

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CS (OS) No. 575/1999

Judgment reserved on 11th July, 2011

% Judgment delivered on 25th July, 2011

M/s SRINIVASA FERRO ALLOYS LIMITED PLAINTIFF

Through: Mr. C.B.N. Babu, Adv.

Versus

M/s VLS FINANCE LIMITED DEFENDANT

Through: Mr. Sukumar Pattjoshi, Mr. S.S. Rai and Mr. Ashok Kumar Sharma, Adv.

AND

CS (OS) No. 624/1999

M/s SHRI GIRIJA SMELTERS LIMITED PLAINTIFF

Through: Mr. C.B.N. Babu, Adv.

M/s VLS FINANCE LIMITED DEFENDANT

Through: Mr. Sukumar Pattjoshi, Mr. S.S. Rai and Mr. Ashok Kumar Sharma, Adv.

Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J.

1. M/S Srinivasa Ferro Alloys Limited (for short hereinafter referred to as 'SFAL') and its sister concern M/s Shri Girija Smelters Limited (for short hereinafter referred to as 'SGSL') have filed the above-noted suits

against the defendant for rendition of accounts. Both the suits are based on similar facts and had been consolidated for trial vide order dated 27th September, 2005. It was ordered that CS(OS) No. 575/1999 shall be treated as lead suit and the evidence be led in the said suit.

2. Case of the plaintiffs, as set out in the plaint(s), is that SFAL had engaged defendant as a 'Lead Manager' for carrying out the job of its Public Issue vide Memorandum of Understanding dated 28th July, 1995 against the payment of management fee of ₹5 lakhs. SFAL paid a sum of ₹30 lakhs to the defendant vide cheque no. 152 dated 28th February, 1996 drawn on Vyasya Bank, New Delhi towards the caution money on the specific promise by the defendant that the same will be refunded after the Public Issue work was over. Similarly, SGSL also paid a sum of ₹45 lakhs to the defendant vide cheque no. 201 dated 28th February, 1996 drawn on Vyasya Bank, New Delhi towards the caution money. Defendant had promised to return this amount as well after the Public Issue work was over. Work of Public Issue was completed in the month of April, 1996. However, the 'caution deposit' was not refunded despite repeated requests. Defendant avoided to refund the caution money on one or the other pretext. SFAL vide letter dated 20th August, 1996 requested the defendant to refund the caution money of ₹30 lakhs. Similarly, SGSL vide letters dated 5th July, 1996 and 20th August, 1996 requested the defendant to refund the caution money of ₹45 lakhs. Aforesaid amounts were not refunded. Instead, vide fax reply dated 25th August, 1996, defendant stated that it had paid the said amount to their party as per their advice. Ultimately, legal notice dated 27th December, 1996 was served on the defendant calling upon it to refund

₹75 lakhs together with interest @ 24% per annum but to no effect. Defendant sent reply dated 3rd February, 1997 stating therein that the contents of legal notice were misconceived, misleading, false, frivolous and unwarranted and that no amount was payable. Hence, the suits.

3. In the written statement(s) defendant admitted that they were engaged as 'Lead Manager' by SFAL for its Public Issue, however, it was denied that Memorandum of Understanding dated 28th July, 1995 was executed between them in this regard. Defendant alleged that, in fact, Memorandum of Understanding dated 24th August, 1995 was executed between SFAL and defendant in this regard. In the prospectus dated 6th February, 1996 of SFAL for the Public Issue, no reference was made regarding Memorandum of Understanding dated 28th July, 1995. It is the Memorandum of Understanding dated 24th August, 1995 which was referred to in the said prospectus under the heading 'Material Contracts'. As per the Memorandum of Understanding dated 24th August, 1995, a sum of ₹10 lakhs was to be paid by SFAL to the defendant towards the management fee. There was no clause in the Memorandum of Understanding dated 24th August, 1995 providing deposit of caution money nor the same was ever paid. No caution money was ever paid and/or deposited by SFAL and SGSL, therefore, question of its refund did not arise. Had there been any caution money deposited by SFAL and SGSL, the same would have necessarily been reflected in the 'Annual Reports' of the companies. The 'caution money' had not been reflected in the Annual Reports of SFAL and SGSL for the years 1996-97 and 1997-98. Suits had been filed aiming recovery of ₹30 lakhs by SFAL and ₹45 lakhs by SGSL towards the alleged caution

money without paying court fee and was not maintainable. It was alleged that SFAL and SGSL had given a sum of ₹30 lakhs and ₹45 lakhs to the defendant respectively for being further remitted to one of their parties, that is, Mr. Princho Oberoi. Accordingly, on their advice and instructions, defendant had paid ₹30 lakhs vide cheque no. 003616 and ₹45 lakhs vide cheque no. 003615 both dated 8th June, 1996, drawn on Vyasya Bank, to Mr. Princho Oberoi, who had even acknowledged the receipt thereof in writing. SFAL and SGSL were also informed by the defendant vide letter dated 8th June, 1996 that the above referred cheques had been handed over to Mr. Princho Oberoi on their instructions. It was alleged that suits were bad for non-joinder of necessary party as Princho Oberoi had not been impleaded in the suits. SFAL and SGSL had filed the suits for rendition of accounts in order to harass the defendant, inasmuch as, they were seeking to recover ₹75 lakhs (₹30 lakhs + ₹45 lakhs) together with interest @ 24 % per annum under the garb of suits for rendition of accounts and that too without paying requisite court fee. Suits were not properly valued for the purposes of court fee and appropriate court fee had not been affixed thereon. It was specifically stated that there was no dispute regarding 'accounts' covered by the terms, conditions and clauses of the alleged Memorandum of Understanding, thus, suits were not maintainable. Receipt of legal notice dated 27th December, 1996 was admitted. It was denied that plaintiffs were entitled to any amount. It was alleged that no interest was payable. It was prayed that suits be dismissed.

4. In the rejoinder(s) filed by SFAL and SGSL to the written statement(s) filed by the defendant, contents of the written statement(s) were denied and averments made in the plaint(s) have been reiterated.

5. On the pleadings of the parties following issues were framed on 15th February, 2006 :-

“(1) Whether the suit of the plaintiff has been valued correctly for the purposes of court fee and jurisdiction and whether the plaintiff has paid the requisite court fee in accordance with law? OPP

(2) Whether the suit for rendition of account is maintainable as stated by the defendant in the written statement? OPD

(3) Whether the suit of the plaintiff does not disclose any cause of action? OPD

(4) Whether the plaintiff is entitled to the relief of rendition of accounts? If so to what amount and to what effect? OPP

(5) Whether the amount was paid to Mr. Princho Oberoi, with the consent of the plaintiff, as claimed by the defendant in the written statement? If so, to what effect? OPD

(6) Relief.”

6. SFAL and SGSL have examined two witnesses, namely, Mr. Ravi Shankar Mani, Resident Representative of SFAL as PW1 and Mr. Manohar Rao, Deputy Manager (Finance) of SFAL as PW2. As against this, defendant has examined Mr. Harsh Allagh, Representative of defendant as DW1. Memorandum of Understanding dated 24th August, 1995 has been proved as Ex. PW1/D4. Letters dated 8th June, 1996, written by defendant to Mr. C.S. Raju, Chairman-cum-Managing Director of SFAL to the effect that a sum of ₹30 lakhs and ₹45 lakhs had been paid to Mr. Princho Oberoi vide cheque nos. 003616 and

003615 both dated 8th June, 1996 drawn on Vyasya Bank respectively, as per their instructions, have been proved as Ex. PW1/D3 and Ex. PW2/D1 respectively. Annual Reports of SFAL for the years 1996-97 and 1997-98 have been proved as Ex. PW1/D1 and Ex. PW1/D2 respectively. Letters dated 8th June, 1996 written by defendant to Mr. Princho Oberoi regarding handing over the cheques for ₹30 lakhs and ₹45 lakhs, on the instructions of SFAL and SGSL, have been proved as Ex. DW1/1 and Ex. DW1/2 respectively. Letters dated 8th June, 1996, written by Mr. Princho Oberoi to defendant acknowledging the receipt of aforesaid amount on behalf of SFAL and SGSL, have been proved as Ex. DW1/3 and Ex. DW1/4. Legal notice dated 27th December, 1996, has been proved as Ex. DW1/X-B. Reply of the defendant to the legal notice has been proved as Ex. DW1/X-A. Prospectus of SFAL has been proved as Ex. D1.

7. I have heard learned counsel for the parties and have perused the record and my issue wise findings are as under:-

Issue Nos. 2 and 4:

8. First of all I will deal with Issue nos. 2 and 4 as they go to root of the matter and require detailed discussion which may also be helpful for returning findings on the other issues as well. In nutshell, case of SFAL and SGSL as set out in the plaint(s) is that defendant was engaged by them as 'Lead Manager' for carrying out the job of Public Issue against the management fee of ₹5 lakhs. As agreed, a sum of ₹30 lakhs was paid by SFAL and ₹45 lakhs was paid by SGSL to the defendant towards caution money. Defendant had promised to refund the same after Public Issue work was over. After completion of Public

CS(OS) No. 575/1999

Issue work, this amount was not refunded despite repeated requests. Legal notice dated 27th December, 1996 did not bring any fruitful results. Defendant was also liable to pay interest @ 24% per annum on the above amount from the date of completion of work i.e. April, 1996. PW1 has deposed that plaintiffs had agreed to deposit caution money of ₹30 lakhs and ₹45 lakhs with defendant on the specific promise that the same will be refunded after the Public Issue work was over. Accordingly, plaintiffs had deposited ₹30 lakhs and ₹45 lakhs respectively with the defendant vide cheque nos. 152 and 201 both dated 28th February, 1996 drawn on Vyasya Bank, New Delhi, towards the caution money. Public Issue work was completed in the month of March-April, 1996, however, the caution money was not refunded despite repeated requests. Legal notice dated 27th December, 1996 requesting the defendant to refund ₹75 lakhs together with interest @ 24 % per annum did not bring any fruitful results. Defendant vide reply dated 3rd February, 1997 denied the contents of entire legal notice. Similar is the statement made by PW2.

9. From the above it is clear that neither in the plaint(s) nor in the deposition of PWs any reference has been made that there existed any fiduciary relationship between the plaintiffs and defendant. On the contrary, during the course of arguments it was admitted that relationship between the plaintiffs and defendant was that of principal to principal. It is not the case that defendant was agent of SFAL and SGSL and mutual account was to be maintained or that defendant had to render any accounts to them. Memorandum of Understanding dated 28th July, 1995, on which reliance has been placed by the plaintiffs, has

remained unproved. Defendant has placed on record Memorandum of Understanding dated 24th August, 1995 and has proved the same as Ex.PW1/D4, a perusal whereof makes it clear that relation between the plaintiffs and defendant was that of principal to principal. Defendant was engaged as 'Lead Manager' by SFAL to supervise its Public Issue work as against management fee of ₹10 lakhs. It is not the case that the fee was to be adjusted against the alleged deposits, inasmuch as, no document has been placed on record to show that any caution money or security deposit was to be made by SFAL or SGSL which was to be refunded after adjusting the amount that may become due and payable to the defendant. Ex. PW1/D4 does not talk about the payment of any advance, caution deposit or security deposit much less an amount of ₹75 lacs. No document has been placed on record to indicate that mutual and running account was to be maintained between the plaintiffs and defendant in connection with the issuance of Public Issue or any account was to be rendered by the defendant to SFAL after completion of work. On the contrary, vide legal notice dated 27th December, 1996, amount of ₹75 lacs was claimed together with interest. Defendant was not called upon to render any accounts. Even the plaint(s) is silent on this aspect. On the contrary, specific averments have been made that defendant was liable to pay ₹75 lacs with interest @ 24% per annum.

10. In ***K.C. Skaria Vs. Govt. of State of Kerla & Another (2006) 2 SCC 258***, Supreme Court has held as under :-

“15. It is now well settled that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases

and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right. [vide *Jowahar Singh v. Haria Mal* (1899) 60 P.R. 1899, followed in *Gulam Qutab-ud-din Khan v. Mian Faiz Bakhsh* AIR 1925 Lah 100, *State of Jammu & Kashmir v. L. Tota Ram* AIR 1971 J&K 71, *Triloki Nath Dhar v. Dharmarath Council* AIR 1975 JK 76]. The right to seek rendition of accounts is recognized in law in administration suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against trustee (s), suits by a member of a joint family against the karta for partition and accounts, suits by a co-sharer against other co-sharer (s) who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the funds of the minor.

16. Even where there is no specific provision for rendition of accounts, courts have recognized an equitable right to claim rendition of accounts. In *Narandas Morardas Gaziwala v. S.P.Am.Papammal* AIR1967SC333 this Court considered the maintainability of a suit by an agent against the principal for accounts. Negating the contention that only a principal can sue the agent for rendering proper accounts and not vice versa (as Section 213 of the Contract Act provided that an agent is bound to render proper accounts to his principal on demand without a corresponding provision in the Contract Act enabling the agent to sue the principal for accounts), this Court held:

“In our opinion, the statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right.”

Though an agent has no statutory right for an account from his principal, nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claim for

commission against his principal. The right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into”

17. To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee; or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.”

11. In ***Hari Gokal Jewellers vs. Satish Kapur 2006 (88) DRJ 837***, legal notice was issued by the plaintiff to the defendant thereby claiming a definite amount of ₹17,39,169/- with interest @ 12%. No claim with regard to rendition of accounts was raised in the notice nor was there any averment made in the plaint in this regard. In these facts, a Division Bench of this Court has held that the suit for rendition of accounts would not be maintainable more so, when in the plaint there was no reference to any fiduciary or other relationship like master or servant, employee and contractor, regular mutuality of accounts maintained in the normal course of business where a party holds the goods in trust or otherwise and members of the trust. It was specifically observed that since plaintiff had himself given a notice for a definite

amount, there was no basis for instituting a suit for rendition of accounts. Before the plaintiff could call upon the defendant to render the accounts, plaintiff has to satisfy the Court that he has a legal right to claim rendition of accounts. Plaintiff cannot be allowed to file a suit for recovery of money in the garb of a suit for rendition of accounts.

12. In this case, in legal notice dated 27th December, 1996 (Ex.DW1/X-B), SFAL and SGSL had in no uncertain terms asked the defendant to make payment of ₹75 lakhs together with interest. Overall reading of plaints also makes it clear that SFAL and SGSL seek recovery of this amount allegedly paid towards the caution money. Neither in the notice nor in the plaints it has been mentioned that defendant was liable to render any accounts to the plaintiffs. No evidence has been led to satisfy the Court that plaintiffs have a legal right to claim rendition of accounts. Plaintiffs cannot be permitted to file a suit for recovery under the garb of suit for rendition of accounts. In my view, the suits for rendition of accounts are, thus, not maintainable. Consequently, in my view, plaintiffs are not entitled to any relief of rendition of accounts. Both these issues are answered in favour of defendant and against the plaintiffs.

Issue No. 1

13. In CS (OS) No. 624/1999, plaintiff SGSL stated that the value of the Suit for the purpose of the jurisdiction is fixed tentatively at ₹45 lakhs and for the purpose of Court Fee is fixed tentatively at ₹200/- on which Court Fee of ₹20/- is being paid. Similarly, in CS (OS) No. 575/1999, plaintiff SFAL has stated that the value of the suit for the purpose of court fee is fixed tentatively at ₹30 lakhs and interest

thereupon @ 24% per annum and a prescribed court fee under Section 7(4)(f) of the Court Fees Act, 1870 is being paid. While answering Issue nos. 2 and 4 it has already been held that the suits for rendition of account are not maintainable since plaintiffs were aware of definite amount which they sought to recover from the defendant. Indubitably, so far as the valuation for the purpose of court fee is concerned, in a case of rendition of accounts, it has to be left open to the plaintiff to affix valuation. At the same time, this valuation cannot be fixed arbitrarily. In the present case, perusal of notice, plaint(s) and depositions of PWs clearly show that plaintiffs were well aware of the amount it sought to claim and for which amount suits were valued for the purposes of pecuniary jurisdiction. Thus, in my view, suits had to be necessarily valued, for the purposes of court fee, at ₹45 lakhs and ₹30 lakhs respectively and ad valorem court fee thereon was payable. Accordingly, this issue is decided in favour of the defendant and against the plaintiffs.

Issue No. 3

14. Careful perusal of plaint(s) clearly indicate that plaintiffs have not made any averment that defendant was liable to render accounts to the plaintiffs nor any evidence in this regard has been led. While deciding Issue Nos. 2 and 4 it has already been held that suits for rendition of accounts were not maintainable since plaintiffs had failed to make out a case that they were entitled to seek relief of rendition of accounts from the defendant. A detailed discussion in this regard has already been made. For the forgoing reasons and in

absence of any averment made in the plaint(s) and deposition of PWs that defendant was liable to render accounts, in my view, plaint(s) does not disclose cause of action for filing suits for rendition of accounts. This issue is also decided in favour of the defendant and against the plaintiffs.

Issue No. 5

15. Case of the defendant is that SFAL and SGSL had paid a sum of ₹30 lakhs and ₹45 lakhs respectively to the defendant to remit it to one Mr. Princho Oberoi. Onus to prove this issue was upon the defendant. However, defendant has failed to prove this issue. Mr. Princho Oberoi has not been produced in the witness box to depose that he had received ₹75 lakhs from the defendant. It has remained unproved that the alleged cheques had been duly encashed. Relevant entries in the bank's statement in this regard has not been proved, inasmuch as, records of the bank had been destroyed after eight years. In the letters Ex.D1/3 and Ex.D1/4 even the address of Mr. Princho Oberoi has not been mentioned. Defendant has failed to prove that it had received any instructions from the plaintiffs with regard to the remittance of the said amount to Mr. Princho Oberoi. Mere fact that Ex.PW1/D3 and Ex.PW2/D3 had remained unreplied by itself is not sufficient to prove the payment of such a huge amount to Mr. Princho Oberoi that too on oral instructions of Mr. C.S. Raju, Chairman-cum-Managing Director of plaintiffs. Evidence led by the defendant on this point is insufficient to prove this issue.

This issue is, accordingly, decided in favour of the plaintiffs and against the defendant.

Relief

16. In view of the findings on Issue Nos. 1 to 4, both the above suits are dismissed. No order as to cost.

A.K. PATHAK, J.

JULY 25, 2011

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