(2009) 12 DEL CK 0057

In the Delhi High Court

Case No : C.S. (OS) No. 1575 of 2008

Vijay Gopal Jindal APPELLANT

Vs

Srei Infrastructure Finance Limited and Another RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, Order 8 Rule 10
Limitation Act, 1963 — Section 5

Citation : (2009) 12 DEL CK 0057

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Pinaki Mishra, K. Datta and Ashish Verma, for the Appellant; T.K. Ganju Indrani Ghosh and U. Bhatia, for the Respondent

Judgement

Shiv Narayan Dhingra, J.

I.A. Nos. 1150/2009 and 1152/2009

1. By this order I shall dispose of these two applications. I.A. No. 1150 of 2009 is made by the defendants u/s 5 of the Limitation Act read with Section 151 CPC for condonation of delay in filing the written statement. The defendants were served on 22nd August, 2008 and the written statement has been filed on 21st January, 2009 along with this application for condonation of delay.

2. The reasons as given in the application are that after service of summons on defendants at Kolkata address, he took some time for engaging the services of present counsel and the present counsel was given instructions for drafting the written statement. However, the same could not be prepared as the file of the defendants got misplaced by the counsel during the process of shifting his office from 18, Rouse Avenue, Kotla Lane to A-9, Sector 9, Noida office and the files could be traced only in November, 2008 and soon thereafter, an application under Order 39 Rule 4 CPC being I.A. No. 14345 of 2008 was made. It is stated that the suit was at very initial stage and was listed for consideration of applications

under Order 39 and, therefore, no harm would be caused to the plaintiff if the present application of the defendants was allowed and delay of 121 days in filing the written statement is condoned.

3. In the application made under Order 8 Rule 10 CPC being I.A. No. 1152 of 2009, the plaintiff has stated that this Court directed service of defendants vide order dated 8th August, 2008 and simultaneously granted an ex-parte ad-interim injunction. The plaintiff in compliance with the provisions of Order 39 Rule 3 CPC served a copy of the plaint, applications and documents on the defendants vide letter dated 13th August, 2008 and this letter was duly served on the defendants on 18th August, 2008 in view of the A.D. card. However, even otherwise summons send by the court were also served on defendants on 22nd August, 2008. The defendants though filed an application under Order 39 Rule 4 CPC for vacation of ad-interim injunction did not file the written statement and the written statement was not filled till filing of the application by the plaintiff under Order 8 Rule 10 CPC. The plaintiff, therefore, asked for pronouncement of judgment or passing such an order in relation to the suit as court deems fit.

4. The defendants in reply to this application reiterated the facts stated in application u/s 5 of the Limitation Act and sought condonation of delay in filing the written statement and dismissal of this application under Order 8 Rule 10 CPC.

5. Admittedly, the defendants were served on 22nd August, 2008. The time period for filing written statement is 30 days from the service of notice. This time period is extendable by the court for another 60 days in case the defendants makes out a reasonable ground. The extension of time for filing written statement beyond period of 90 days from the date of service can be granted by the court only under exceptional circumstances.

Thus, while considering the application made under Order 8 Rule 10 CPC or u/s 5 of the Limitation Act, the court has to see whether any exceptional circumstances were made out and whether there was any force in the application made by the defendants.

6. The plea taken by the defendants in this case that file was misplaced by the advocate does not seem to be true. If the file of the defendants had been misplaced by the advocate, the advocate, who is supposed to be aware that written statement is to be filed within 30 days, would have made an application to the court that he has misplaced the file and was not able to file written statement within 30 days and, therefore, the court should extend some more time to enable him to obtain a copy of the plaint and other papers from the court file. There is no application made by the defendants'' counsel or by the defendants for inspection of the court file so as to note the contents of the plaint and other documents. There is no application made by the defendants for obtaining a copy of the plaint and other documents from the court on the plea of misplacement of file. Neither any letter was written by counsel of the defendants

informing defendants that their file has been misplaced nor a letter from the defendants to their counsel showing anxiety about misplacement of file has been placed on record. I also find no document showing that the counsel had hired another office at A-9, Sector 9, Noida during this period and shifted to this office during that period. The plea, therefore, is obviously a baseless plea and has been taken just to create an excuse. In any case, the misplaced file according to defendants was traced in first week of November, 2008. The written statement should have been filed immediately thereafter. I find no reason given as to why written statement could not be filed from November, 2008 till 21st January, 2009, that is, for about ten weeks. Thus, there is no explanation at all what to talk of exceptional circumstances for not filing written statement even after the file allegedly lost was traced in the first week of November, 2008. I, therefore, find no reason to allow I.A. No. 1150 of 2009 of the defendants. The application is dismissed.

7. The application of plaintiff being I.A. No. 1152 of 2009 is allowed and the written statement filed by the defendants is taken off the record. The defendants shall have no defence in this case.

I.A. No. 9448/2008 (under Order 39 Rules 1 & 2 CPC) and I.A. No. 14345/2008 (under Order 39 Rule 4 CPC)

8. By filing I.A. No. 9448 of 2008 made under Order 39 Rules 1 & 2 CPC, the plaintiff has sought an ad-interim injunction restraining the defendants from parting with or encumbering or appropriating in any manner 5,00,000 equity shares of defendant No. 1 in accordance with letter dated 2nd July, 2007. Another prayer made is that the court should pass an order directing the defendants to initiate process of allotment of 5,00,000 equity shares of defendant No. 1 in favour of the plaintiff.

9. The application made under Order 39 Rule 4 CPC being I.A. No. 14345 of 2008 is for vacating an ad-interim injunction granted by the court on 8th August, 2008 whereby the defendants were restrained from disposing of 5,00,000 equity shares which were to vest in the plaintiff in terms of letter dated 2nd July, 2007 as a part of Employees'' Equity Participation Plan, 2001 with effect from 1st August, 2008.

10. The plaintiff in the suit has claimed that the plaintiff was lured by defendants to join the services of the defendants after leaving his lucrative engagements by offering following terms and conditions vide letters dated 19th May, 2007 and 2nd July, 2007, reproduced herein below:

Letter dated 19th May, 2007

Dear Mr. Jindal,

Please refer to the discussions which we have had regarding your joining our organization as the Managing Director.

We are glad to confirm your appointment. We would pay you a sum of Rs. 2.40 crores per annum, which will be structured with mutual consent.

You will also be entitled to 10% of net profit of the company and 25% Equity stake in the proposed Media/Entertainment fund.

You will also be paid Rs. 5 crores as an advance against security of property/ shares/other assets.

We would request you to please confirm the date of your joining the organization.

With best regards.

Letter dated 2nd July, 2007

Dear Mr. Jindal,

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 anytime 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 commissioner amount will stand adjusted/cancelled to the extent of the consideration amount.

Thanking you,

Yours faithfully.

11. It is submitted by the plaintiff in the plaint that the plaintiff joined defendant on 1st August, 2007 based on assurances and promises made to him and in a short span of time, the defendants were benefited from the plaintiff''s skill which was manifested from the steep rise in enterprise value and share value of Srei, prior to the recent fall in the share market. The shares of defendants'' company appreciated more than 300 per cent in a span of few months. The plaintiff was actively assisting the Vice-Chairman and Managing Director of the defendants in chalking out future growth of the group. In return, the plaintiff was made to believe that he was not only earning handsome salary, bonus and share of the profits but he shall be given Rs. 5 crores as advance and he shall be entitled to commission of 25 per cent share in the venture fund. However, the defendants from the very beginning had been adopting evasive attitude as far as benefits to the plaintiff were concerned. A sum of Rs. 5 crores as advance was not given to him. The defendant No. 1 also failed to communicate the percentage of commission. The plaintiff started suspecting the intentions of the defendants in or about December, 2007 when he did not receive the advance of Rs. 5 crores and had been receiving just the promises. The defendants and plaintiff were

involved in creating one fund with another fund of the company and one Mr. Sanjeev Gupta with a corpus of US $ 1 billion under the aegis of defendant No. 2 but plaintiff was shocked to find out that the defendants had shifted the funds from the aegis of defendant No. 2 to the aegis of defendant No. 1 without any consultation with the plaintiff.

12. There are various other facts stated by the plaintiff, however, the main plea of the plaintiff is that despite plaintiff''s sincere services, the defendants neither gave advance nor gave commission nor made him participant in the profits of the company nor offered him 25 per cent equity stake in proposed media/ entertainment fund. An offer of 5,00,000 shares was made by the defendants under Employees'' Equity Participation Plan, 2001 vide letter dated 2nd July, 2007 (reproduced above) but these shares were also no transferred. It is further submitted that though the plaintiff had been working with the defendants company up to July, 2008 but the defendants stopped making payment of even salary to the plaintiff after May, 2008 and when the plaintiff wrote letter to defendants in July, 2008 for crediting salary for the month of June, 2008, the plaintiff was shocked to receive letter from the defendants informing him that his services stood terminated with effect from 31st May, 2008, that is, retrospectively and that is how the plaintiff was compelled to file the present suit for recovery of salary for the month of June, 2008 with interest and for mandatory injunction granting defendants to allot 5,00,000 equity share of face value of Rs. 10/- which were to be issued to the plaintiff on payment of Rs. 5 lacs (which amount had already been paid by the plaintiff) and a decree for directing the defendants to pay 10 per cent share in the profits.

13. In view of my order passed on the application of the defendants for condonation of delay in filing written statement and application of the plaintiff under Order 8 Rule 10 CPC, there is no defence of the defendants available on record. The written statement has been taken off the record. Learned Counsel for the defendants, however, argues that the case of the plaintiff was based on two letters dated 19th May, 2007 and 2nd July, 2007. A perusal of letter dated 19th May, 2007 shows that the plaintiff was to get these shares @ Rs. 100/- per share on payment of balance consideration. It is stated that the plaintiff has paid only one per cent of the total consideration amounting to Rs. 5 lacs whereas as per the letter dated 2nd July, 2007, value of shares was determined @ Rs. 100/- per share and the total value of shares would come to Rs. 5 crores. He submitted that the defendants were prepared to transfer these shares to the plaintiff on payment of balance consideration of Rs. 4,95,00,000/-.

14. To these arguments, it is submitted by counsel for the plaintiff that the plaintiff was only to pay Rs. 5 lacs and the balance consideration was to be adjusted in lieu of commission payable by Srei Venture Capital Limited as was clear from the letter and the balance consideration amount, if any, was to be adjusted out of the profits/commission which the plaintiff had earned.

15. Learned Counsel for the defendants submitted that the defendants have

earned profit of Rs. 9 lacs in Srei Venture Capital and the share of the plaintiff would be only Rs. 90,000/- and that would not make up the cost of the shares and in any case, the plaintiff would have to pay the balance amount.

16. The plea taken by the plaintiff is that the plaintiff was entitled to 10 per cent 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 lacs 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. I, therefore, consider it would be a matter of evidence as to how much would be the share profit of the plaintiff in the defendants companies. Till this issue is adjudicated by the court, the equity shares for which the plaintiff had paid one per cent amount in terms of letter dated 2nd July, 2007 should be preserved. In case, the equity shares are allowed to be disposed of, the major relief sought by the plaintiff in the suit shall become infructuous. I, therefore, confirm the interim injunction granted by this Court on 8th August, 2008 and the application being I.A. No. 14345 of 2008 made by the defendants is hereby dismissed.