IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 610 of 1996

1. Reliance Industries Limited	)
A company registered under the	)
Companies Act, 1956 and having its	)
Registered office at Maker Chambers IV	)
Nariman Point, Mumbai – 400021	)
2. Reliance Consultancy Services Limited,	)
A company registered under the	)
Companies Act, 1956 and having its	)
Registered office at 56, Mogra Village	)
Lane, Off Old Nagardas Road,	)
Andheri(East) , Mumbai- 400069	)… Plaintiffs
Versus	
Ms. Rajul C. Vasa, of Mumbai Indian	)
Inhabitant, residing at A/4, Alka, Opp.	)
N.L.High School, 19, S.V.Road, Malad	)
(West), Mumbai – 400064	)… Defendant

Ms. Alpana Ghone , i/b Kanga & Co. for the Plaintiffs.

None for the Defendant.

CORAM: S. J. Kathawalla, J.

Date :2nd July, 2015

JUDGEMENT:

1. The present suit has been filed to recover from the Defendant the amount of loss suffered by the Plaintiffs because of issuance of duplicate share certificates (of Plaintiff No.1 company) to the Defendant pursuant to her applications for issuance of duplicate share certificates for loss of shares.

2. The Defendant has filed her Written Statement. The main grounds of defense, *inter alia*, are : i) that Defendant had caused search to be carried out at her place as also with her broker and banker and the lost share certificates could not be located by her, (ii) that the Board of Directors of Plaintiff No.1 had satisfied itself about the loss of share certificates and then passed resolution for issuance of duplicate shares, (iii) no loss and/or damage was caused to the Plaintiffs and (iv) the Indemnity issued by her is not valid and subsisting.

3. Based on the aforesaid pleadings, the following issues were framed by this Court by its order dated 8th April, 2014 (Coram: G.S. Patel J.)

i) Whether the Plaintiffs prove that the Indemnity dated 3rd June, 1994 is valid, subsisting and binding on the Defendant?

ii) Whether the Plaintiffs prove that they have suffered a loss of Rs. 1,03,80,000/- as a direct result of issue of duplicate share certificates pursuant to the Defendant's application?

iii) Whether the Plaintiffs prove that the Indemnity dated 3rd June, 1994 has been validly invoked by Plaintiff No.1?

iv) Whether the Plaintiffs are entitled to a decree in the sum of Rs.1,03,80,000/- as per particulars of claim Ex. “G” together with interest at the rate of 18% per annum from the date of filing of the suit till payment and/or realization thereof?

v) Whether the Defendant proves that she is not liable for the loss caused to the Plaintiff No.1?

vi) Whether the Defendant proves that the suit as framed is not maintainable?

vii) Whether the Defendant proves that the suit is barred by the law of limitation?

viii) What order?

4. By the same order dated 8th April, 2014 the Plaintiffs were directed to file their Affidavit of Documents, Compilation of Documents and Affidavit in lieu of Examination in Chief and serve copies thereof on the Defendant. Accordingly, the Plaintiffs filed their Affidavit of Documents dated 22nd July, 2014, Compilation of Documents and Affidavit in lieu of Examination in Chief of Mr. Rohit Shah (PW-1) dated 22nd July, 2014. Copies of the same were served on Advocate for the Defendant.

5. Admissibility of documents filed by the Plaintiffs was considered by this Court (Coram: G.S.PatelJ.) on 29th September, 2014. None appeared for the Defendant. Based on the deposition of PW-1, the documents at Sr. Nos. 1 to 18 of the Compilation of Documents were taken on record and marked as Exhibits “P-1” to “P-18” respectively. Mr. Rashid Khan, Advocate was appointed as Commissioner for recording evidence of PW-1.

6. The Court Commissioner had fixed a preliminary meeting in the said suit on 14th November, 2014. At the preliminary meeting, the Court Commissioner fixed 9th and 10th

December, 2014 for conducting cross examination of PW-1. However, the Advocate for the Defendant by his letter dated 8th December, 2014 informed the Court Commissioner that the Defendant is not coming forward to give any instructions in the matter and he will therefore be seeking discharge in the matter.

7. This Court has in its order dated 12th January, 2015 (Coram : G.S.PatelJ.) recorded that the Advocate for Defendant had made a statement before the Commissioner for recording evidence that he is in the process of taking a discharge in the matter. The Advocates for the Plaintiff and the Registry were both directed to issue notice to the Defendant of the next date of hearing i.e 28th January, 2015.

8. Notices sought to be served on the Defendant were returned with remarks "unclaimed/returned to sender".

9. The matter appeared on board of this Court on 16th June, 2015. One more attempt to serve notice to Defendant by the Advocate for the Plaintiffs also failed. As the Defendant was not present, the cross examination of PW-1 was closed and the suit was directed to be placed for final arguments.

10. The Plaintiffs have led evidence of Mr. Rohit C. Shah , Vice President, Corporate Affairs of Plaintiff No.1 (PW-1). The Plaintiffs have also filed documentary evidence. The Defendant has not cross examined the Plaintiffs' witness. Therefore, the entire testimony of the Plaintiffs' witness has remained uncontroverted. There is no evidence oral or documentary led by the Defendant.

11. The facts briefly stated are as follows:

a) The Defendant was prior to April, 1994 holder of 25,950 shares ("suit shares") of Plaintiff No.1 company. The details of the shares are set out in a statement Ex. P-1. By letter dated 7th April, 1994 (Ex. P-2) Defendant wrote to Plaintiff No.1 that the share certificates relating to the said shares were misplaced at her end. She requested that duplicate share certificates be issued to her and further requested that if the shares were received for transfer, the same should not be effected by Plaintiff No.1. Plaintiff No.2 who is the share transfer agent of Plaintiff No.1 issued four identical letters all dated 14th April, 1994 to the Defendant in respect of various folios informing her about the steps to be taken for issuance of duplicate share certificates. (Exs. P-3 to P-6).

b) As required, Defendant forwarded to Plaintiff No.2 an Indemnity agreement dated 3rd June, 1994 duly executed by her (Ex. P-7). By the said indemnity the Defendant, in consideration of Plaintiff No.1 agreeing to issue duplicate share certificates, covenanted with Plaintiff No.1 that she would at all times save, defend and keep harmless and indemnified Plaintiff No.1 and its directors against all claims, actions etc. in respect of the suit shares. The Defendant further declared that she had not pledged or deposited the original share certificates by way of security or otherwise or transferred or sold the suit shares or any of them.

c) As per procedure of the Plaintiffs, notices of loss of suit shares were published in Free Press Journal, The Observer, The Daily and the Asian Age on 20th and 21st June, 1994 (Exs. P-8 to P-14). No claims were received by the Plaintiffs in respect of the suit shares. The matter was placed before the Board of Directors of Plaintiff No.1. Relying on the representations of the Defendant that the said shares were misplaced, no claims having been received in respect of the said shares and based on the Indemnity furnished by the Defendant, a resolution to issue duplicate shares was passed. In August, 1994, the Defendant was issued duplicate share certificates in respect of the suit shares.

d) In July, 1995, after a lapse of more than ten months an enquiry was received from Bombay Stock Exchange ("BSE") regarding 26,650 shares of Plaintiff No.1 (including 25,950 shares listed in Ex. P-1) which were lodged for transfer with the Plaintiff No.2 and were returned by Plaintiff No.2 because of difference in signature of Transferor. By letter dated 14th July, 1995 (Ex. P-15) BSE informed Plaintiff No.2 that 26,650 shares standing in the name, inter alia, of Defendant were delivered in the market through a member of the BSE who had been recently declared as a defaulter. Consequently, the said shares vested in the Defaulters Committee of the BSE and had become property of BSE.

e) It was upon investigation realized by the Plaintiffs that the shares which the BSE were claiming formed part of the shares in respect of which duplicate share certificates were issued to the Defendant. Plaintiffs informed BSE that all due precaution was taken before issuance of duplicate share certificates.

f) Since, BSE claimed the value of the shares from the Plaintiffs, Plaintiff No.1 by its letter dated 19th October, 1995 (Ex. P-16) after referring to the Indemnity and the claim made by the BSE, invoked the Indemnity. There was no response to the said letter. Plaintiff No.1 without prejudice to its rights and submissions, forwarded to BSE vide letter dated 21st October, 1995 (Ex. P-17) a cheque for the sum of Rs.1,06,60,000/- being the value of the shares claimed by the BSE as determined by the Settlement Committee. The Plaintiffs have produced a bank statement issued by Syndicate Bank which shows a debit for the sum of Rs. 1,06,60,000/- in favour of BSE (Ex. P-18).

12. Heard the Learned Counsel for the Plaintiffs. She submitted that the Plaintiffs are entitled to a decree in terms of prayer clauses (a) to (d). She further made submissions on the issues as framed:

Issue No.1 : The Plaintiffs have produced the Indemnity (Ex. P-7). The execution of the Indemnity has been admitted by the Defendant in paragraph 9 of the Written Statement. The Indemnity clearly provides that :

> *"In consideration of the Company issuing such duplicate certificates, we Rajul C. Vasa (the share holders) and surety (1) Hemendra C. Vasa and Surety (2) Piyush C. Vasa for ourselves respective heirs, executors and administrators do hereby jointly and severally covenant with the Company its successors or assignees that we and our heirs executors and administrators respectively, will at all times and from time to time, save, defend and keep harmless and indemnify the Company its successors , assignees and the Directors thereof and their respective heirs, executors, administrators each of their estates and effects* ***from and against all actions, causes, suits, proceedings accounts, claims and demands whatsoever on account of the said shares or any of them or loss or non production of the certificates and against all damages costs, charges, expenses and sums of money incurred in respect thereof or otherwise in relation of the premises"****.*

In the Plaint in paragraph 19, it is averred that the Indemnity is valid and subsisting. PW-1 has in paragraph 11 of his evidence, stated that the Indemnity was received by the Plaintiffs from the Defendant. In paragraph 21 he has stated that the Indemnity is a continuing, valid and subsisting Indemnity and the same is validly invoked.

Except for a bald statement in the Written Statement, the Defendant has not explained why the Indemnity is no longer valid and subsisting. The Defendant has not led any evidence nor has cross-examined PW-1. In view thereof, the evidence tendered by the

Plaintiffs has gone uncontroverted. The Defendant has herself admitted execution of the Indemnity. The Plaintiffs have therefore proved that the Indemnity (Ex. P-7) is valid, subsisting and binding on the Defendant. Therefore, Issue No.1 is answered in the affirmative.

Issue No.2: The Plaintiffs have in paragraph nos. 14 to 18 of the Plaint explained in detail that the loss suffered by them was a direct result of issuance of duplicate share certificates to the Defendant. The Plaintiffs were required to make payment to the BSE of an amount equivalent to the value of shares in respect of which duplicate share certificates were issued by the Plaintiffs. In the Written Statement, the Defendant has merely denied the contents of the Plaint. She has not explained as to why according to her the loss suffered by the Plaintiffs was not a direct result of issuance of duplicate share certificates. PW-1 has in paragraph nos. 16 to 21 of his Affidavit in lieu of examination in chief clearly demonstrated that the loss suffered by the Plaintiffs was directly as a result of issue of duplicate share certificates in favour of the Defendant. He has deposed that in July, 1995, an enquiry was received from BSE regarding 26,650 shares of Plaintiff No.1 (including 25,950 shares listed in Ex. P-1) which were lodged for transfer with the Plaintiff No.2 and were returned by Plaintiff No.2 because of difference in signature of Transferor. It was upon investigation realized by the Plaintiffs that the shares which the BSE were claiming formed part of the shares in respect of which duplicate share certificates were issued to the Defendant. Since, BSE claimed the value of the shares from the Plaintiffs, Plaintiff No.1 by its letter dated 19th October, 1995 (Ex. P-16) after referring to the Indemnity and the claim made by the BSE, invoked the Indemnity and called upon the Defendant to pay the value of 26,650 shares claimed by the BSE. There was no response to the said letter. He has further deposed that Plaintiff No.1 without prejudice to its rights and submissions, forwarded to the BSE vide letter dated 21st October, 1995 (Ex. P-17) a cheque for the sum of Rs.1,06,60,000/- being the value of the shares claimed by the BSE as determined by the Settlement Committee. The Plaintiffs have produced a bank statement issued by Syndicate Bank which shows a debit for the sum of Rs. 1,06,60,000/- in favour of BSE (Ex. P-18). The Plaintiffs have in the present suit claimed from the Defendant a sum of Rs.1,03,80,000/- being the proportionate amount paid by the Plaintiffs to the BSE alongwith interest towards issuance of duplicate shares to the Defendant (Ex. "G" to the Plaint).

PW-1 has not been cross examined and his testimony has gone unchallenged. The Defendant has not led any evidence to demonstrate why the loss suffered by the Plaintiffs was not a direct result of issuance of duplicate share certificates.

Accordingly, Issue No.2 is answered in the affirmative.

Issue No.3: The Defendant had requested for issuance of duplicate share certificates on the basis that the original share certificates were lost. The Plaintiffs had taken all the regular/necessary precautions and safeguards before the issuance of duplicate share certificates. The Defendant had by issuance of Indemnity (Ex. P-7) agreed to indemnify the Plaintiffs in case any claims etc. were received in respect of the duplicate share certificates issued. As the Plaintiffs were required to make payment of Rs.1,06,60,000/- to the BSE for the shares in respect of which duplicate share certificates were issued, the Plaintiffs were entitled to be indemnified in respect of the proportionate amount which pertained to the duplicate shares issued to the Defendant. The invocation of the Indemnity is therefore valid.

Accordingly, Issue No.3 is answered in the affirmative.

Issue No.4: As per Indemnity (Ex. P-7) issued by the Defendant, the Plaintiffs were liable to be indemnified in case any claim was made on them in respect of the duplicate share certificates issued to her. As claim was made by BSE and Plaintiffs were required to make payment to the BSE, the Plaintiffs were entitled to be indemnified by the Defendant in respect of the proportionate amount which pertained to duplicate shares issued to her. Exs. P-17 and P-18 demonstrate that Plaintiff No.2 has made payment to the BSE. The Plaintiffs are therefore entitled to the decree as prayed for alongwith interest.

Issue Nos. 5 & 6: The onus of proving the said issues was on the Defendant. The Defendant has not led any documentary or oral evidence in support of these issues. The Defendant has therefore failed to discharge the said burden cast on her. Accordingly, the said issues are answered in the negative.

Issue No.7: The onus of proving the said issues was on the Defendant. Except a bald statement no details have been provided as to why the suit would be barred by the law of limitation. The Defendant has not led any documentary or oral evidence in support of this issue. The Defendant has therefore failed to discharge the said burden cast on her. In any event, the Plaintiffs have stated that the Indemnity was invoked on 19th October, 1995. Payment to BSE was made by the Plaintiffs under cover of letter dated 21st October, 1995. The suit is therefore within the period of limitation. Accordingly, the said issue is answered in the negative.

13. In the circumstances, the suit is decreed in terms of prayer clauses (a) to (d) of the Plaint which are reproduced hereunder:

"*(a) That it be declared that the indemnity dated 3rd June 1994 executed by the Defendant is valid, subsisting and binding on the Defendant;*

(b) That it be declared that the Plaintiffs have suffered a loss of Rs. 1,03,80,000/- as a direct result of issue of duplicate share certificates in respect of shares described in Exhibit 'A' hereto pursuant to application of the Defendant;

(c) That it be declared that the indemnity dated 3rd June 1994 executed by the Defendant has been duly and validly invoked by the Plaintiff No.1;

(d) That the Defendant be ordered and decreed to pay to the Plaintiffs or such of them as this Hon'ble Court directs a sum of Rs. 1,03,80,000/- as per particulars of claim annexed hereto and marked Exhibit 'G' together with interest on Rs. 1,03,80,000/- at the rate of 18% (eighteen per cent) per annum from the date of filing of the suit till payment and/or realization thereof".

Defendant shall pay costs of this Suit to the Plaintiffs which shall be quantified as per Rules.

14. The office is directed to return the original documents to the Advocate for the Plaintiffs upon the Advocate for the Plaintiffs handing over Photostat copies of the said documents duly certified by them as true copies.

(S.J. KATHAWALLA,J.)