
(2010) 03 DEL CK 0124

In the Delhi High Court

Case No : F.A.O. (OS) No. 74 of 2010 and C.M. No. 1437 of 2010

Srei Venture Capital Limited and Another

APPELLANT

Vs

Vijay Gopal Jindal

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, 151

Citation : (2010) 03 DEL CK 0124

Hon'ble Judges : Vikramajit Sen, J; Manmohan Singh, J

Bench : Division Bench

Advocate : T.K. Ganju, Indiranil Ghosh, Sandeep Mahapatra and Nitin Kala, for the Appellant; Pinaki Mishra K. Datta and Manish Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The Appellants Srei Venture Capital Limited and Srei Infrastructure Finance Ltd. have preferred the present Appeal against the order dated 4th December, 2009 passed by the learned Single Judge whereby the injunction application being I.A. No. 9448/2008 of the Respondent has been allowed and the application preferred by Appellants under Order XXXIX Rule 4 of Civil Procedure Code, 1908 being I.A. No. 14345/2008 has been dismissed.

2. The Respondent herein filed a suit for recovery, mandatory injunction and permanent injunction against the Appellants herein bearing reference No. CS(OS) No. 1575/2008 inter alia seeking the following prayer:

(a) a decree for recovery of a sum of Rs. 5,75,800/- alongwith interest @18% per annum.

(b) a decree for mandatory injunction restraining the Appellants herein from parting with the possession of 5,00,000 equity shares of appellant No. 2 herein to any other third party and thereby seeking direction upon the Appellants to issue.

(c) allot 5,00,000 equity shares in favour of the Respondent herein in accordance with the letter dated 2nd June, 2007.

(d) directions to be issued to the defendant to calculate and pay the plaintiff his 10% share in the profits.

3. The case of the Respondent Mr. Vijay Gopal Jindal before the learned Single Judge was that he was appointed as a Managing Director of Srei Venture Capital Limited, Appellant No. 1 herein vide letter dated 19th May, 2007 issued by the said company. The terms of the appointment of the Respondent in the company read as under:

(a) a sum of Rs. 2.40 crores p.a. would be paid by the appellant No. 1 to the Respondent;

(b) the Respondent was also entitled to 10% of net profit of appellant No. 1;

(c) 25% equity stake in the proposed Media/Entertainment fund; and

(d) the Respondent would be paid an advance of Rs. 5 crore against security of property/shares/other assets.

4. Vide letter dated 2nd July, 2007 issued by Srei Infrastructure Finance Limited, Appellant No. 2 herein it was agreed to grant 5,00,000 EEP units of shares which were priced at Rs. 100/- per share to the Respondent. In lieu thereof the Respondent was to pay 1% of the total consideration of the aforesaid amount and the balance was to be adjusted against the commission to be paid by Appellant No. 1.

5. According to the Respondent he is a reputed professional who has held various high level and important positions in reputed companies since 1980. The details of the same are given in paragraphs 3 to 5 of the plaint. It is also alleged that at the peak of his career he was approached by one Mr. Hemant Kanoria (the vice-chairman and Managing Director of appellant No. 1) in April, 2007 and offered the said job and promised that if he quit his job and joined the Appellants, he would stand to make substantial gains on his then existing compensation package. In view of the said assurance by the Appellants and their other subsidiaries the Respondent joined the Appellants in their mutual interest.

6. The grievance of the Respondent before the learned Single Judge was that from the very beginning the Appellants failed to pay a sum of Rs. 5 crore as an advance to the Respondent and also failed to communicate the percentage of commission payable by the Appellants to the Respondent. According to the Respondent, he suspected the conduct of the Appellants was such due to the reversal in profitability as the net profit of the appellant No. 1 came down from Rs. 6,45,59,156/- to Rs. 9,43,597/-. Another reason assigned by the Respondent was that on the one hand the Appellants were involved in creating one fund with another fund company with one Mr. Sanjeev Gupta with a corpus of US \$ 1 billion under the aegis of appellant No. 2 and on the other hand the Appellants had

shifted the funds from the aegis of Appellant No. 1 to the aegis of Appellant No. 2. Upon coming to know of the said activities of the Appellants, the Respondent filed the suit for recovery before the court. Alongwith the suit, the Respondent filed an interim application which was listed on 8th August, 2008 when an ex parte ad interim order was granted against the Appellants restraining them from disposing of 5,00,000 equity shares which were to vest in the Respondent in terms of the letter dated 2nd July, 2007 as part of the Employees' Equity Participation Plan 2001, w.e.f. 1st August, 2008.

7. The Appellants thereafter filed an application under Order XXXIX Rule 4 read with Section 151 CPC being IA No. 14345/2008 for vacation of ex parte ad interim order. After hearing both the parties on merit, the learned Single Judge disposed of both the applications by confirming the ex parte ad interim order already granted and dismissed the Appellants' application for vacation thereof.

8. The reason for confirmation of the said order is given in paragraphs 16 and 17 of the impugned order dated 4th December, 2009. The operative portion of the same reads as under:

16. The plea taken by the plaintiff is that the plaintiff was entitled to 10% profit in the entire Srei Group of companies as he was working for the entire Srei Group. He was not an employee of one company and that is the reason that vide letter dated 2nd July, 2007, he was offered 5,00,000 equity shares under Employees' Equity Participation Fund, 2002 of Srei Infrastructure Finance Limited and not to Srei Venture Capital Limited. He has stated that if he has been an employee of Srei Venture Capital Limited, he would have been offered equity shares under Employees' Equity Participation Plan only of Srei Venture Capital Limited and not of Srei Infrastructure Finance Limited. He further submitted that Rs. 9 lac profit being talked of by the defendants was of Srei Venture Capital Limited and not of Srei Infrastructure Finance Limited and other group companies. Therefore, the plea taken by the defendants was not tenable.

17. I consider that looking at the offer of 5,00,000 equity shares of Srei Infrastructure Finance Limited made by the defendants, the plea of the plaintiff that he was not merely an employee of Srei Venture Capital Limited has some force. If the plaintiff had been an employee of merely Srei Venture Capital Limited, as is propounded by the defendants during arguments, there was no reason for Srei Infrastructure Finance Limited to offer 5,00,000 equity shares under Employees' Equity Participation Plan, 2001....

9. Against the said order, the present Appeal has been filed by the appellants, inter alia, challenging the impugned order as under:

(i) that the impugned order passed by the learned Single Judge is contrary to the principles of Order XXXIX of Code of Civil Procedure, 1908;

(ii) that in the absence of considerable amount for transferring 5,00,000 equity shares to the Appellants, it was not an obligation on the part of the Appellants to

transfer the said share in favour of the Respondent;

(iii) that offer of 5,00,000 shares of the appellant No. 2 herein was not part of the appointment letter dated 19th May, 2007 which was offered to the Respondent later on vide letter dated 2nd July, 2007 and this Court has to go strictly as per the said contract entered between the parties;

(iv) the learned Single Judge incorrectly held that the shares of appellant No. 2 were offered to the Respondent although the Respondent was an employee of appellant No. 1 and the learned Single Judge ought to have given his finding on the basis of the appointment letter dated 19th May, 2007 wherein it was specifically mentioned that the Respondent was entitled to 10% of the net profits of the appellant No. 1 but not of appellant No. 2.

10. Before dealing with the submission of the learned Counsel for the Appellants, let us examine the factual position in the matter.

11. In Annual Report 2008-2009 the Group Structure of Srei Infrastructure Finance Ltd. has been given. The detail of the same is shown below as under:

Group Structure Srei Infrastructure Finance Ltd. Srei Capital Srei Venture Srei Markets Ltd. Capital Ltd. Infrastructure Advisors Ltd. Subsidiaries* Srei Sahaj International Global e-Village Ltd. Infrastructure Investment Trust Services Ltd. GmbH Bengal Srei Zao Srei Hyderabad Cyberabad --Sub-subsidiaries Infrastructure Leasing Information Trustee Development Technology Venture Company Ltd. (JV Enterprises Ltd. Pvt. Ltd. With WBIDC) Srei Equipment Joint Ventures Finance Pvt. Ltd. (Srei-BNP Paribas Lease

Srei Insurance Broking Pvt. Ltd.

12. From the above Group Structure it is clear that both the Appellants are part of Srei Infrastructure Finance Ltd. It is also not disputed fact that there are common Directors/Promoters of the said Group. This fact is further fortified from the copy of the circular dated 22nd April, 2008 issued by the Appellants wherein the Appellants have made the following statement:

In its journey of over 18 years, SREI, having started from its core business of infrastructure equipment finance, has since, evolved into a one stop virtually real infra destination offering a wide array of services as reflected in the companies value chain diagram.

SREI is one company which has the advantage of straddling infrastructure creation and infrastructure funding, whereas the rest are either involved in infrastructure creation OR infrastructure funding. None is in both.

Today, SREI is spread over 53 offices in India with an international footprint in 2 countries. A lot is happening at any given point of time across the Company.

13. In the same circular it is mentioned that various persons including the Respondent shall additionally support the PR/brand effort from Delhi of the

various companies and the details thereof are given as under:

Hemant Kanoria VC & MD Sunil Kanoria Director Namrata Kumbhat* Vijay Jindal Funds + Brand Rajesh Paleth Subhash Mohanti AVP (Brand) VP (Media Relations) Kolkata Kolkata

Tirthankar Supriyo Sarkar Dasgupta Paromita Raghav Kanoria Bhaduri *Ms. Namrata Khumbhat EA to HK/SK/VJ shall additionally support the PR/Brand effort in Delhi

14. As per the circular it is mentioned that Mr. Paleth and Mr. Mohanty will work closely with all HODs and Business Heads functionally, and shall be responsible to Mr. Vijay Jindal. They will additionally seek overall guidance in their responsibilities from Mr. Hemant Kanoria and Mr. Sunil Kanoria. All the above mentioned team members will continue to serve at their present grades.

15. Another important aspect of the matter is that in the appointment letter dated 19th May, 2007 there is specific reference to the effect that the Respondent would be joining the organisation although the said letter was issued by the Appellant No. 1. But yet in another letter dated 2nd July, 2007 written by the Appellant No. 2 to the Respondent, the letter informed the Respondent thus:

We wish to inform you that you are granted 500000 EEP Units on 1st August, 2007 under the "Employees" Equity Participation Plan 2001 (EEPP Schemes)". The total EEP Units awarded under aforesaid EEPP Scheme would vest with you on 1st August, 2008.

Please note that these units will be priced at Rs. 100/- per share. You will be requested to pay @1% of the total consideration and the balance any time thereafter to obtain these shares. You may also obtain these shares in lieu of your commission to be paid by Srei Venture Capital Ltd. in which case your commission amount will stand adjusted/cancelled to the extent of the consideration amount.

16. From the above, prima facie it appears that the Respondent was not exclusively working with the Appellant No. 1 but also for the group. The learned Counsel for the Appellants has not denied the facts that the net profit from the Appellant No. 1 from the earlier year i.e. 2006-2007 was Rs. 6,45,59,156/- and it later came down to Rs. 9,43,597/- during the period when the Respondent was working in the company for about one year.

17. It is not disputed by the Appellants' counsel that the net profit of Appellant No. 2 increased to Rs. 132,41,00,000/-. The Appellant No. 1 has agreed and offered to pay 10% profit to the Respondent from profit made by the Appellant No. 1 which only comes to about Rs. 90,000/- when at the same time, the salary offered to the Respondent is Rs. 2.40 crores per annum. It is not possible to accept the submission made by the Appellants in the light of the above mentioned facts. Admittedly, the Respondent has sought the relief as mentioned in the prayer clause from both the Appellants.

18. From the facts and circumstances explained above, it appears to us that the balance of convenience at this stage clearly lies in favour of the Respondent as per material available on record and against the Appellants as all the points raised by the Appellants would be answered after the trial of the matter. As regards the continuation of interim orders, we are not inclined to interfere with the order passed by the learned Single Judge who has passed a limited interim order only to the extent against the Appellants restraining them from disposing of 5,00,000 equity shares which were to vest in the Respondent in terms of the letter dated 2nd July, 2007 as part of the Employees' Equity Participation Plan 2001, w.e.f. 1st August, 2008. The said shares are less than 0.35 per cent out of the total more than 11 crores shares owned by the company. In case we give any positive finding on the point raised by the Appellants on merit at this stage we are aware that it would definitely prejudice the case of one of the parties. Therefore, on thoughtful consideration, we are of the view that the Appellants have not made strong case for interfering with the order passed by the learned Single Judge.

19. There is yet another aspect of the matter as to whether finding of the learned Single Judge can be disturbed by the Appellate Court. The scope and extent of the power enjoyed by the Appellate Court in interfering with a detailed order passed in exercise of discretion by the learned Trial Judge is limited and the circumstances in which the discretion exercised by the learned Single Judge require consideration have been discussed by the Apex Court in the case of *Wander Ltd. and Another Vs. Antox India P. Ltd.*, at page 733 wherein the Apex Court has held that in an appeal against the exercise of discretion by the learned Single Judge, the Appellate Court will not interfere with the exercise of discretion by the first Court except under some limited circumstances. The relevant observation of the Apex Court is extracted as under:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material. The Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the facts that the Appellate Court would have taken a different view may not justify interference with the trial court's exercise of discretion.

20. We do not find any infirmity in the impugned order and find that there is no force in the Appeal. Therefore, the same is dismissed with no orders as to costs. In view of dismissal of the Appeal, all the pending CMs are also disposed of.

21. Needless to state that the observations made above are only an expression of opinion for the purpose of grant/refusal of injunction and will have no bearing on the final outcome of the suit which will be decided on its own merit without being influenced by the observations.