he could apply for transfer and registration of the said shares and warrant certificates in his name. The plaintiff, claiming to be the bonafide purchaser of the shares and warrant certificates submits that neither the defendants nor anyone else can have any interest, right or any benefits in them except the plaintiff. And that in order to protect its rights and interests in the said shares and warrant certificates and to prevent misuse and misappropriation by any unauthorized person, it applied to the defendant no. 1 on 19.01.1995 for cancellation of the original shares and warrant certificates and requested for issuance of duplicate shares and warrant certificates.

3. The plaintiff submits that the defendant no. 1 refused to cancel the original shares and warrant certificates and also did not issue duplicate shares and warrant certificates. The plaintiff subsequently filed a suit (Suit No 28 of 1995) wherein it was prayed that the plaintiff be declared the exclusive owner and beneficiary of the said shares and warrant certificates and that a permanent injunction be passed against defendant no. 1 restraining it from transferring or alienating the said shares and warrant certificates in the name of someone else. The suit was subsequently decreed in favour of the plaintiff vide order dated 29.07.1995. On the strength of the favorable order, the plaintiff again applied to the defendant no. 1 for issuance of duplicate shares and warrant certificates, but the plaintiff submits that the defendant no. 1 refused, asking them to produce an order/direction from the Court.

4. The plaintiff submits that it filed another suit (Suit No. 57 of 1995) before the Senior Civil Judge, Delhi for mandatory injunction and direction to be passed against defendant no. 1 ordering them to cancel the original shares and warrant certificates and to issue duplicate shares and warrant certificates. The said suit was disposed off by the Court of Senior Civil Judge on 16.02.2002, observing that the cause of action of the previous suit filed by the plaintiff i.e. Suit No. 28 of 1995 for declaration and permanent injunction, which was decreed in favour of the plaintiff was identical. The plaintiffs went in appeal against this order, which was also dismissed vide order dated 27.05.2002 with the liberty given to the plaintiff to approach the defendant no. 1 company or Registrar of Companies for issuance of duplicate shares and warrant certificates.

5. The plaintiff submits that subsequently, on approaching the defendant no. 1 for issuance of duplicate shares and warrant certificates on 24.04.2003, the defendant no. 1 issued notice which was published on 19.07.2003 to the public at large, inviting objection if any for issuance of duplicate shares and warrant certificates to the plaintiff. And that the plaintiff after the publication received a

letter from defendant no. 1 on 22.07.2003 regarding the duplicate shares and warrant certificates but with a malafide and dishonest intention did not issue the said duplicate shares and warrant certificates.

6. The plaintiff contends that it had lost the said shares and warrant certificates in January 1995 when the cost of each share was around Rs. 320/- and each warrant certificate Rs. 150 and that value was Rs. 290/- for each share and Rs. 140/- for each warrant certificate when he applied for duplicate shares and warrant certificates. He further submits that the value in March 1995 was Rs. 440/- per share and Rs. 220/- per warrant, totaling to an amount of Rs. 22,44,000/- for 5100 shares and Rs. 5,61,000/- for 2550 warrant certificates. The plaintiff also submits that the damages on account of profit and interest loss from March 1995 to July 2003 comes to Rs. 84,15,000/- (Rupees Eighty Four Lakhs Fifteen Thousand Only). Further, the plaintiff submits that the rate of the said share decreased in September 1995 to Rs. 120/- per share. At the same time, the defendant no. 1 had issued bonus shares worth Rs. 120/- per bonus share. The plaintiff submits that since the defendant no. 1 withheld the issuance of duplicate shares, the plaintiff is entitled to reasonable damages to the tune of Rs. 17,62,560/- inclusive of interest @ 24% p.a. for the period from 13.09.1995 (when the bonus share was listed at Rs. 120/-) till July 2003.

7. The plaintiff submits that the cause of action arose when he applied for duplicate shares on a number of dates i.e. 24.02.1995, 10.08.1995 and 24.04.2003. It further arose when Suit No. 57 of 1995 was dismissed and further when appeal against that order was dismissed on 27.05.2003. It arose again on 19.07.2003 and 22.07.2003 when the publication of the notice was issued by defendant no. 1 and when it decided to issue duplicate shares and warrant certificates in favour of the plaintiff.

8. The defendant no. 1 filed its written statement taking the preliminary objection that the plaint discloses no cause of action and should be rejected u/O 7 R 11 of the CPC (hereinafter referred to as "the Code"). The defendant no. 1 contends that the plaintiff has fabricated and has filed false documents. Further, it submits that the plaintiff did not approach defendant no. 1 or the Registrar of Companies in furtherance of the liberty granted to him vide order dated 27.05.2002, passed by the Appellate Court up until 24.04.2003 and that in spite of the issuance of a public notice by defendant no. 1 and intimation sent by to plaintiff for executing the necessary documents, the plaintiff never responded.

9. The defendant no. 1 further contends that the two letters dated 24.02.1995 and 10.08.1995, allegedly sent by the plaintiff requesting issuance of duplicate shares and warrant certificates were fabricated and that the defendant no. 1 did not receive any such letter from the plaintiff. The answering defendant further submits that the plaintiff delayed and neglected to comply with the liberty granted by the Appellate Court.

10. Vide Order dated 24.02.2005, defendant no. 2 was proceeded exparte. Vide

the same Order, the following issues were framed for trial:

1. Whether the present suit is liable to be dismissed under Order VII Rule 11 CPC, as the suit does not disclose cause of action?
2. Whether the claim of the plaintiff is barred by limitation?
3. Whether any request was made by the plaintiff to the defendant no. 1 for issuance of duplicate shares certificate?
4. Whether the defendant intentionally and deliberately refused/neglected to issue the duplicate shares certificate to the plaintiff in time?
5. Whether the plaintiff is entitled for the damages on account of refusal for non-issuance of duplicate shares certificate to the plaintiff?
6. Relief.

I have heard the Ld. Counsels for the parties and have perused through the records. Issue-wise findings are as under:

11. ISSUE NO. 1

No separate application has been filed by the defendant no. 1 u/O 7 R 11, but it was taken as a preliminary objection in the written statement. The Ld. Counsel for the defendant submits that the plaint is barred u/O 2 R 2(3) stating that the plaintiff had already filed Suit No. 57 of 1995 praying for mandatory injunction to be passed against the defendant no. 1 to cancel the original shares and warrant certificates and for issuance of duplicate shares and warrant certificates (mentioned in paragraph 10 of the plaint). It is the argument of the Ld. Counsel for the defendant no. 1 that the present suit was filed based on the same cause of action as the previous suit i.e. Suit No 57 of 1995, but seeks an additional relief of damages, which is barred u/O 2 R 2(3).

12. It would be pertinent at this juncture to read the relevant provisions u/O 2 R 2:

2. Suit to include the whole claim.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

This provision bars a person from approaching the Courts for different reliefs based on the same cause of action. In paragraph 22 of the plaint, the plaintiff submits that the cause of action arose when it applied for duplicate shares and warrant certificates to the defendant no. 1 company on various dates and when the defendant no. 1 refused to respond to them. In Suit No 57 of 1995, the plaintiff prayed for mandatory injunction against defendant no. 1 for issuance of duplicate shares and warrant certificates. This prayer was also based on the fact

that the defendant no. 1 did not issue duplicate shares and warrant certificates. Thus it is amply clear that the cause of action that arose in both suits is the same.

13. Applying the provisions of Order 2 Rule 2(3), it is seen that the plaintiff has already approached the Court based on the same cause of action (in Suit 57 of 1995). Keeping this aspect in mind the next question to be asked is whether the plaint can be rejected u/O 7 R 11(d) read with O 2 R 2(3). It is pertinent to address this issue judging by the fact that u/O 7 R 11, the Court is to confine itself to the plaint and should not travel to the written statement. Whereas in cases u/O 2 R 2(3), the plea of a bar under the said provision can be established only if the defendant files in evidence the pleadings of the previous suit and thereby proves to the court the identity of the causes of action in the two suits. This Court in the case of "Sh. Suresh Kakkar And Another vs. Sh. Mahender Nath Kakkar & Ors, CS (OS) 1132/2004" had occasion to examine this question of law as to whether a plaint can be rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 on the plea taken by the defendants that the present suit is barred under Order 2 Rule 2 of the said Code? The Ld. Single Judge held thus:

17. In the light of the above discussion, it is clear that before the bar under Order 2 Rule 2, CPC can be set up, the defendant has to produce the pleadings in the previous suit by way of evidence and the court is required to go into the pleadings of the previous suit and compare it with the pleadings in the present suit to arrive at a conclusion as to the identity of the causes of action. However, under Order 7 Rule 11, CPC, the court is enjoined only to look at the averments made in the plaint of the present suit and not travel to the written statement or other documents filed by the defendant. The plaint by itself must disclose that the suit is barred by law.....It is, therefore, abundantly clear that in an application under Order 7 Rule 11, CPC, the plaint cannot be rejected on the bar of Order 2 Rule 2.

(emphasis supplied)

It is clear that unless and until the plaint reveals that the suit is barred by virtue of O 2 R 2(3), the Court cannot reject the plaint u/O 7 R 11. As observed from the plaint, the cause of action that arose in both the suits was the same i.e. non-issuance of duplicate shares and warrant certificates by the defendant no. 1. Thus the bar u/O 2 R 2(3) would be applicable and the plaint ought to be rejected u/O 7 R 11.

14. The Ld. Counsel for the defendant also contends that the plaint ought to be rejected as this Court does not have the jurisdiction to try the present suit. Relying on the case of Shripal Jain vs. Torrent Pharmaceuticals Ltd., 1995 Supp (4) SCC 590 ", the Ld. Counsel for the defendant argues that the proper forum for grant of duplicate shares and warrant certificates lay with the Registrar of Companies and not the civil court. The Apex Court in the said case held that:

3. We are of the view that the Registrar of the Company was in patent error in

referring the appellant to the civil court in the facts and circumstances of the present case. He should have himself held an enquiry into the matter u/s 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and taken a decision himself in the matter.

15. The observations of the Supreme Court in the above cited case make it amply clear that cases related to issuance of duplicate shares and warrant certificates have to be dealt with by the Registrar of Companies and not the civil court. Thus, this court does not have the jurisdiction relating to issuance of shares. On this ground as well, the plaint is liable to be rejected u/O 7 R 11.

16. In any case, the appeal carried vide RCA No. 8 of 2002 by the plaintiff against the order dated 16.02.2002 of Civil Judge in his Suit no. 57 of 1995, was dismissed by the learned ADJ vide judgment dated 27.5.2002 observing that the cause of action in this suit was the same as was in Suit no. 28 of 1995 and this plaint was not maintainable. However, liberty was granted to the plaintiff to approach defendant no. 1 or the Registrar of Companies for issuance of duplicate shares and warrant certificates on the strength of decree/order as passed in Suit no. 28 of 1995. That itself indicated that the relief of issue of duplicate shares and warrant certificates was not available with the Civil Court, but the appropriate forum was a request to defendant no. 1 or the Registrar of Companies. It would be discussed subsequently that the plaintiff instead of taking any action in compliance of the said order of learned ADJ till before April 24.4.2003 chose to file the instant suit, which as per Section 84 (4) of the Companies Act was not maintainable. The relief against the defendant was also not available to the plaintiff without there being anything on record to suggest that the defendant no. 1 had defaulted or neglected in issuing duplicate shares and warrant certificates to the plaintiff.

17. From the above discussion, it comes out to be that the plaint was also liable to be rejected under Order 7 Rule 11 CPC on account of lack of jurisdiction. In fact, the suit could be dismissed outrightly on this ground. However, since the issues on merit have been framed, I deem it appropriate to advert to the remaining issues on merit as well.

18 ISSUE NOS. 3 TO 5.

These issues being interlinked are being dealt with together. The main grievance of the plaintiff is that he had requested defendant no. 1 for issue of duplicate shares and warrant certificates repeatedly, but the same were not issued by defendant no. 1 for considerable time, resulting in the plaintiff suffering huge losses. His case is that he had requested defendant no. 1 on 18.1.1995, 24.2.1995 and 10.8.1995 for issue of duplicate shares and warrant certificates, but no action was taken by defendant no. 1. And that during this period, the value of the shares and warrant certificates was very high and because of non issue of shares and warrant certificates by defendant no. 1, he could not trade the same. Further, it is his case that on 24.4.2003, when he again applied to

defendant no. 1, the latter initiated the process of issue of duplicate shares and warrant certificates by issuing a public notice and asking him to complete certain formalities, and that by that time the price of shares and warrants had considerably fallen thereby depriving him of the gains he would have made had the duplicate shares and warrant certificates been issued by defendant no. 1 to him in 1995.

19. On the other hand, the case of defendant no. 1 is that the plaintiff never made any request for issuance of duplicate shares and warrant certificates prior to 24.4.2003 and that immediately on receipt of the letter of 24.4.2003, it initiated the process by giving a public notice in the newspaper and called upon the plaintiff to complete certain formalities, which he never did. It is the defendant's case that so far as the duplicate shares are concerned, the plaintiff was required to execute necessary documents and pay incidental charges and so far as the warrant certificates are concerned, these could be converted into shares only on payment of warrants price, and none of these the plaintiff ever did.

20. The receipt of letter dated 18.1.1995 of the plaintiff is admitted by the defendant, but it is stated that vide this letter the plaintiff had only intimated about losses of shares and warrants and had requested for stopping the transfer of these shares and warrants to anyone. With regard to the letters dated 24.2.1995 and 10.8.1995, the defendant's case is that these are forged and fabricated letters, which were never received by it. Based on all these, it is stated that there was no delay on the part of defendant no. 1 to act on the letter of 24.4.2003 of the plaintiff, but it was only the plaintiff who was to be blamed for not having approached it immediately after the order of 27.5.2002 of the ADJ.

21. So far as letter of 18.1.1995 is concerned, there is no dispute. This letter was admitted by defendant no. 1 as correct in that this was only an intimation of loss of shares and warrant certificates and a request not to entertain transfer of these shares and warrant certificates. There is no request made for issue of duplicate shares and warrant certificates in the said letter.

22. The receipts of the two letters dated 24.02.1995 and 10.08.1995 are denied by defendant no. 1 and are alleged to be forged and fabricated, having been created by the plaintiff for the purposes of setting up a claim. I have meticulously compared the seal and signatures appearing on these with that appearing on the letter dated 18.01.1995 (Ex PW1/4). It would leave no manner of doubt that an attempt has been made to copy these signatures on these two letters. There are various distinctions in the formation and writing pattern of these signatures with the admitted signatures. I have no reason of doubt to record that the signatures and seal appearing on the letters dated 24.2.1995 and 10.8.1995 are forged and fabricated.

23. I have another reason to substantiate my findings as recorded above. The letter of 24.4.2003 does not mention about any of these two letters, whereas it

does mention about the letter of 18.1.1995 (sent on 19.1.1995). If these letters of 24.2.1995 and 10.8.1995 were in existence, the plaintiff would have mentioned these as well in his letter of 24.4.2003. Further, when the Suit No. 28 of 1995 was pending, there was no occasion for the plaintiff to have written to defendant no. 1 on 24.2.1995 for issue of duplicate shares and warrants without making any request in this regard before the Court. Likewise, when Suit no. 57 of 1995 was pending, there was no reason for the plaintiff to write to defendant no. 1 again vide letter dated 10.08.1995 for issue of duplicate shares and warrants. Admittedly, there was also no mention of letter dated 24.2.1995 in the Suit no. 57 of 1995 which was filed on 2.3.1995. It was specifically suggested to the plaintiff in his cross-examination that the letters dated 24.2.1995 and 10.8.1995 are forged and fabricated and do not bear the seal and signatures of defendant no. 1. It was specifically suggested to him that it was for the first time on 24.4.2003 that he applied for transfer of shares. He admittedly received letter dated 22.7.2003 (Ex. P1) from defendant no. 1. He also admitted that he did not comply with the directions as contained in this letter and that was a reason for defendant no. 1 not to transferring the shares in his name. He also admitted having received letter dated 18.9.2003 (Ex. PW1/DC) from defendant no. 1. Again, he did not remember if he had completed the necessary formalities as contained in the said letter. On the other hand, DW1, N.K. Kaushik had categorically stated and maintained that no letter of 24.2.1995 or 10.8.1995 were received and that it was only on 24.04.2003 that the plaintiff applied for issue of duplicate shares and warrant certificates for the first time.

24. From all this, the conclusion comes out to be that no request was made by the plaintiff to defendant no. 1 for issue of duplicate shares and warrants prior to 24.4.2003 and that immediately on the receipt of the same, the defendant proceeded and called upon the plaintiff to complete the required formalities and pay the requisite dues, which the plaintiff admittedly never did. That being the state of affairs, the plaintiff could not be said to be entitled to any damages from the defendant. In this view of the matter, the increase or fall of the price of the shares or warrant certificates at the relevant times as alleged by the plaintiff, and sought to be proved from the statements of PW2 and 3, becomes. Consequently, all the three issues are decided against the plaintiff.

25 ISSUE NO. 2

In view of the discussion and findings recorded above in Issue nos. 3 to 5, the issue regarding limitation becomes redundant and there is no need to deal with the same.

26. RELIEF:

In view of above findings, the plaint is liable to be rejected under Order 7 Rule 11 CPC and even otherwise the plaintiff has no case on merits.

The suit stands disposed of accordingly.