

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14.05.2013
Pronounced on: 26.07.2013

+ **RFA (OS) 62/2010, C.M. APPL. 11525/2010, 16110/2010,
3865/2011 & CRL. M.A.853/2011**

MR. ARUN MEHRA AND ANR. Appellants
Through: Sh. Mohit Chaudhary with Ms.
Pragya Singh and Sh. Harsh Sharma,
Advocates.

Versus

MR. RAVINDER NANDA AND ORS. Respondents
Through: Dr. Sarabjit Sharma, Advocate, for
respondents.
Sh. Udyan Jain with Sh. Amit Sherawat,
Advocates, for applicants in C.M.
Appl.5107/2013

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

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1. The present appeal is directed against the judgment and order of a Learned Single Judge, rejecting the plaint in a suit filed by the appellant (hereafter “the Plaintiff”) claiming permanent injunction.

2. The brief facts relevant for the purpose of deciding these applications are that the plaintiffs entered into a share purchase agreement dated 19th May, 1997 to purchase 100% shares of M/s. Durga Builders from its erstwhile shareholders i.e. the defendants. The original share certificates were handed over to the plaintiffs bearing endorsements of defendants on each share certificate. They also rely on a Board Resolution dated 19th May, 1997 of the company in respect of authorities/power of attorneys given to the defendants by the company. The plaintiffs alleged that they and their group companies made substantial investments in M/s. Durga Builders (P) Ltd. to the extent of Rs.10 Crores in the form of work executed, lending and arranging finances. The shares were transferred by defendants since they were not able to run the company and the plaintiffs had taken over the company in order to secure the investments made by the plaintiffs in the company. Under the agreement of share transfer, the company was entitled to all assets described in the balance sheet as available on the date of agreement. A detail of the plots available was attached as Annexure I to the agreement which showed that there were 2408 plots, mostly smaller plots, that had been allotted to third parties, while the larger plots of the area 502 Sq.yards, 418 Sq. yards and 289 Sq. yards had not been allotted to third parties and were lying vacant. The company also owned over 6000 Sq. yards of vacant land. 55% of the land of the company was unallotted and owned by the company at the time of purchase by the plaintiffs. These lands were situated at Okhla Enclave, Faridabad. The major assets of the company were immovable

properties; it did not engage itself in any other business. The agreement provided that defendants would not make any commitments or incur any liability or remove or encumber any assets without the prior approval of the plaintiffs in writing, after signing the agreement. The defendants also represented to the plaintiffs that they were not engaged in any litigation.

3. The plaintiffs alleged that they learnt that the defendants had created unwarranted liabilities by making illegal bookings of plots far in excess of the number available and misappropriated the sale proceeds by diverting amounts to their personal accounts. Consequently, the company was mired into litigation including I.A. No. 2454/09, I.A. No. 4490/09, I.A. No. 7581/09 & I.A. No. 8296/09 in CS(OS) No. 354/2009 and some criminal proceedings against the defendants and the same were pending. The Plaintiffs confronted the Defendants, who then undertook to clear all the liabilities. They however, did not hand over the management and control of the company to the plaintiffs for a considerable time and thereafter filed a suit being CS(OS) No. 961/2004 before this Court seeking a declaration that agreement dated 19.05.1997 was null and void. The plaintiffs then approached Company Law Board in Petition No.54/2005 claiming that the transfer of shares be effected in their name with Registrar of Companies. The Board dismissed the plaintiffs' petition on the ground that they had not approached it with clean hands as there was no disclosure regarding filing of the suit titled as *Vishesh Jain v. Arun Mehra & Ors.* being CS(OS) No.

1136/2005 and also since the defendants' suit was pending before the High Court wherein validity of agreement had been challenged and that the company had assets worth more than Rs.100 Crores and the company was "turning a corner" and the company should not have been taken over by the plaintiffs at that stage.

4. The plaintiffs alleged that the defendants had filed a false suit titled as *Vishesh Jain v. Arun Mehra & Ors.*, which became the basis of observations made by Company Law Board regarding the plaintiffs' concealment of facts. The defendants had also filed the said suit with *malafide* intentions and had wrongly pleaded before the Company Law Board that the company was highly profitable and was turning a corner. The defendants also colluded and filed a fraudulent and fictitious winding up petition before the Company Court, i.e Company Petition No. 238/2005 titled *Manjit Kaur v. Durga Builders Pvt. Ltd.* When the Company Court discovered about this collusion between the defendants and their lawyer, that Court observed about this on 3rd October, 2008 and also directed for registration of a case against the defendants and their lawyer. It is submitted that an appeal against the said order was dismissed on the ground that common issues were raised by the defendants in CS(OS) 961/2004 and the petition before Company Law Board. The plaintiffs had preferred a Special Leave Petition against the order of Company Law Board before the Supreme Court. The plaintiffs submit to having duly disclosed all the proceedings before the Company Law Board except those about which they were not aware or which had been filed by

strangers in collusion with the defendants. The suit filed by the defendants being CS(OS) No. 961/2004 was dismissed by the Court on 30.01.2009 and the restraint order passed by the Court in the said suit came to end. Consequently, the plaintiff instituted the present.

5. It was submitted that even after selling all their shares by the defendants to the plaintiffs on receiving consideration and resigning from the Directorship of company, the defendants continued to execute sale deeds in respect of properties belonging to the company. The defendants were not entitled to sell the land belonging to the company. In CS(OS) 961/04, this Court vide order dated 10th November, 2006 granted an interim injunction restraining defendants from selling, alienating or creating third party interests in the immovable assets of the company except in respect of plots in Faridabad covered by the orders of the Supreme Court and Punjab & Haryana High Court. Thus, defendants could execute sale deeds only in respect of such plots provided that a week before executing the sale deed an affidavit was to be filed with advance copy to counsel for the plaintiffs informing the name of the person in whose favour sale deed was proposed to be executed, with full particulars of the plot to be sold and sale consideration received. It is submitted that in direct violation of this injunction order, the defendants executed sale deeds in respect of the company's land in Faridabad without filing affidavit as required. The plaintiff then filed a contempt petition against the defendants in view of this violation. It is stated that defendants were acting *mala fide* and in order to play fraud upon the plaintiffs, were

disposing of the property of the company. It is further submitted that the defendants had been taking false plea in order to deny access to the plaintiffs to the records of the company. The defendants in their reply to the contempt proceedings pleaded inability to give details of the sale deeds executed by them on the ground that High Court had passed orders for winding up and they had sent the records to the Official Liquidator. However, the Court in its order dated 3rd October, 2008 recorded submission of the Official Liquidator that no records were sent to it by the defendants. The Court in view of this submission, again directed the defendants to furnish complete statements of affairs of the company and to hand over the records to the Official Liquidator. The plaintiffs state that status report dated 9th September, 2008 of by District Town Planner, Headquarters, Haryana showed that sale and purchase of plots was still going on and sale deeds were being executed in favour of various individuals by Mr. R.K.Nanda (Defendant No.1). It is further stated that on 28th February, 2009 before the Executing Court at Faridabad, the defendants made a statement that they were willing and ready to execute and register sale deed in favour of a third party. This statement was made without disclosing to the Executing Court that a restraint order was passed by this Court on 20th February, 2009 (in the present suit) restraining defendants from functioning or dealing with any movable or immovable properties of M/s. Durga Builders. Thus, the defendants were out to commit illegalities and play fraud in connivance with their advocate and third parties. The plaintiffs apprehended that the

defendants would succeed in transferring or alienating their properties, if the latter were not restrained from acting on behalf of the company.

6. The defendants urged that the company was an independent entity and its shares could be sold by its shareholders. Even in the case of sale of shares, no rights would vest in the person claiming to be transferee of the shares, unless they (the shares) were produced for registration under Section 108 of the Companies Act, 1956. It is submitted that the plaintiff, after the agreement dated 19th May, 1997 sought transfer of shares in his name. On the other hand, the plaintiff had been claiming in all prior litigation that he had acquired the shares from the defendant only to secure the amounts advanced as loan to the company. It is pleaded by the defendants that the agreement dated 19th May, 1997 cannot be enforced due to lapse of such long time. The period of limitation for enforcing the agreement was three years and the suit was filed much after the period of limitation. It was further submitted that plaintiff was appointed as Director of the company after 19th May, 1997 and he never came forward either to function as Director or even to inform this to the Registrar of Companies, nor was the requisite Form No.32 ever submitted to the Registrar of Companies. Thus, the defendants had no option but to continue with the company as Directors and keep facing various criminal cases. The plaintiffs also did not perform their part of promise stipulated in the agreement dated 19th May, 1997, instead denied their liability on behalf of the Company under the agreement on the ground that the agreement had become time barred. It was

further submitted that after dismissal of plaintiffs' Company Petition before Company Law Board, an SLP was preferred by the plaintiffs and the Supreme Court declined interim directions. It was also argued that till the issue of registration and transfer of shares in the name of plaintiffs were heard and adjudicated upon by the Supreme Court in favour of the plaintiffs, they had no rights vis-à-vis the company and were not entitled to seek the relief claimed.

7. The defendants further referred to suits filed by them on behalf of the company and stated that in CS(OS) No. 961/2004, the plaintiffs in their written statements (as defendants) specifically stated that the agreement was only for securing the payments made to company and not for its purchase. The plaintiffs' petition under the Companies Act too was later dismissed by the Company Law Board on 22nd February, 2006 when it was observed that Mr. Mehra slipped away from the company during the period 1997 till 2004, when it faced considerable civil and criminal litigation. The said Board also observed that the defendants had been carrying and managing the affairs of the company in respect of various proceedings. While the plaintiffs had claimed that they were holding 96% shares in the company, they did nothing from 1997 onwards. The Company Law Board therefore dismissed the Petition filed by the plaintiffs. The appeal filed before this Court against the Company Law Board's decision too was dismissed. The Supreme Court refused to grant an interim order in favour of the plaintiffs in the petitions seeking special leave to appeal.

8. The Learned Single Judge dismissed the suit, invoking Order VII Rule 11, CPC and holding that the claim was time barred; the relevant findings recorded are extracted below:

“9. There is no dispute about the fact that the share purchase agreement was executed on 19th May, 1997. It is also not disputed that the company was in precarious situation and had lot of liabilities to the knowledge of plaintiffs. Despite entering into agreement dated 19th May, 1997 plaintiffs took no steps either to get their shares registered, nor forwarded their names to Registrar of Companies in Form No. 32 as Directors, nor started functioning as Directors nor took control of Company. Plaintiffs seemed to be happy that defendants were facing music of criminal prosecution and had to face the ire of plot holders. For seven long years plaintiffs kept watching and did not act. In the suit filed by defendants they pleaded that agreement dated 19th May, 1997 was executed to secure their financial interests. Considering these undisputed facts and that from 1997 to 2004, the plaintiffs took no steps to enforce their rights. They did not take control of the company, did not call any board meeting, did not send their names as Directors to the Registrar of Companies, did not get the shares transferred in their names in the record of Registrar of Companies, I consider that the relief, which is now being sought by the plaintiffs against the defendants from restraining the defendants from acting on behalf of the Company on the face of it cannot be granted. The defendants have been holding themselves as Directors of the company right from 1997 till date to the knowledge of the plaintiffs. If the plaintiffs were aggrieved by the act of the defendants, they should have approached the Court immediately. The entire action of the plaintiffs only shows that the plaintiffs were not bothered about the company or its activities. The plot holders of the company were crying and making efforts to

get the plots in their names but the plaintiffs were not concerned. For the first time they woke up in 2004 and all litigations have been filed by the plaintiff only after 2004 i.e. after 07 years of entering into the agreement. The present suit has been filed by the plaintiffs after about more than 10 years of the execution of the agreement.

10. The relief which is being sought by the plaintiffs against the defendants on the basis of the agreement cannot be granted since plaintiffs chose to sleep over their rights for a long time and allowed the agreement to remain inoperative and action barred by limitation. I, therefore consider that the application under Order 39 Rule 1&2 CPC and the suit are liable to be dismissed and application under Order 7 Rule 11 CPC is liable to be allowed in view section 3 of the Limitation Act which provides, that a Court where a suit is instituted after the period of limitation, shall dismiss the suit even if no defence of limitation has been set up. I, therefore hereby dismiss the suit.”

9. The Appellant/Plaintiff argues in pleadings in its appeal, and through the submissions of its counsel, Shri Mohit Chaudhary, that the impugned order is erroneous. It is urged that the Learned Single Judge lost sight of the fact that there was no occasion for the plaintiff to approach the court earlier than the time he did. In this context, it was argued that the suit filed by the defendant, i.e Suit No. 961/2004 had sought a decree for declaration that the agreement for transfer of shares was not valid, legal and binding. Although the plaintiff's efforts in securing relief from the Company Law Board came to a naught, since his petition was dismissed, the further clarification by this Court in the appeal preferred against that decision (through the order dated

30.10.2006 in Co. A. No. 7/2006) that all substantive rights of the parties would be decided by the Court in the pending suit, i.e. CS(OS) 961/2004 meant that the legality of the share transfer was to be gone into in the suit. The order made in that suit, on 10.11.2006 had recorded that the defendant (plaintiff in the said suit) would maintain *status quo*. Furthermore, in the Company Appeal preferred by the appellant, the Court had stated that the rights of the parties would be determined in CS(OS) 961/2004. In the circumstances, there was no occasion for the appellant to seek injunction. Had he approached the court, in all likelihood, the suit or proceeding would have been termed premature. It was only upon dismissal of CS (OS) 961/2004 that the need to seek a protective order arose.

10. It was contended that the Learned Single Judge fell into error in linking the transfer of shares, and ownership of the company in 1997, with the question of cause of action for injunctive relief. It was submitted that the Court failed to see that the dismissal of CS(OS) 961/2004 in fact reinforced the title and rights of the appellant, to the shares and property of the company. Therefore, unless an appropriate order injunctioning the respondents was made, irreparable prejudice would have ensued. Counsel argued that unlike in the case of a declaratory suit, limitation in a claim for injunction arises when the threat complained against arises, or is apprehended. It was also argued that an issue of limitation is a mixed question of facts and law, and therefore, the Single judge should not have dismissed the suit. Learned counsel lastly relied on the decisions of the Supreme Court, reported

as *C. Mohammed Yunus v Syed Unissa and Ors.* AIR 1961 SC 808 and *Daya Singh and Anr. v Gurdev Singh (Dead) by LRs and Ors.* 2010 (1) SCR 194.

11. Counsel for the defendant/respondent argued that the appellant, in the written statement in CS (OS) 961/2004 had taken pleas which are entirely contrary to the averments in his suit, which was rejected by the impugned order. It was also argued that the dismissal of CS (OS) 961/2004 could not be said to constitute a cause of action. If indeed the appellant had apprehended that the respondent would transfer or part with possession of any properties, he ought to have approached the Court at that stage. Not having done so, he cannot be heard to say that the suit was filed within the period of limitation prescribed by law. Dr. Sarabjit Singh, learned counsel, also submitted that by virtue of orders in a pending proceeding before the Supreme Court (W.P. 876/1996) the respondent has been restrained from handing over possession of any property.

12. What emerges from the above discussion is that there is now no controversy about the binding nature of the agreement dated 19.05.1997, as between the parties in relation to the underlying transaction. This is because the defendant/respondent's suit, CS(OS)961/2004 was dismissed on 30.01.2009. There is also no dispute that till that date, an interim order had subsisted, preventing the disturbance of *status quo* in respect of the properties and status of the company. The question then is, whether the Learned Single Judge was right in rejecting the appellant's suit, filed after 30.01.2009.

13. The judgments cited, i.e. *C. Mohammed Yunus v Syed Unissa and Ors.* AIR 1961 SC 808 and *Daya Singh and Anr. v Gurdev Singh (Dead) by LRs and Ors.* 2010 (1) SCR 194 are authorities on the point that the claimant can approach the Court only on the occurrence of a cause of action, in the context of a suit, which is governed by Article 54 of the Limitation Act. In the present case, there can be no manner of dispute that the cloud over the title to the shares and management of the company had passed. The plaintiffs' attempt to agitate and question the actions of the respondent/defendant in proceedings under the Companies Act were turned down; it was clearly mentioned that the parties' rival claim to title to the shares and ownership would be decided by the Court in exercise of original jurisdiction. It is again not disputed that in those proceedings, i.e. CS (OS) 961/2004, an interim order of *status quo* bound the respondent; the suit was eventually dismissed. In these circumstances, this Court is of the opinion that the Plaintiff-Appellant's argument about its not having approached the Court for injunctive relief earlier, to avoid needless litigation, is of sound merit. The Learned Single Judge, with respect appears to have lost sight of the fact that to drive the Appellant to file a suit, on apprehension of threat to property, even during subsistence of an interim order (though the carriage of that proceeding was with the respondent) would have meant multifarious proceedings, and a possibility of conflicting orders, which Courts ordinarily frown upon. The Court holds as insubstantial the defendant's argument that dismissal of one's civil suit cannot constitute a cause of action to another. What is important is whether there is a threat to the property-

that alone determines whether a cause of action has arisen. In the facts of this case, this Court has no doubt in its mind that such threat did arise after dismissal of the defendant's suit. As a result, the Court is of further opinion that the Learned Single Judge should not have rejected the plaint on the ground that the suit was time barred.

14. The parties are directed to maintain *status quo* as regards the property which had been the subject matter of the present appeal, and apparently for which there is a subsisting interim order of the Supreme Court. They shall present themselves before the learned Single Judge, on 12th August, 2013 for directions toward fixing a date of hearing of the *ad-interim* injunction application. The *status quo* order shall subsist and bind the parties till the Single Judge shall decide such application. We request that the hearing and orders should be conducted and concluded at the earliest convenience of the learned Single Judge. The orders made, especially the interim orders, directed by this judgment, shall be subject to any orders of the Supreme Court. The appeal succeeds and is allowed; the suit is restored in the above terms. There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

JULY 26, 2013

