
(2016) 03 DEL CK 0222
In the Delhi High Court
Case No : CS(OS) No. 822 of 2011

Shri Kanwal Kant Chagti

APPELLANT

Vs

Hotel Queen Road Private Limited

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Citation : (2016) 231 DLT 1

Hon'ble Judges : Mr. Valmiki and Mehta, JJ.

Bench : Division Bench

Advocate : Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and Mr. Ambuj Saraswat, Advocates. in CS(OS) No. 822 of 2011, Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and Mr. Ambuj Saraswat, Advocates. in CS(OS) No. 823 of 2011, Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and M

Final Decision : Dismissed

Judgement

Mr. Valmiki and Mehta, JJ.—I.A. No.2539/2013 (for seeking consolidation) in CS(OS) No.822/2011 I.A. No.2538/2013(for seeking consolidation) in CS(OS) No.823/2011 I.A. No.2518/2013(for seeking consolidation) in CS(OS) No.824/2011 I.A. No.2537/2013 (for seeking consolidation) in CS(OS) No.3057/2011.

1. These applications are filed by the defendant in the four suits. The defendant is the same M/s Hotel Queen Road Pvt. Ltd.

2. Suits being CS (OS) Nos. 822/2011, 823/2011 and 3057/2011 are suits for recovery of monies on the ground of plaintiff of the suits granting loans to the defendant. CS(OS) No. 824/2011 is a suit filed by the plaintiff seeking recovery of share application money given by the plaintiff to the defendant for allotment of shares of the defendant.

3. The four suits being CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 are sought to be consolidated with CS(OS) No. 161/2012 and which is filed by M/s Hotel Queen Road Pvt. Ltd, and which is the defendant in the

aforesaid four suits. This suit filed by M/s Hotel Queen Road Pvt. Ltd seeks relief of declaration, cancellation, injunction etc alleging corporate fraud by 29 defendants in the suit. Four of the 29 defendants being the defendant nos. 26 to 28 and defendant no.12 are the four plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011.

4. The memo of parties in CS(OS) No. 161/2012 and the prayer clauses of this suit reads as under:-

Memo of Parties

"In The Matter of:

1. M/s H.Q.R.P. Limited (M/s Hotel Queen Road Pvt. Ltd.) Through Authorised Representative Registered Office at: 19, Ashok Road, New Delhi-110001.

2. Mr. Ashok Mittal S/o Late Sh. Gurdas Rai Mittal, 106, Free Press House, 10th floor, Nariman Point, Mumbai-400 021. Also At: 42, Ashoka Avenue, Sainik Farms, New Delhi-110062.

3. M/s. Hillcrest Realty SDN. BHD. Through Sh. Nand Kishore Chaturvedi, Authorised Representative Regd. Office at Level 16, 1 Sentral, Jalan Stesen Sentral 5, KL Sentral, Kuala Lumpur, Wilayah Persekutuan, 50470, Malaysia. Plaintiff

Versus

1. M/s M.T.I.Limited. (M/s Moral Trading and Investment, Limited) Through Chairman/MD Thapar Chamber-II, 4th Floor Opp. Kalindi Colony, New Delhi-110014. Also at: 81, Sainik Farms, M.B.Road, New Delhi-110062.

2. Mr. Ram Parshotam Mittal, S/o Late Sh. Gurdas Rai Mittal, 81, Sainik Farms, M.B. Road, New Delhi-110062.

3. Mrs. Sarla Mittal, W/o Mr. Ram Parshotam Mittal 81, Sainik Farms, M.B.Road, New Delhi-110062.

4. Mr. Sumaj Jain S/o Mr. M.P. Jain 85, Sainik Farms, Central Avenue, New Delhi-110062. Also At: 287, Panchsheel Park, New Delhi-110017.

5. Mr. N.P. Gupta S/o Late Omprakash Gupta, Resident of:: W-20, G.K-II, New Delhi-110048

6. Jyoti Kesri, Wife of Mr. Manoj Kesri Resident of:: 74A, Sainik Farms, Central Avenue, New Delhi-110062.

7. Bhawna Gupta Daughter of Mr. R.P. Mittal Resident of:: W-20, Greater Kailash-II New Delhi-110048.

8. Sapna Jain Daughter of Mr. R.P. Mittal Resident of:: 85, Sainik Farms, Central Avenue, New Delhi-110062. Also at: 287, Panchsheel Park, New Delhi-110017.

9. Vandana Mittal Daughter of Mr. R.P. Mittal 81, Sainik Farms, M.B.Road, New Delhi-110062.

Also at: B-316, New Friends Colony, New Delhi

10. Manoj Kesri Son of Mr. Kedar Nath 74A, Sainik Farms, Central Avenue, New Delhi-110062.

11. J.J. International Private Limited Through Managing Director, 74 A, Central Avenue Sainik Farm New Delhi-1100062.

12. Sudarshan Dhoop Private Limited Through Managing Director 4-5, G.I.A., G.T. Karnal Road, Azadpur, Delhi-110033. Also at: 74A, Central Avenue, Sainik Farms, New Delhi-100 062.

13. Mahashian Di Hatti Limited Through Managing Director 9/44, Industrial Area, Kirti Nagar New Delhi

14. Prerna Singh W/fe of Mr. Ankit Singh Resident of:: Shiv Sushil Bhavan D-219, Vivek Vihar, New Delhi-11 0095.

15. Ankit Singh Son of Mr. Indraj Singh Resident of:: R-2/61, Raj Nagar, Ghaziabad.

16. Nitin Singh Son of Mr. Indraj Singh Resident of:: R-2/61, Raj Nagar, Ghaziabad.

17. Seema Family Trust Through Trustee Mr. Ankit Singh AT:: Shiv Sushil Bhavan D-219, Vivek Vihar, New Delhi-110095.

18. Mr. Rajiv Gulati Son of Dharam Pal Gulati Resident of::E-6/6, Vasant Vihar, New Delhi-110057.

19. Aroma Eatables Pvt. Ltd. Through Managing Director, At:: D-219, Vivek Vihar, Phase-I New Delhi 110095.

20. Acme resources Limited Through Managing Director At:: 1, Crooked Lane, Room No.107, 1st Floor, Kolkata-700069 (West Bengal)

21. Abhipra Capital Limited Through Managing Director Abhipra Complex At:: A-387, Dilkhush Industrial Area, G.T. Karnal Road, Azadpur Delhi-110033.

22. Bathla & Company Pvt. Ltd. Through Managing Director At:: BGF-1, Dilkhush Industrial Complex, G.T. Karnal Road, Azadpur Delhi-110033.

23. Mr. Vinod Kumar Bindal Son of Mr. Sushil Kumar Bindal Resident of:: Shiv Sushil Sadan, B-2, Vivek Vihar Phase-I New Delhi-110095

24. Mr. V.D. Aggarwal Son of Late Sh. R.P. Aggarwal Resident of : 2-12, Model Town, Delhi-110 009.

25. M/s V.D. Aggarwal & Co., Chartered Accountants, Through partner Mr. V.D. Aggarwal Son of Late Sh. R.P. Aggarwal Resident of:: 2-12, Model Town

Delhi-110 009.

26. Mr. Kanwal Kant Chhagti Proprietor of M/s Green Transport Corporation Son of Mr. Gulshan Rai, 1418, Nicholson Road, Kashmere Gate, Delhi-110 006.

27. Mr. Gulshan Rai Proprietor of M/s Hotel Green Castle Son of Mr. Nand Lal, 1418, Nicholson Road, Kashmere Gate, Delhi-110006.

28. Upper India Trading Company (Delhi) Pvt. Ltd. Through Managing Director 1/1662, Lothian Road Kashmere Gate, Delhi-110 006.

29. M/s R.N. Khemka Enterprises (P) Ltd. Through Managing Director 302, Adarsh Complex Wazirpur Industrial Area, Ring Road Delhi-110 052.Defendants

Prayer Clauses

A. Pass a Decree of Declaration, Declaring that Defendant no.2 along with other defendants is guilty of malfeasance and misfeasance and breach of trust in relation to the Plaintiff No.1 Company and the they are guilty of retention of the property/records/documents/electronic records etc. and the money of the company, And

B. Pass a decree Directing Defendant no. 2 along with other defendants to repay/restore the property including documents and records of the company respectively or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as this Court thinks just, And

C. Pass a Decree Declaring the alleged transaction/arrangement/agreement/understanding mentioned in Para no.14 of the present suit, along with the respective documents thereto, as null and void and unenforceable in law in following terms, viz.

i. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 17.09.2007 and 20.11.2007, entered between Defendant no. 2 (using the name of Plaintiff No. 1) with JJ International Pvt. (Defendant no. 11), along with the respective documents (including cheque(s), if any) thereto, as null and void and unenforceable in law, AND

ii. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 05.06.2008/06.05.2008, entered between Defendant No. 2 (using the name of Plaintiff No. 1) with Mahashian Di Hatti (Defendant No. 13), along with the respective documents including cheques(s), if any thereto, as null and void and unenforceable in law, AND

iii. Press a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (using the name of Plaintiff No. 1) with Preme singh (Defendant No. 14), along with the respective documents (including cheque(s), if any) thereto, as null and void and

unenforceable in law, And

iv. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (using the name of Plaintiff No. 1) with Ankit Singh (Defendant no. 15), along with the respective documents (including cheque(s), if any) thereto, as null and void and unenforceable in law, And

v. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (suing the name of Plaintiff No. 1) with Nitin Singh (Defendant no.16), along with the respective documents (including cheque(s), if any) thereto, as null and void and unenforceable in law, And

vi. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (using the name of plaintiff No. 1) with Seema Family Trust (Defendant No. 17), along with the respective documents (including cheque(s), if any) thereto, a null and void and unenforceable in law, And

vii. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 04.04.2008/14.04.2008, entered between Defendant no.2 (suing the name of Plaintiff of Plaintiff No. 1) with Rajiv Gulati (Defendant no. 18), along with the respective documents (including cheque(s), if any) thereto, as null and vid and unenforceable in law, And

viii. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 26.12.2007, entered between Defendant no. 2 (using the name of Plaintiff No.1) with Aroma Eatables (Defendant no. 19), along with the respective documents thereto, as null and void and unenforceable in law, And

ix. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 6.5.2008, entered between Defendant no. 2 (suing the name of Plaintiff No.1) with Acme resources (Defendant no. 20), along with the respective documents including cheques No. 622281 and 622282 both dated 6.05.2009, as null and void and unenforceable in law, And

x. Pass a Decree Declaring the alleged transaction/understanding dated 25.11.2006, entered between Defendant no.2 (using the name and books of Plaintiff No. 1) with Abhipra Capital (Defendant no. 21), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, And

xi. Pass a Decree declaring the alleged transaction/understanding dated 25.11.2006, entered between Defendant No.2 (using the name and books of Plaintiff No.1) with Bathia (Defendant no. 22), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, And

xii. Pass a Decree declaring the alleged transaction/understanding dated March 2007, entered between Defendant no. 2 (suing the name and books of Plaintiff No. 1) with Kanwal Kanth Chagti (Defendant no. 26), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, And

xiii. Pass a Decree Declaring the alleged transaction/understanding dated March, 2007 to October, 2008, entered between Defendant no.2 (using the name and books of Plaintiff No. 1) with Gulshan Rai (Defendant No. 27), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, And

xiv. Pass a Decree Declaring the alleged transaction/understanding dated November, 2007 to December, 2007, entered between Defendant no. 1 (using the name and books of Plaintiff No. 1) with Upper India Trading Company (Delhi) Pvt. Ltd. (Defendant No.28), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, And

xv. Pass a Decree Declaring the alleged transaction/understanding dated November, 2007 to December, 2007, entered between Defendant no.2 (using the name and books of Plaintiff No.1) with M/s R.N. Khemka Enterprises (P) Ltd (Defendant no.29), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and enforceable in law, And

xvi. Pass a Decree Declaring the alleged transaction/understanding dated Feb. 2007 to July 2008, entered between Defendant no.2 (using the name and books of Plaintiff No.1) with Sudarshan Dhoop Private Limited (Defendant No.12), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and enforceable in law, And

D. Pass a Decree of damages to the extent of Rs.61 Crores against the Defendants declaring them liable to pay the damages jointly and severally in terms of the present suit, And

E. Pass a Decree of Permanent and Mandatory injunction, injuncting the defendants to refer to and/or rely upon the alleged transaction/arrangement/agreement/cheques etc. mentioned on para No.14 of the present suit, And.

F. Pass a decree of Recovery of Sum of Rs.31 lacs as on 31.3.2009 against Defendant No.1 M/s Moral Trading and Investment, Limited along with the interest @ 18%, And

G. Pass a decree of Recovery of Sum of Rs. 34,44,128/- against Defendant no.11 M/s JJ International Pvt. Ltd. Along with the interest @ 18% from 14.1.2009 till disbursal., And

H. Pass a decree of awarding Cost of the present litigation: and/or

I. Pass any other appropriate orders, directions that this Hon''ble Court may

deem fit in the facts and circumstances of the present case."

5. No doubt, object of consolidation is to ensure that if there are same issues between the parties who are parties to different pending suits, the suits should be tried together, however, consolidation is not an automatic right and a mandatory requirement of law. Putting it in other words, passing an order of consolidation is discretionary and is dependent on a host of factors with one main factor being that there should not be grave prejudice to any party. In fact, on a subsequent suit being CS(OS) No.161/2012 being filed where issues are common with an earlier filed suit or suits, then in fact the subsequent suit may have to be stayed under Section 10 of the Code of Civil Procedure, 1908 instead of allowing consolidation. In the opinion of this Court merely because some issues are common in the four suits being CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 with CS(OS) No. 161/2012 does not mean that these five suits have to be consolidated. If consolidation takes place then in the facts of these four suits there will be caused grave prejudice to the plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011, inasmuch as, their suits are only simple suits for recovery of monies on the ground of having granted loans to the defendant M/s Hotel Queen Road Pvt. Ltd. and which will get unnecessarily entangled with various other unrelated issues of CS(OS) No. 161/2012 which has as many as 25 other defendants than the four defendants who are the plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011. Facts of each case have to be examined carefully with respect to requirement of consolidation, and it should not be that in the guise of consolidation strategies are played out which will cause unnecessary prejudice and delay in deciding of suits filed by certain plaintiffs which have limited scope, and this principle squarely applies in the present cases because all the plaintiffs in the four suits being CS (OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 were never in any manner connected to the management of the company M/s Hotel Queen Road Pvt. Ltd. as the four plaintiffs of the four suits being CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 are complete strangers to the company M/s Hotel Queen Road Pvt. Ltd. Also, consolidation is ordinarily not to be granted if all the defendants in all the suits or most of the defendants in most of the suits are not common. Definitely the 25 defendants in CS(OS) No.161/2012 have no commonality of issues with the other four defendants no. 12 and 26 to 28 and who are the plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011.

6. Learned counsel for the applicant sought to place reliance upon the judgment of a learned Single Judge of this Court, Hon'ble Mr. Justice R.C. Lahoti (as he then was), in the case of S.C. Jain v. Bindeshwari Devi, 1997 (67) DLT 189, but, there is no dispute to the proposition of law laid down in the said judgment that consolidation can take place of suits, however whether or not consolidation should take place of suits depends on individual different facts of those cases/suits which are to be consolidated. The judgment in the case of S.C. Jain (supra) does not hold that there is mandatory and automatic consolidation of suits

merely because some issues are common and that too only between some parties and whose other suits are pending. As already stated above, four plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 have filed suits on their limited causes of action on the grounds of loans to M/s Hotel Queen Road Pvt. Ltd. and giving share application money to M/s Hotel Queen Road Pvt. Ltd. and such suits cannot be defeated by delaying them by consolidating these suits with the very wide suit containing wide causes of action against various defendants in CS(OS) No.161/2012, whose memo of parties and relief clauses have already been reproduced above. It may also be noted that the plaint in CS(OS) No.161/2012 runs into around 115 pages whereas the plaints in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 are just about five odd pages each on the simple causes of action of grant of loans which are pleaded to have not been repaid by M/s Hotel Queen Road Pvt. Ltd. or M/s Hotel Queen Road Pvt. Ltd. not refunding the share application monies received for allotment of shares although shares were not allotted.

7. In view of the above, the applications for consolidation of suits being CS(OS) Nos.822/2011, 823/2011, 824/2011 and 3057/2011 with CS(OS) No.161/2012 are wholly misconceived, abuse of the process of the law and hence dismissed.

CS(OS) Nos.822/2011, 823/2011 & 824/2011

8. An Office Order dated 24.11.2015 has been issued by Hon"ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, these suits are transferred for decision to the jurisdictional Court under the District & Sessions Judge, Patiala House Courts, New Delhi.

9. Let parties appear before the District & Sessions Judge, Patiala House Courts, New Delhi on 8th April, 2016. Suit files be made available to the District & Sessions Judge, Patiala House Courts, New Delhi, on the date fixed.

CS(OS) No. 3057/2011

10. List for further proceedings on 14th July, 2016.