(2022) 08 DEL CK 0121

In the Delhi High Court

Case No : Civil Suit (OS) No. 65 Of 2018, I.A. Nos. 2604 Of 2019, 10373, 12267 Of 2020

VLS Commodities Private Limited — APPELLANT

Vs

Late Somesh Mehrotra Through (Sadhna Mehrotra) & Ors — RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2022) 08 DEL CK 0121

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : Sudhir Nandrajog , Madhavi Khare, Mannat Sandhu, Yashpal Singh

Final Decision : Disposed Of

Judgement

Mini Pushkarna, J

I.A. No. 10373/2020 (Application on behalf of the plaintiff under Order XXXIX Rule 1 and 2 of CPC seeking interalia interim restraint on grant of succession certificate with respect to 23,85,530 shares of VLC Capital Ltd.)

1. This is an application on behalf of the plaintiff seeking interim restraint on grant of succession certificate with respect to 23,85,530 (twenty three lakhs eighty five thousand five hundred thirty) shares of VLS Capital Ltd, registered in the name of defendant no. 1.

2. It is the case of the plaintiff that by order dated 30.04.2019, this Court had directed that status quo be maintained with respect to the aforesaid shares. Despite the aforesaid order, the defendant no. 1 and 2 are aggressively pursuing the succession proceedings in respect of the aforesaid shares.

3. The present suit has been filed by the plaintiff seeking recovery of loan of Rs. 1,50,00,000/- (Rupees One Crore fifty lakhs only) extended to late Mr. Somesh Mehrotra during 2007-2008, along with interest calculated @12% per annum

until the date of realisation. It is submitted that at the time of grant of loan, late Mr. Somesh Mehrotra was a Director in the plaintiff company and also had its 2000 preference shares. The total amount due and recoverable by the plaintiff on the date of filing of the suit on 30.04.2017, was Rs. 4,18,61,406/- (Four crores, eighteen lakhs sixty one thousand four hundred six). The said amount as on 30.09.2020 was Rs. 6,17,59,830/- (Six crores seventeen lakhs fifty nine thousand eight hundred thirty).

4. It is submitted on behalf of the plaintiff that late Mr. Somesh Mehrotra held 96,38,020 shares in VLS Capital Ltd. Out of the said shares, 27,60,400 (Twenty seven lakhs sixty thousand) shares were gifted to him by Mr. M.P. Mehrotra on behalf of Mr. Vikas Mehrotra. 44,92,090 (forty four lakhs ninety two thousand ninety) shares were gifted to him by Mr. M.P. Mehrotra on behalf of M.P. Mehrotra HUF, in which Mr. Vikas Mehrotra is a coparcener and had vital financial interest. It is submitted that the title of late Mr. Somesh Mehrotra to the aforesaid 72,52,490 (Seventy two lakhs fifty two thousand four hundred ninety) shares were disputed by Mr. Vikas Mehrotra by challenging the aforesaid gift deeds in CS (OS) No. 3067/2015 and CS (OS) No. 3314/2015. The said suit proceedings are pending till date. It is submitted that in the aforesaid proceedings, status quo was granted with respect to 72,52,490 (Seventy two lakhs fifty two thousand four hundred ninety) shares of VLS Capital Ltd.

5. It is further submitted on behalf of the plaintiff that apprehending misuse/ dilution/alienation of the balance shares of VLS Capital Ltd. owned by late Mr. Somesh Mehrotra, the plaintiff sought a status quo with respect to the balance 23,85,530 (twenty three lakhs eighty five thousand five hundred thirty) shares in the present proceedings in order to secure the recovery amount. As per the plaintiff, status quo order was granted by this Court by way of order dated 30.04.2019. However, the aforesaid security only secures the plaintiff to the extent of Rs. 2,38,55,300 (Rupees Two crores thirty eight lakhs fifty five thousand three hundred only) whereas the total outstanding is more than Rs. 6, 00,00,000/- (Rupees six crores only).

6. It is contended on behalf of the plaintiff that the defendants no. 1 and 2 have started aggressively pursuing the proceedings for grant of succession certificate for assets of late Mr. Somesh Mehrotra, including shares of VLS Capital ltd., despite the aforesaid status quo orders. In view of this, the plaintiff in CS (OS) 3067/2015 and CS (OS) No. 3314/2015 were constrained to approach this Court for clarification of the status quo orders passed therein with respect to the shares of VLS Capital Ltd.

7. Thus, by order dated 17.07.2019, this Court in CS (OS) No. 3067/2015 and CS (OS) No. 3314/2015 observed that the succession proceedings with respect to shares of VLS Capital Ltd. could continue despite pendency of the proceedings in the said suits and status quo orders were passed therein. Against the said order dated 17.07.2019, the plaintiffs in the said suit preferred appeals. By order dated 24.02.2020, in FAO (OS) No. 209/2019 and FAO (OS) No. 217/2019, DB of

this Court observed that no final orders be passed in the succession proceedings till disposal of the aforesaid appeals.

8. It is contended on behalf of the plaintiff that the status quo order passed on 30.04.2019 with respect to the balance 23,85,530 (Twenty three lakhs eighty five thousand five hundred thirty) shares would be rendered meaningless if succession to the said shares is allowed. It is submitted that the plaintiff apprehends that if the defendant no. 1 succeeds to 23,85,530 (Twenty three lakhs eighty five thousand five hundred thirty) shares of VLS Capital Ltd, she would get unfettered right to misuse her rights as a shareholder and the present recovery proceedings will be rendered otiose. It is, thus, prayed on behalf of the plaintiff that a restraint order be passed in respect of succession of 23,85,530 (Twenty three lakhs eighty five thousand five hundred thirty) shares of VLS Capital Ltd in favour of defendant no. 1 and 2.

9. On the other hand, it is argued on behalf of the defendants that an earlier application on behalf of the plaintiff under Order 39 Rules 1 and 2 CPC has already been decided on 30.04.2019, and as such a second application is not maintainable. The succession proceedings are independent of the present suit, thus, no orders can be passed in that regard.

10. Defendants 1 and 2 have denied that they are aggressively pursuing the succession proceedings in respect of the aforesaid shares. They, however, do not deny the fact that by order dated 30.04.2019, status quo was directed to be maintained by this Court.

11. This Court has considered the submissions made on behalf of both the parties and has perused the various documents on record.

12. Various orders have been passed time and again with respect to the succession proceedings, as follows:-

I. Order dated 09.10.2015 passed in CS (OS) No. 3067/2015, wherein it was directed that defendants are restrained from selling, transferring or alienating or encumbering the shares worth Rs. 27,60,400/- (Twenty seven lakhs sixty thousand four hundred) that were held by the plaintiff (Vikas Mehrotra) in the defendant no. 1 company (VLS Capital Ltd.)

II. Order dated 04.11.2015 passed in CS (OS) No. 3314/2015, wherein it was directed that till further orders, the defendants are restrained from transferring, alienating, disposing of the entire 44,92,090 (Forty four lakhs ninety two thousand ninety) fully paid up equity shares of defendant no. 1 company (VLS Capital Ltd.) owned by the HUF to any third party.

III. Order dated 17.03.2017 passed in Succession Case No. 1554/2016, wherein the parties themselves have given no objection to the petion being continued for 23,85,530 (Twenty three lakhs eighty five thousand five hundred thirty)shares of VLS Capital Ltd.

IV. Order dated 17.07.2017 passed in CS (OS) NO. 65/2018 (earlier CS (COMM) 360/2017), wherein it was directed that status quo be maintained qua the balance shares of 23,85,530 (Twenty three lakhs eighty five thousand five hundred thirty) till next date of hearing.

V. Order dated 09.08.2018 passed in CS (OS) NO. 65/2018, wherein it was clarified that defendants 1 and 2 herein are free to pursue the succession petition.

VI. Order dated 25.09.2018 passed in CS (OS) No. 3067/2015 and CS (OS) No. 3314/2015, wherein it was directed that there is no stay of succession proceedings.

VII. Order dated 30.04.2019 passed in CS (OS) No. 65/2018, wherein it was recorded that counsels for defendants 1 and 2 state that they will maintain status quo.

VIII. Order dated 17.07.2019 passed in CS (OS) NO. 3067/2015 and CS (OS) No. 3314/2015, wherein it was recorded that the said proceedings shall not come in the way of the succession proceedings being concluded and succession certificate, if any, being granted in accordance with law.

IX. Order dated 27.08.2019 passed in CS (OS) NO. 3067/2015 and CS (OS) No. 3314/2015, wherein applications for clarification of order dated 17.07.2019 passed in the said suit proceedings were withdrawn, with statement of the plaintiff being recorded that the plaintiff will move an appropriate application after the conclusion of the proceedings for grant of succession certificate.

X. Order dated 24.02.2020 passed in FAO (OS) 209/2019 and FAO (OS) 217/2019, wherein it is ordered that in the meanwhile, arguments in the succession proceedings will continue, but no final orders will be passed till the next date of hearing.

XI. Order dated 20.05.2022 passed in FAO (OS) 209/2019 and FAO (OS) 217/2019, wherein the applications being CM No. 17380/2022 and CM No. 17313/2022 for modification of order dated 24.02.2020, were disposed of upon the statement on behalf of respondents/applicants that he does not wish to press the above captioned applications.

13. A perusal of the aforesaid orders clearly shows that status quo orders have been passed time and again wherein it has been directed that defendant Nos. 1 & 2 will not sell, transfer, alienate or create third party interest in the shares held by late Sh. Somesh Mehrotra.

14. During the course of arguments, it was submitted on behalf of defendant Nos. 1 & 2 that defendants give the undertaking in the present case also as in the other cases. Reference may be made to order dated 30.04.2019 passed by this Court, wherein it is recorded as under:

"....Learned Counsel for defendants No. 1 & 2 states that they will maintain status quo regarding the title of the shares till the pendency of the suit. This is subject to orders passed by this Court on 09.08.2018....”

15. By order dated 09.08.2018, this Court had passed the following directions:

“... It is clarified that defendant Nos. 1 & 2 are free to pursue the petition for granting of succession certificate. Defendant Nos. 1 & 2 plus all the other legal heirs, if any, of late Mr. Somesh Mehrotra shall remain bound by the interim injunction passed by this Court vide order dated 17.05.2017, namely, they will maintain status quo regarding balance 23,85,530 shares of defendant No.4...”

16. It may be noted that by order dated 17.05.2017, this Court had directed that status quo be maintained qua the balance share of 23,85,530 (twenty three lakhs eighty five thousand five hundred thirty) till the next date of hearing.

17. In view of the aforesaid, the present application is allowed by recording the undertaking on behalf of defendant Nos. 1 & 2 that they will maintain status quo regarding the title of the balance 23,85,530 (twenty three lakhs eighty five thousand five hundred thirty) shares till the pendency of the suit.

18. The present application is disposed of in the aforesaid terms.

