
(2009) 12 DEL CK 0314

In the Delhi High Court

Case No : IA No's. 15247 and 15249 of 2009 in CS (OS) No. 775 of 2009

Vinedale Distilleries Ltd.

APPELLANT

Vs

Adnan Investments Consultants

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 2 Rule 2, 151, 22

Citation : (2009) 12 DEL CK 0314

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : A.K. Thakur, Rajiv Arora, for A.K. Aggarwal Group and Ashwini K. Mata and Rishi Agarwala and Manmeet Sethi for S.K. Aggarwal Group, for the Appellant; Chetan Sharma Amit Sibal and Sanjay S. Chhabra, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Shakdher, J

1. By this order, I propose to dispose of the captioned applications being four in number by a common order. IA No. 15247/2009 in suit No. 775/2009 and IA No. 15229/2009 in suit No. 776/2009 have been filed by the defendants under Order 14 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). The prayers in the two applications are identical. The prayers being:

(i) Fresh/additional issues be framed

(ii) Defendants be permitted to file evidence by way of affidavits in terms of order dated 27.08.2008 passed in suit No. 1514/1994 and other connected suits.

1.1 Similarly, in IA No. 15249/2009 in suit No. 775/2009 and IA No. 15231/2009 in suit No. 776/2008 filed by the defendants u/s 22 read with Section 151 of the CPC; the defendants have sought the following reliefs:

(i) Direct trial of the suits, that is, suit No. 775/2009 and 776/2009 along with

suit No. 1514/1994.

(ii) Allow the defendants to file additional evidence by way of affidavits in support of its case.

2. The present applications arise in the background of the following facts:

2.1. The entire dispute between the warring parties is with respect to the control of the plaintiff, i.e., M/s Vinedale Distilleries Ltd. (hereinafter referred to as the "Vinedale"). The parties, contesting various proceedings with a view to gain control over Vinedale, are the Chhabaria Group and the Aggarwal Group comprising of two brothers, namely, S K Aggarwal and Anil Aggarwal. In these proceedings the plaintiff is the Aggarwal Group while the defendants are the Chhabaria Group. I have described these accordingly. There are some disputes even between S K. Aggarwal and Anil Aggarwal. It appears that till 31.03.1987 the plaintiff/Aggarwal Group controlled the Vinedale. The plaintiff/Aggarwal Group ceded some part of the control to a corporate entity by the name of Shaw Wallace & Company. Ltd. (hereinafter referred to as "Shaw Wallace") by permitting them to purchase 51% of the shareholdings in Vinedale through its subsidiary companies Aronova and Mahadev. Resultantly, the Aggarwal Group was left with 49% shares in the Vinedale. This position obtained till 31.03.1991.

2.2. It appears that in March, 1991 Shaw Wallace transferred their 51% shareholding in Vinedale to the plaintiff/Aggarwal Group through the medium of four investment companies controlled by them at the relevant point in time, namely, Deccan Securities Pvt. Ltd., Chamunda Holdings Pvt. Ltd., Yogeshwara Holdings Pvt. Ltd and Deccan Holdings Pvt. Ltd. (hereinafter collectively referred to as "Investment Companies"). Resultantly, the entire shareholding of Vinedale was owned and controlled by the aforementioned four investment companies. The point of dispute commences from this stage onwards. It is claimed by the defendants/Chhabaria Group that the entire shareholdings of Vinedale were purchased by them from the four investment companies through the medium of Sanman Distributors Pvt. Ltd. (hereinafter referred to as "Sanman") against a valuable consideration. The plaintiff/Aggarwal Group, on the other hand, disputes this position.

2.3. The aforesaid dispute, which relates to the control of the Vinedale, has led to the institution of the following proceedings:

(i) Suit No. 1514/1994, titled Vinedale Distilleries Ltd and Ors. v. Satish Kumar Aggarwal and Ors. This suit was originally filed in the Bombay High Court and was numbered as suit No. 307/1993. To be noted, this suit was instituted at the behest of the defendants/Chhabaria Group.

(ii) Suit No. 244/1997, titled Vinedale Distilleries Ltd. and Ors. v. Sanman Distributors Ltd. and Ors. This suit was originally instituted in the City Civil Court in Secunderabad, at which point in time it was numbered as suit No. 389/1994. This suit is a recovery suit filed at the behest of the plaintiff/Aggarwal Group.

(iii) Suit No. 775/2009, titled Vinedale Distilleries Ltd. and Ors. v. M/s Adnan Investment Consultants. This suit was also filed in the City Civil Court at Secunderabad, and was originally numbered as suit No. 376/1994. This suit was also instituted at the behest of the plaintiff/Aggarwal Group.

(iv) Suit No. 776/2009, titled Vinedale Distilleries Ltd. and Ors. v. M/s BDA Breweries & Distilleries Ltd. This suit was also filed in the city civil court at Secunderabad, and was originally numbered as suit No. 400/1994. This suit was also instituted at the behest of the plaintiff/Aggarwal Group.

3. As would be evident from the above, in all the aforementioned four suits the plaintiff is Vinedale. However, the first suit, i.e., suit No. 1514/1994, as indicated above, is a suit which is instituted by the defendants/Chhabaria Group, while the remaining three suits, i.e., suit Nos. 244/1997, 775/2009 and 776/2009 have been filed by the plaintiff herein, i.e., Aggarwal Group. It is not disputed that suit No. 1514/1994 was transferred to this Court by virtue of the order of the Supreme Court.

4. In the background of the aforesaid facts it is contended by the defendants/Chhabaria Group that since they have paid valuable consideration to acquire 100% shareholding of the four investment companies through Sanman, they are in control of Vinedale. In order to demonstrate this they have averred that all relevant documents such as the original share-certificates of Vinedale as well as that of four investment companies alongwith their respective statutory records are in possession of Sanman.

5. As against this the plaintiff/Aggarwal Group allege that Shaw Wallace, which was in control of Vinedale w.e.f. 19.03.1988, siphoned huge amounts of money from Vinedale to their seven sisters concern, namely, M/s Cruckshank & Co. Ltd., Sanman; Tracstar Investments Pvt. Ltd., BDA Brewery & Distilleries Ltd. (hereinafter referred to as "BDA"), Budgam Finance & Investments, Adnan Investment Consultants and International Tyres Ltd. The extent of the amount siphoned by Shaw Wallace from Vinedale, according to the plaintiff/Aggarwal Group, is a sum of Rs 8,38,12,337/-. It is to recover a part of the siphoned amount that the plaintiff/Aggarwal Group have instituted the aforementioned three suits, in the first instance in the City Civil Court at Secunderabad - being suit Nos. 224/1997, 775/2009 and 776/2009. This aspect, however, is refuted by the defendants/Chhabaria Group. They have set up a defence that monies had been paid to an entity by name of Kumar Liquors & Beers Pvt. Ltd. (hereinafter referred to as "KLBL"). KLBL which was a "super distributor" in the State of Maharashtra, was required to carry out sale, promotion and marketing activity in consultation with BDA. For these purposes KLBL was paid a fee which had various components. It is the say of the defendants/Chhabaria Group that a certain amount of fee was unutilized and it was agreed that KLBL shall refund the unutilized amounts to BDA and its assigns through the medium of Vinedale. 6. In sum and substance the defence of the defendants/Chhabaria Group, as regards the allegation of siphoning of the amount, is that, these were really refund of

unutilized sale promotion funds received from KLBL. It is the submission of the defendants/Chhabaria Group that the recovery suits by the plaintiff/ Aggarwal Group, i.e., suit Nos. 244/1997, 775/2009 & 776/2009 came to be filed only when a stand was taken by them that if amounts had been siphoned from Vinedale why is that no action had been instituted to recover the amount.

6.1 To be noted, it is not disputed by the plaintiff/Aggarwal Group that the three recovery suits, in which recoveries of various amounts is sought, falls well short of the amount alleged to have been siphoned, which is a sum of Rs 8.38 crores.

7. What is also not disputed is that after suit No. 1514/1994 was transferred from Bombay High Court to this Court, in 1996 one of the three recovery suits, filed by the plaintiff/Aggarwal Group, being suit No. 244/1997 was transferred by the Supreme Court from Secunderabad to this Court. Both parties have been unable to place before me a copy of the order of the Supreme Court. However, counsels for both parties did not dispute this aspect of the matter. It is also not disputed that, by an order dated 07.10.1996 passed in Transfer Petition No. 319/1996, suit No. 775/2009 (original suit No. 376/1994) was transferred by the Supreme Court for trial by this Court along with suit No. 1514/1994. The prayer in the said transfer application being No. 319/1996 was as follows:

transfer O.S. No. 376 of 1994 pending in the court of III Additional Judge, City Civil Court, Secunderabad (Vinedale Distilleries Ltd v. Sanman Distributors Pvt. Ltd.) to Delhi High Court for being heard and tried alongwith Suit No. 1514 of 1994 (Vinedale Distilleries Ltd and Ors. v. Satish Kumar Agarwal and Ors.) (Original Suit No. 307 of 1993 as filed in Bombay High Court); and....

7.1 In respect of the prayer made the order passed by the Supreme Court dated 07.10.1996 was as follows:

Heard counsel for the parties, transfer petition is ordered as prayed for.

7.2 Similarly the other suit, i.e., 776/2009 (Original suit No. 400/1994) was transferred by the Supreme Court vide order dated 22.07.2008 passed in Transfer Petition No. 221/2008. The prayer in the Transfer Petition and the operative part of order dated 22.07.2008 read as follows: Prayer in TP No. 221/2008:

Transfer O.S. No. 400 of 1994 pending in the court of III Additional Judge, City Civil Court, Secunderabad (Vinedale Distilleries Ltd. v. Sanman Distributors Pvt. Ltd.) to Delhi High Court; and ...

Operative part of order dated 22.07.2008:

Since we have been informed by Mr E.C. Agarwala that OS No. 400/1994, which is being transferred, is at the stage of evidence, we would further request the Delhi High Court to take up the said suit from the said stage and dispose of the same expeditiously in terms of this order. Transfer petition is allowed. There will be no order as to cost.

8. Thereafter several orders have been passed by this Court in suit No. 775/2009 and 776/2009. The crucial order is order dated 01.05.2009. This order amongst others was also passed in suit Nos. 775/2009 and 776/2009. I will revert back to this order. However, it is quite clear that on applications being: IA No. 7560/2009 in suit No. 775/2009 and IA No. 7583/2009 in suit No. 776/2009; two separate orders of even date have been passed on 29.05.2009. Similarly, orders were also passed on 11.09.2009 in suit No. 775/2009 and suit No. 776/2009. The order dated 11.09.2009, however, was a common order.

9. In the background of the aforesaid facts and circumstances the learned Counsel for the defendants/Chhabaria Group, who have moved the captioned applications, have submitted that in view of orders passed by the Supreme Court dated 07.10.1996 and 22.07.2008, the consolidation of suit Nos. 775/2009 & 776/2009 is no longer in issue. It is also submitted that if there was any doubt, it has been set at rest by this Court vide its common order dated 01.05.2009 passed in suit No. 775/2009 and 776/2009. Therefore, it is the defendants/Chhabaria Groups. submission that:

(i) their prayer for consolidated trials of suits No. 775/2009 & 776/2009 with suit No. 1514/2009 is really a formal request.

(ii) if their submission with regard to the first aspect of the matter is accepted, i.e., that suit No. 775/2009 and 776/2009 stands consolidated with suit No. 1514/1994 then, this Court is empowered to frame issues even at this stage if the necessary facts and circumstances obtain.

(iii) in so far as the permission to file documents is concerned it is submitted that permission has already been accorded by this Court vide its order dated 01.05.2009. By the said order four weeks time was granted to file additional documents in suit Nos. 775/2009 & 776/2009 amongst others. It is submitted that a set of documents was filed on 28.05.2009; since they were photocopies, and the originals had to be obtained, an application was moved being IA No. 7560/2009 in suit No. 775/2009 for seeking extension of time by a further five weeks w.e.f. 30.06.1999 (when the original four weeks granted vide order dated 01.05.2009 came to an end) for the purposes of filing of originals of the documents was moved on 29.05.2009. An identical application being IA No. 7583/2009 was filed in suit No. 776/2009 for securing leave to file originals of the documents evidently filed on 28.05.2009. It is their contention that the plaintiff/non-applicant cannot object to the filing of originals of those documents whose photocopies was filed within the stipulated four weeks accorded by this Court vide order dated 01.05.2009. It is further contended that the court had allowed filing of additional documents; a request which was not opposed by the plaintiff/Aggarwal Group, as is evident from the order dated 29.05.2009. To be noted this order was passed in IA No. 7560/2009 in suit No. 775/2009.

(iv) As regards the additional issues, which the defendants/Chhabaria Group now want the court to frame; it was stressed that they referred to material issues

both of fact and law, which require court's consideration. A list of the proposed issues primarily dealing with the allegations of the amounts having been siphoned has been placed before me, apart from three other issues with respect to non-joinder of necessary parties, the issue with regard to the present suit as framed being liable to be dismissed under the provisions of Order 2 Rule 2 of the CPC and lastly, limitation. While three out of four proposed issues are common to both suit Nos. 775/2009 & 776/2009, the proposed issue with respect to limitation is raised for consideration only in suit No. 776/2009.

10. As against this, Mr Mata, learned senior counsel, on behalf of the plaintiff/Aggarwal Group has submitted that there is no order consolidating suit No. 775/2009 and suit No. 776/2009. In order to buttress his submission he has placed reliance on the order of the Supreme Court dated 22.07.2008. The learned senior counsel has laid great stress on the observations of the Supreme Court that this Court should proceed with suit No. 776/2009 from the stage of evidence at which it was placed at a point in time when the transfer petition was moved before the Supreme Court, and proceed to dispose of the suit accordingly. It is the learned senior counsel's contention that order dated 01.05.2009 cannot improve the situation. The other submissions are premised on acceptance of the first submission made by Mr Mata. It is submitted by Mr Mata that if the suits cannot be consolidated then surely there is no case for casting additional issues in suit Nos. 775/2009 and 776/2009. It is the contention of the Mr Mata that the nature of suit No. 1514/1994, which broadly deals with as to who is in the control of Vinedale, is quite different from the nature of suit No. 775/2009 and 776/2009, which are the suits instituted to recover money siphoned from Vinedale; in that sense, neither a consolidation is called for nor is there any commonality of issues.

10.1 It is, therefore, contended by Mr Mata that no permission whatsoever ought to be granted to the defendants to file additional documents. Mr Mata, however, does not object to filing of affidavits by way of evidence by the witnesses which the defendants/Chhabaria Group wishes to produce in suit No. 775/2009 and 776/2009. It is the contention of Mr Mata that a voluminous set of documents is purported to be filed by the defendants/Chhabaria Group only to delay the trial in suit No. 1514/1994. The learned Counsel further contends that in suit No. 1514/1994, two witnesses have already been examined, and what remains is the cross-examination of the third witness, i.e., Mr Shyam Luthria (PW3). It is contended that if permission as sought for by the defendants/Chhabaria Group is granted then it would not only set the clock back but it would also give an unfair advantage to the defendants/Chhabaria Group as the plaintiff/Aggarwal Groups have already cross-examined two witnesses which includes Mr Jain (PW2), who purportedly was maintaining the records of Sanman, which is one of the four investment companies which controls Vinedale. REASONS

11. I have heard the learned Counsel for the parties. It is quite clear that the dispute between the two groups, i.e., the plaintiff/Aggarwal Group and the

defendants/ Chhabaria Group pertains to control of Vinedale. The defendants/ Chhabaria Group have taken a stand that they came to control Vinedale as the shares in the four investment companies were transferred in favour of Samnan for a valuable consideration. In these circumstances, the defendants/Chhabaria Group has sought to place on record before court from time to time documents to show that not only did they pay the requisite consideration to the plaintiff/ Aggarwal Group for acquisition of the shares in the four investment companies which control Vinedale, but also documents to show that on account of the transfer of the controlling shareholding of Vinedale in favour of Sanman, they came to possess the records of both Vinedale and Sanman which includes books of accounts, minutes book of Board of Directors, Register of Members, shareholders and also records pertaining to various assets.

11.1 As against this, the plaintiff/Aggarwal Group in the three recovery suits, i.e., suit Nos. 244/1997, 775/2009 and 776/2009 have set up a case that no consideration flowed from Sanman to the plaintiff/Aggarwal Group for acquisition of the said shares. It is the stand of the plaintiff/Aggarwal Group that the purported financial transactions, reflected in the book of accounts of the concerned parties, are in substance refund of money which Shaw Wallace had siphoned from Vinedale.

11.2 In my view, the stand taken by both groups, i.e., defendants/Chhabaria Group and the plaintiff/Aggarwal Group are inextricably linked. It is perhaps in that context that in 1996 one of the three recovery suits filed by the plaintiff/ Aggarwal Group, i.e., suit No. 244/1997, was consolidated with suit No. 1514/1994. As I have indicated above, this position is not disputed. In this context, it would perhaps also be relevant to note that by an order dated 07.10.1996, passed in transfer petition No. 319/1996, the Supreme Court had allowed a prayer made by the defendants/Chhabaria Group that suit No. 775/2009 (originally suit No. 376/1994) be heard and tried with suit No. 1514/1994. The prayer and order dated 07.10.1996 have already been extracted by me hereinabove. Therefore, as regards the consolidation of suit No. 775/2009, I have no doubt. In so far as suit No. 776/2009 is concerned, the transfer petition bearing No. 221/2008 was allowed by the Supreme Court vide its order dated 22.07.2008. However, it is sought to be contended by the plaintiff/ Aggarwal Group that the said order of the Supreme Court dated 22.07.2008 did not consolidate the suit No. 776/2009. I have already extracted the relevant portion of the order hereinabove. Mr Mata has, as observed above, laid stress on the fact that since at that point in time when the order was passed by the Supreme Court in the transfer petition, the suit was at the stage of evidence, the Supreme Court only directed that the said suit No. 776/2009 be transferred to this Court and it be taken up for disposal from the said stage, i.e., from the stage of evidence at which it was at that particular point in time. I would have no hesitation in agreeing with the submission made by Mr Mata but for the fact that on 01.05.2009 both suits being suit Nos. 775/2009 & 776/2009 amongst others came up before this Court. A bare reading of the order dated 01.05.2009 clearly

shows that the understanding of both the counsel for the plaintiff/Aggarwal Group and the defendants/Chhabaria Group was that the said suits had to be consolidated, except that to achieve the said purpose certain pre-requisites had to be complied with namely, completion of pleadings, filing of additional documents and perhaps framing of additional issues. It is contended by Mr Mata that the direction with regard to the aforesaid aspects related to suits other than suit Nos. 775/2009 and 776/2009. I may have agreed with him, but for the fact that, pursuant to the order dated 01.05.2009 additional documents were filed by the defendants/Chhabaria Group on 28.05.2009 in accordance with the directions issued by this Court on 01.05.2009 within the time frame of four weeks accorded to the defendants/Chhabaria Group - the plaintiff/Aggarwal Group has neither challenged the order dated 01.05.2009 nor sought a clarification of the said order. As a matter of fact on 29.05.2009 when applications (being IA No. 7560/2009 and IA No. 7583/2009) were filed by the defendants/Chhabaria Group seeking extension of time for being granted permission to file originals of the documents which had been filed evidently on 28.05.2009, strangely, in the application for extension of time (being IA No. 7560/2009 filed in suit No. 775/2009), no objection was taken by the plaintiff/ Aggarwal Group. As a matter of fact the counsel for the plaintiff/ Aggarwal Group submitted that he had no objection to the application was being allowed. The objection was, however, taken in IA No. 7583/2009 filed in suit No. 776/2009 which was filed by the defendants/Chhabaria Group for the same purpose, i.e., taking extension of time for filing originals, on the ground that suit No. 776/2009 had not been consolidated. Reference obviously was to the order of the Supreme Court dated 22.07.2008. It was also contended that by an order dated 01.05.2009 suit No. 776/2009 had been erroneously clubbed (reference once again obviously was to suit No. 1514/2009) and hence, defendants/Chhabaria Group could not be allowed to file further documents in suit No. 776/2009. The learned Judge, while passing the order dated 29.05.2009 in the said IA No. 7583/2009, specifically overruled both objections of the plaintiff/Aggarwal Groups. The court was also of the view that the court is not powerless in permitting filing of documents even after the trial has begun, if the circumstances so permit. The court went on to say that even though the application did not disclose the documents that the defendants/Chhabaria Group wanting to file, the same may be filed subject to the objection of the plaintiff/ Aggarwal Group to any particular document. The matter was posted for consideration of objections on 11.09.2009.

11.3 The order dated 29.05.2009 has also not been challenged by the plaintiff/ Aggarwal Group. As a matter of fact on 11.09.2009 they raised an identical objection and sought leave to file an affidavit raising objections in respect of the additional documents filed in suit No. 776/2009.

11.4 In these circumstances, I am of the view that in so far as the first issue is concerned as to whether the suit No. 776/2009 and 775/2009 should be consolidated and tried with suit Nos. 1514/1994 and 244/1997 there cannot be any debate at this juncture as submissions to the contrary have been rejected by

the predecessor Judge. I may also refer to an order dated 27.08.2008 which this Court passed in respect of suit No. 1514/1994 and suit No. 244/1997 amongst others. There is a clear mention that suits have to be consolidated and tried. Suit No. 244/1997 is also a recovery suit filed by plaintiff/Aggarwal Group - on a parity of reasoning, I am of the view that suit No. 775/2009 and suit No. 776/2009 should also be consolidated. In any event, even otherwise I am of the opinion that once one of the recovery suits, i.e., suit No. 244/1997 has been consolidated with suit No. 1514/1994, then I see no reason as to why suit No. 775/2009 and suit No. 776/2009 cannot be tried with them. In so far as suit No. 775/2009 is concerned the Supreme Court's order dated 07.10.1996 is quite clear on the issue. As regards the suit No. 776/2009 is concerned it appears that the plaintiff/Aggarwal Group having suffered the order dated 01.05.2009 and thereafter the order dated 29.05.2009, there is no scope for arguing to the contrary at this stage. This would in my view, be also in the interest of the warring groups and shall enable this Court to adhere to the direction of the Supreme Court to conduct the trial expeditiously.

12. As to whether additional issues should be framed, I am of the view that no prejudice would be caused to the plaintiff/Aggarwal Groups if the following issues are framed in suit No. 775/2009 and suit No. 776/2009. The issues not only relate to material aspect of fact and law but also bring to fore the controversy between the parties.

Suit No. 775/2009

(i) Whether Shaw Wallace & Co. have siphoned Rs 10 lacs out of Rs 8,38,12,337/- from the plaintiff to the sister concerns of Shaw Wallace & Co. namely M/s Cruickshank & Co. Ltd., M/s Sanman Distributors Pvt. Ltd., M/s Tracstar Investments Pvt. Ltd., BDA Brewery & Distilleries Ltd., M/s Budgam Finance & Investments, M/s Adnan Investment Consultants & M/s International Tyres Ltd? OPP

(ii) Whether the suit as framed is liable to be dismissed for non-joinder of necessary parties? OPD

(iii) Whether the suit as framed is liable to be dismissed under Order 2 Rule 2 CPC? OPP Suit No. 776/2009:

(i) Whether Shaw Wallace & Co. have siphoned Rs 80 lacs out of Rs 8,38,12,337/- from the plaintiff to the sister concerns of Shaw Wallace & Co. namely M/s Cruickshank & Co. Ltd., M/s Sanman Distributors Pvt. Ltd., M/s Tracstar Investments Pvt. Ltd., BDA Brewery & Distilleries Ltd., M/s Budgam Finance & Investments, M/s Adnan Investment Consultants & M/s International Tyres Ltd? OPP

(ii) Whether the suit is barred by limitation? OPD

(iii) Whether the suit as framed is liable to be dismissed for non-joinder of necessary parties? OPD

(iv) Whether the suit as framed is liable to be dismissed under Order 2 Rule 2 CPC? OPP

12.1 It may be noted that the learned Counsel for the plaintiff/Aggarwal Group did not have any objection to the aforesaid issues being framed. I must, however, state that Mr Sibbal, who appears for the defendants/Chhabaria Group, in addition, wanted the following issues to be framed in suit No. 775/2009 and 776/2009:

Suit No. 775/2009

(i) Whether the payment of Rs 10,00,000/- by cheque No. 442419 dated 25.10.1991 stands accounted for and adjusted in suit Special Suit No. 375 of 1995 in the Court of Civil Judge (Sr. Division) at Aurangabad between KLBL and BDA decided by judgment and decree dated 11.10.1999 which is binding upon the plaintiff? OPD Suit No. 776/2009

ii) Whether the payment of Rs 80,14,577.58/- by cheque No. 442409 dated 15.11.1991 stands accounted for and adjusted in suit Special Suit No. 375 of 1995 in the Court of Civil Judge (Sr. Division) at Aurangabad between KLBL and BDA decided by judgment and decree dated 11.10.1999 which is binding upon the plaintiff? OPD

13. I am of the view that no formal issue is required to be framed in respect of proceedings initiated by BDA to recover certain outstanding amounts from KLBL. The fact that in those proceedings BDA has obtained a judgment and decree, is not in issue between the parties in the present proceedings. The judgment and decree is perhaps only an evidence to establish its case in the captioned suits. Therefore, the prayer of the defendants/Chhabaria Group to that extent is rejected.

14. That brings me to the issue as regards permission to file additional documents. Upon a reading of the order dated 01.05.2009 it is quite clear that defendants/Chhabaria Group was permitted to file original documents in both suit Nos. 775/2009 and 776/2009 within a period of four weeks. Mr Sibbal, learned Counsel for the defendants/Chhabaria Group has said that within the time allotted, i.e., four weeks, photocopies of the said documents were filed by them. Since the originals had to be placed on record, two applications being IA Nos. 7560/2009 and 7583/2009 were filed in suit No. 775/2009 and 776/2009 respectively. It is crucial to extract prayer in the two applications which are identical:

In view of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that this Hon''ble Court may be pleased to modify the order dated 01.05.2009 by granting extension of time for filing original documents by another five weeks w.e.f. 30th of June, 2009 when the original four weeks granted vide order dated 01.05.2009 comes to an end: and pass any such other order/orders as this Hon''ble Court may deem just and proper under the facts

and circumstances of the case to do complete justice.

14.1 A reading of the prayer would show that modification of the order dated 01.05.2009 was sought only to the extent that the defendants/Chhabaria Group be granted an extension of a period of five weeks for filing of original documents. There was no prayer for filing of additional documents. Therefore, the subsequent orders dated 29.05.2009 have to be construed in the light of the prayer made in the IA No. 7560/2009 and 7583/2009. Having done so, I am of the opinion that the defendants/Chhabaria Group cannot, at this stage, file any other document which was not filed within the time allotted by order dated 01.05.2009. In consonance with the orders dated 01.05.2009 and two orders of even date 29.05.2009 the defendants/Chhabaria Group can place on record originals of the documents which they claim had been filed on 28.05.2009.

15. Mr Mata, learned senior counsel had also made a submission that permitting defendants/Chhabaria Group the luxury of relying upon documents filed, pursuant to the order dated 01.05.2009, would compromise their defence in suit No. 1514/1994. In this regard, he had argued, as indicated above, that two witnesses have already been examined and, therefore, the defendants/Chhabaria Group would attempt to strengthen their case by placing reliance on these documents. In my view, this was not an objection which was taken by the learned Counsel for the plaintiff/Aggarwal Group at the time when order dated 01.05.2009 was passed. In any event, admittedly PW3 has not yet been cross-examined and, therefore, to shut out a party from placing any evidence on record would not serve the interest of justice. It is really for the defendants/Chhabaria Group to figure out how they are going to prove the additional documents filed on 28.05.2009 - they cannot be permitted to set the clock back. The exercise of filing documents cannot continue interminably.

16. The prayer of the defendants/Chhabaria Group with regard to filing of affidavit of evidence, was not objected to by Mr Mata, as in suit No. 775/2006 and 776/2009 the defendants/Chhabaria Group have not yet filed affidavit of evidence of its witnesses. Accordingly, as prayed for, defendants/Chhabaria Group shall be at liberty to file affidavits by way of evidence of their witnesses in suit No. 775/2009 and 776/2009. They shall do so within the time frame that may be set by the commissioner.

17. At one point in time submissions were made with regard to relevance of documents which were being filed. I have refrained from commenting on the relevance of documents filed, as this is an aspect which can be appreciated by commissioner at the time when evidence is recorded. Both parties shall, I am sure, at the relevant time place their point of view before the commissioner.

CONCLUSION

18. In view of the reasons given above the prayers in IA No. 15247/2009 in CS(OS) 775/2009 and IA No. 15229/2009 in CS(OS) 776/2009 with regard to fresh/ additional issues being framed is partially allowed. The additional issues,

which are cast, are set out in paragraph 12 hereinabove.

19. The second prayer that the defendants/Chhabaria Group be permitted to file by way of additional affidavits in terms of order dated 27.08.2008 is rejected. In the said order there is no direction permitting the parties to file additional affidavits. The defendants/ Chhabaria Group cannot be permitted at this point in time to lead additional evidence.

20. In IA No. 15249/2009 in CS(OS) 775/2009 & IA No. 15231/2009 in CS(OS) 776/2009, the first prayer of consolidation of CS(OS) 775/2009 and CS(OS) 776/2009 is allowed. Defendants/Chhabaria Group is permitted to file the evidence by way of affidavits in CS(OS) Nos. 775/2009 & 776/2009, since there is no dispute with respect to the fact that this exercise has not been undertaken by the defendants/ Chhabaria Group in the said suits.

21. As regards permission to file additional documents, I have already made it clear that the defendants/Chhabaria Group shall confine themselves to the documents filed on 28.05.2009 and their respective originals.

22. With the aforesaid directions the captioned applications are disposed of.