

(2008) 01 DEL CK 0070

In the Delhi High Court

Case No : IA No. 1568 of 1998 in CS (OS) No. 2010 of 1997

Vysya Leasing and Finance Ltd.

APPELLANT

Vs

Amrit Lal Bajaj and Co. and Another

RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:

Citation : (2008) 146 DLT 741

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

Bench : Single Bench

Advocate : Aman Vachher and Ashutosh Dubey, for the Appellant; Ashok Bhasin Yogesh Chandra, Shantanu Rastogi and A.K. Shan, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this common order I shall dispose of above three applications for leave to defend since all the three applications under Order 37 Rule 3 CPC are based on similar facts and only the cheque numbers and amount differs. The defendants in all the three suits are common. In two suits, plaintiff is M/s Vyasa Leasing and Finance Ltd. and in third suit, the plaintiff is Mrs. Alka Goel.

2. The case of plaintiffs in all the three suits is that plaintiffs were holding certain shares of M/s. Rahul Dairy and Allied Products Ltd. The plaintiffs sold these shares to defendant(s) in the month of July/August, 1994. The market rate of the shares at that time was between Rs. 38 and Rs. 40. The defendant agreed to purchase shares in Suit No. 2010/97 and 2013/97 for sum of Rs. 1 crore 20 lac. The total number of shares purchased in two suits by the defendant was 3,39,000. Defendant is stated to have issued two cheques, one of Rs. 1 crore 10 lac and other of Rs. 10 lac in September, 1994 as consideration of these shares. The shares were partly paid up shares. In 3rd suit, the defendant allegedly purchased 1,13,000 shares partly paid up shares of Rahul Dairy and Allied Products Ltd. for Rs. 32,00,000/-.

3. It is stated by plaintiffs that the defendant had entered into a package deal. The defendant issued a cheque dated 7.9.1994 for Rs. 32,00,000/- as a consideration for 1,13,000 number of shares. The defendant's all above cheques got dishonored and thereafter plaintiffs served legal notices demanding the amount from the defendant. The plaintiffs also filed complaints u/s 138/141/142 of Negotiable Instrument Act. The plaintiffs filed present three suits under Order 37 CPC for recovery of the amounts along with the 18 % interest.

4. The defendant has taken common defense in all the three suits. The defendant stated that the suits under Order 37 CPC were not maintainable since defendant had issued only blank cheques, duly signed, to the plaintiff to be kept as collateral security. These cheques were not to be filled or used in any manner. The defendant was a reputed share broker in the Delhi Stock Exchange and was acting and working as a known underwriter/share broker. Sh. Pawan Goel, one of the directors of the Vyasa Leasing and Finance Company Ltd. (one of the plaintiffs) floated another company in the name of M/s. Rahul Dairy and Allied Products Ltd. as a promoter director. The other two directors of M/s. Rahul Dairy and Allied Products Ltd. were Mr. Vasudev and Mr. Anil Goel. Company came out with a public issue in the year 1994. plaintiff company (M/s Vyasa Leasing and Finance Ltd.) issued prospectus and forms in the market for public issue and appointed M/s. Beetel as its Registrar. However, there was no response from the market for subscribing the shares. Since defendant was having a large client-base, Mr. Pawan Goel personally requested Mr. Rajesh Mittal to get the issue subscribed through his personal clients and sub-brokers and a deal was struck between the parties and other brokers were also roped in by the defendant. The size of the issue was to the tune of Rs. 1.49 crore and company was supposed to collect 90 % of the subscribed value through public issue, then only the public issue would have been considered subscribed under the law otherwise this would have been considered as a flop. The defendant were roped in to see that the issue did not go flop. In order to ensure that public issue of M/s Rahul Dairy and Allied Products Ltd. would not be flopped and subscribed fully, a guarantee in the form of blank cheque was given by the defendant to the plaintiff. It is stated that the issue worth Rs. 1.49 crore was subscribed by 5 underwriters as per the report of "Prime" a leading Indian publication in the trade. The date of subscription of the issue was 18th April, 1994. The report shows that procurement amount of the defendant and other sub-brokers was as under:

1. M/s. Amrit Bajaj Rs. 76.19 lakh 2. M/s. Rajesh Mittal and Co. Rs. 26.37 lakh 3. M/s. Miti Lal Oswal Rs. 25.00 lakh 4. M/s. AK Mittal and Co. Rs. 16.31 lakh 5. M/s. Devendra Bandal Rs. 11.44 lakh

5. Defendant submitted that sub-brokers 2 to 5 worked under the guidance of the defendant and procured substantial business while other brokers all over India procured negligible business. Major business was done by defendant and his associates. Since the public issue had been subscribed, the plaintiff was supposed to return the blank cheques but these cheques were not returned

neither destroyed. The defendant remained under the impression that these cheques would have been destroyed. It is stated that Mrs. Alka Goel, one of the plaintiffs and her husband Mr. Pawan Goel were the directors of M/s. Rahul Dairy and Allied Products Ltd. Both of them with malafide intention and mischief, got the present suit filed on the last day of limitation i.e. 03 years.

6. It is averred that defendant were ticket holders of Delhi Stock Exchange (DSE) and were working as Share Brokers/under writers up to year 1994- 95. In the year 1994-95 defendant transferred the ticket to M/s Sunrise Securities Limited through its Chairman-cum-Director Mr. S.L. Maloo. As per the trade, when a party wants to sell or transfer the ticket, the information is put on the notice board of DSE, so as to invite objections and claims of the parties, whose money is due against the party transferring the ticket and their claims are sorted out. It is only after settlement of the claims that the ticket is allowed to be transferred. In the case of defendant also, claims were lodged by other persons and settled on defendant's giving a notice of transferring the ticket. However, plaintiff never lodged a claim before Delhi Stock Exchange or before SEBI or before any other party since 1995. Had the claim of the plaintiff been existing, the plaintiff would have filed the claim. It is further submitted that plaintiff company i.e. M/s Vyas Leasing and Finance Limited and other two companies viz. M/s Link Overseas Finance Ltd. and M/s Overseas Carpet Ltd. were all closely linked companies and owned and run by same Directors. M/s Rahul Dairy was having Mr. Basu Dev as Chairman, Mr. Pawan Geol and Ms. Anil Goel as Directors. M/s Vyas Leasing and Finance Ltd. was also having the same Chairman and Directors.

7. It is also submitted that shares numbering 3,39,000 were never handed over to the plaintiff neither a package deal was entered into as claimed neither the price of share was Rs. 38-40. There was no term as package deal in vogue in this trade. In case the shares had been sold to the defendant, they would have been sold at the bottom rate instead of maximum rate as claimed by the plaintiff and the plaintiff would have entered into a prescribed form of contract as per rules with the defendant. Without issuing the requisite contract in respect of shares to be transferred or sold to the defendant, the plaintiff could not have dealt with the shares, in question. No contract was in existence between plaintiff and defendant in respect of the shares in question. The entire story was cooked up by the plaintiff. The plaintiff produced no document concerning deal between the plaintiff and defendant. The defendant could not have handed over cheques worth Rs. 1.2 crore without obtaining any authority from the plaintiff in its favor to deal with the shares in the market. The plea of the plaintiff that defendant received sale proceeds after selling the shares, is belied from the fact that after getting the cheques, the plaintiff waited for three years to claim the said amount and plaintiff did not lodge a claim either before Stock Exchange Board of India (SEBI) or before Delhi Stock Exchange (DSE) and even did not bother to lodge claim at the time of transfer of DSE ticket by the defendant. It is claimed that shares as stated by the plaintiff in the plaint were never handed over. Moreover, the shares are claimed to be partly paid up shares and as per rules and

guidelines of SEBI, partly paid up shares could not be handed over to defendant for selling.

8. The next defense taken by the defendant is that as per rules of SEBI, transfer of shares by Directors amounted to "inside trading", which was prohibited. In view of this prohibition, Promoter Directors could not have sold alleged shares directly or indirectly to the defendant and such a transaction would be null and void. Since both the parties belonged to the share business, they would not have allowed such a transaction and the plaintiff would not have executed a cheque of Rs. 1.2 crore. It is also submitted that a notice u/s 138 of NI Act was issued by the plaintiff deliberately at the old address of the defendant at Kailash Building at Connaught Place. The defendant had stopped operating from this premises since 1994, after selling DSE ticket and business to M/s Sunrise Securities Ltd. on 8th September, 1994. Since defendant were a well known stock broker, this fact was known to everybody in the trade market that defendant had no concern with the old address.

9. It is further submitted by defendant that the Objections/Memos filed along with the plaint bear the same date of 21st November, 1996 and they were all identical showing that a "Stop Notice" was issued from M/s Vyas Leasing Finance Ltd. Since both the companies were being managed by the same management, share transfer could not have allowed without the clearance of the plaintiff as the plaintiff had issued "Stop Notice" more so because M/s Rahul Dairy and Allied Products and M/s Vysya Leasing and Finance Ltd. were sister concerns having same Directors. An inference is drawn that all the objections/memos were fabricated in collusion with each other by plaintiff and M/s Rahul Dairy and Allied Products Ltd. It is submitted that the Book Closing Date of M/s Rahul Dairy as declared by Delhi Stock Exchange was 26th September, 1995 for the year 1995 and September, 1996 for the year 1996. After the Closing Date of Books any transaction on the floor of Stock Exchange is possible only through a new Transfer Deed. Any Transfer (pertaining to sale or purchase) through old Transfer Deed has to be treated as bad delivery by the Stock Exchange. In case the plaintiff sold all shares in the market then those shares could have been received by the company latest by 26th September, 1995, which was the Book Closing date, otherwise this transfer would have become bad. In case Company was not able to receive shares by 26th September, 1995 or within one year which was the validity date, whichever was earlier, as per rules, then M/s Rahul Dairy and Allied Products Ltd. should have approached either the defendant or ROC for correcting the shares and in case the defendant would not have obliged them by correcting the shares, they would have complained against the defendant before the Stock Exchange. No such procedure was complied with. In all probabilities these shares were lying with the plaintiff and in order to support the blank signed cheques, which were with the plaintiff, the plaintiff fabricated documents. The defendant referred to two Share Transfer Forms out of the documents filed by the plaintiff having ROC stamp of 15th July, 1994 and stated that the validity date of this Form for Transfer was one year from the date of stamp or the Book

Closing date, which was earlier. The shares could not have been presented for transfer beyond one year and the Transfer Deed itself would have become invalid and the Objection Memo of the plaintiff should have stated "Expired Transfer Deed" instead of or in addition to "Stop Notice". The Transfer Deeds filed by plaintiff were all expired and till September 1996 these shares had not come for transfer. The defendant prayed for grant of unconditional leave on the basis of above grounds.

10. In reply to the leave to defend, plaintiff denied all the averments made by the defendant and stated the averments made in the application were false and malicious and defendant had concealed material facts, the application was liable to be rejected. It is denied that the cheques were not issued against the consideration of transfer of shares or they were issued blank as security. plaintiffs contended that the defendant have taken a false and frivolous defense. However, the plaintiff did not deny the facts about the defendant holding ticket of stock market of Delhi Stock Exchange. It was also admitted that Mr. Pawan Goel was husband of Ms. Alka Goel and was the Promoter Director in M/s Rahul Dairy and Allied Products. Rest of the submissions made by the defendant have been just denied and no specific replies have been given to the submissions of the defendant in respect of different pleas taken by the defendant.

11. In suit No. 2010 the stand of the plaintiff is that a package deal had taken place in respect of 3,39,000 number of shares of M/s Rahul Dairy and Allied Products which was either held by plaintiff in his own name or held in the name of M/s Overseas Carpet Limited or M/s New Overseas Finance Limited for sum of Rs. 1.20 crore and two cheques were issued for consideration of transfer of these shares. A perusal of suit shows that there were three batches of shares and each batch of share contained 1,13,000 number of shares. For these three batches of shares at the prevalent market price, the defendant is alleged to have paid consideration of Rs. 1.20 crore thus, the consideration for one batch of shares of 1,13,000 comes to Rs. 40 lac. In suit No. 2013 which is filed by Ms. Alka Goel, she alleged that she transferred a batch of 1,13,000 shares on the same day to defendant against a consideration of Rs. 32 lac as a package deal and the cheque was issued by the defendant of Rs. 32 lac. Thus, from the contentions of plaintiffs it emerges that on the same day between the same parties, in one deal for the same number of shares i.e. 1.13,000, Rs. 32 lac was consideration and in second deal for same number of shares Rs. 40 lac was the consideration. Why would have defendant paid two different considerations for same number of shares to the same party on the same day, if the deal was on the basis of prevalent market price at the time of entering into the contract? This raises a grave suspicion about the stand of the plaintiff that the cheques were issued against package deal, considering the market rate of Rs. 38-40 price per share.

12. It is not disputed that M/s Rahul Dairy had come up with a public issue. It is also not disputed by the plaintiff that defendant were approached by the plaintiff/ Director to help in subscription of this public issue of M/s Rahul Dairy and Allied

Products Ltd. so that the public issue might not turn flop. There is no specific denial to the averments made by the defendant in leave to defend that, the defendant had on being approached by Mr. Pawan Goel agreed to undertake work of getting subscription for the public issue. defendant have placed on record the pages of journal which show that the defendant and four of its associates had done a major business. The plaintiff has not denied that "inside trading" was banned. It is also not specifically denied that in case the shares have been sold out by Promoter Directors, it would amount to "inside trading" and such trading was illegal. It is also not specifically denied by the plaintiff that these shares were not fully paid up shares and were only partly paid up shares and could not have been dealt, with as claimed. It has also been not specifically denied by the plaintiff that defendant had given a notice of its intention of transferring the ticket and a notice was put and the plaintiff was supposed to put up its claim.

13. The other averment made by the defendants regarding expiry of the "Transfer Form" giving specific instances from the documents filed by the plaintiffs have also not been denied. I consider that the defendants have specifically raised triable issue in this case - whether the cheques were issued in consideration of the transfer of shares or the cheques were issued as co- lateral security at the time defendant had under-written the public issue of M/s Rahul Dairy and Allied Products Ltd. at the instance of Mr. Pawan Goel and whether these cheques were misused by the plaintiff? I consider that the defendants are entitled to un-conditional leave to defend. The applications are allowed.

CS(OS) No. 2010/97, CS(OS) No. 2103/97, CS(OS) No. 549/07

The defendants to file WS within 30 days from today, replication, if any, be filed within two weeks. Parties to file all original documents within six weeks from today. List before Joint Registrar on 22nd February, 2008 for admission/denial of documents. List before Court for framing of issues on 14th March, 2008.