IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 50 OF 2014
IN
SUMMARY SUIT NO. 1492 OF 1997

Shree Financial Services .. Plaintiff
Vs.
The Official Liquidator,
High Court, Delhi Being the
Official Liquidator of .. Defendant

Ms.Snehal Paranjape a/w. Ms.Dharmika Patel i/b Purnanand & Co. for plaintiff.

Mr.Abdul W. Ansari for official liquidator.

CORAM : K.R.SHRIRAM, J.
DATE : 28TH JULY, 2015

P.C.

1 This suit is filed by the plaintiff under Order 37 of the Code of Civil Procedure, 1908 on the basis that a bill dated 8.07.1996 raised by the plaintiff for placement of 25 lakhs debentures of the defendant's rights issue and a letter of acceptance by the defendant constituted a written contract between the plaintiff and the defendant.

2 It is the case of the plaintiff that by a letter dated 28.05.1993, the plaintiff offered to the defendant financial services of the plaintiff connected

with the issue of securities including services on principal to principal basis. By a letter dated 10.07.1993, the plaintiff offered to the defendant their services for the defendant rights issue of debentures such as promotional meetings with brokers, investors, press coverage etc. for the said rights to ensure full subscription thereto and actual placement by the investors against renunciation of the rights. It is the case of the plaintiff that the defendant accepted the offer of the plaintiff and the plaintiff procured the placement of 25 lakhs debentures of the defendant's rights issue and the plaintiff thereafter raised a bill dated 8.04.1994 on the defendant for a sum of Rs.93,75,000/-. The plaintiff has claimed at the rate of Rs.3.75 per debenture for the 25 lakhs debentures of the defendant-company placed by the plaintiff.

3 The defendant, by a letter dated 20.04.1994, informed the plaintiff that they had *'in principle'* accepted the said bill dated 8.04.1994 for the sum of Rs.93,75,000/-. The defendant, however, also mentioned that they awaited confirmation of the plaintiff's registration with The Securities and Exchange Board of India Act, 1992 (SEBI Act). The plaintiff, by a letter dated 25.04.1994 informed the defendant that their application for registration with SEBI was under process and subsequently informed the defendant on 15.12.1994 that they had obtained registration with SEBI and

had been granted certificate to carry on business of a Merchant Banker in Category IV with effect from 16.12.1994. The plaintiff also forwarded a copy of the certificate of registration to the defendant.

4 The defendant, however, did not pay the amount of Rs.93,75,000/-, despite a notice sent through an advocate. Hence the plaintiff has filed the present suit claiming a sum of Rs.93,75,000/- together with interest at the rate of 18% p.a. from the date of invoice.

5 The defendant, after the suit was filed, went into liquidation. The official liquidator of the defendant-company is brought on record and affidavit in reply to the chamber summons has been filed by the Deputy Official Liquidator seeking unconditional leave to defend under Rule 3(5) of Order 37 of the Code of Civil Procedure, 1908 (CPC). It is the case of the official liquidator that there are triable issues in the present case.

The three main defences raised are that (a) there exists no written contract; (b) there is no document that the plaintiff really rendered any services in respect of which claim has been raised in the suit; and (c) which is the alternative to defence (b), is if assuming without admitting that the plaintiff provided its services by placing 25 lakhs debentures for the rights issue of the original defendant-company, still the plaintiff could not have provided the said services at that point in time since the plaintiff was not even registered under Section 12(1) of the SEBI Act.

The defences raised by the official liquidator in my view cannot be held to be sham or bogus or moonshine.

6 The first and second defences can be dealt with together.

As regards the defence that there exists no written agreement, it is true that the plaintiff has not placed any document to show that the defendant accepted the offer of the plaintiff which could be construed as a contract. Exhibit ‘A’ and Exhibit ‘B’ to the plaint only mentions what are the services that the plaintiff offered. The letter dated 28.05.1993 which is at Exhibit ‘A’ to the plaint starts as under :

> *“We are pleased to introduce ourselves as…………………….. ours is a well known financial concern servicing India’s most reputed group.*
>
> *We offer to provide you group companies the financial services communicated with the issue of security including ……………………”.*

Exhibit ‘B’ to the plaint which is a letter dated 10.07.1993 also begins as under :

> *“Subject : Your Rights Issue.*
>
> We are please to introduce ourselves as a leading financial services company and are pleased to offer you various services......………….. Actual placement of investors against renunciation of rights.”

7 The next document is the invoice dated 8.04.1994 raised by the plaintiff which says *"Placement charges for 25 lakhs debentures @ 3.5 per debenture = Rs.93,75,000/-"* and in response to this invoice, the defendant by its letter dated 20.04.1994 said *"In principle we accept the above bill and now await confirmation of your registration with SEBI………………………..".*

Therefore, none of these documents indicate that the plaintiff was appointed to render placement services of the debentures issued by the defendant. Even in the plaint, the plaintiff only states in paragraph 4 that the defendant accepted the offer of the plaintiff and the plaintiff procured the placement of 25 lakhs debentures of the defendant rights issue and the plaintiff raised a bill. Nowhere has the plaintiff stated or given details as to the procedure followed, the offer documents or the kind of debentures issued or who are all the parties with whom the plaintiff placed the debentures. Moreover, if a company is coming out with a large issue of debentures and is going to pay a sum of Rs.93,75,000/- as service charges, certainly, the defendant would have written some letter to the plaintiff. There is absolutely no document showing the actual services that has been rendered by the plaintiff in respect of which the claim has been raised in the suit. The plaintiff has not filed any evidence with plaint which shows that the plaintiff procured the placement of 25 lakhs debentures or the right issue of the defendant-company in liquidation. There is no evidence at all that the defendant-company even came out with rights issue of debentures. Atleast nothing is filed with the plaint. The plaintiff if seeking a summary decree, should have filed some cogent and credible documentary evidence in support of its contention including disclosing in detail the placement of debentures, the procedure followed, the offer documents etc.

8 As regards, the 3rd defence, Section 12(1) of the SEBI reads as under :

> **"12 Registration of Stock-brokers,sub-brokers, share transfer agents, etc.--**
>
> (1) No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act............................."

According to Section 12(1) no stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board (SEBI) in accordance with the regulations made under this Act. What exactly the service that the plaintiff rendered is also not very clear from the plaint. Moreover, under Section 12(1), no merchant banker shall deal in securities except under the conditions of certificate of registration. Securities is defined to include debentures. Admittedly, the certificate that the plaint if claims to have obtained from SEBI is to enable the plaintiff to carry on the business of a merchant banker in category IV.

9 Reading Section 12(1), another pertinent issue that comes up is whether the plaintiff could have ever rendered services that it claims to have rendered to the original defendant-company. Admittedly, the plaintiff was not even registered under Section 12(1) of the SEBI Act in April 1994. The certificate was obtained only in December-1994. This also raises a triable issue, i.e., the the plaintiff's authority or eligibility to provide the alleged services.

10 In the circumstances, the defendant is entitled to an unconditional leave to defend.

11 The summons for judgment is rejected and the suit is transferred to the list of commercial causes. The defendant to file the written statement within four weeks and within two weeks thereafter, the parties to file their respective affidavits of documents and also complete discovery and inspection.

12 Stand over to 21.09.2015 for framing of issues.

(K.R. SHRIRAM, J.)