IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1094 OF 2015

IN

SUIT NO. 213 OF 2014

Mr. Manish Amarchand Mehta … Applicant / Def. No. 7

IN THE MATTER BETWEEN :

M/s. Sanghavi Exports International

Private Limited and Ors. … Plaintiffs.

Versus

M/s. BKC Homes Private Limited and Ors. … Defendants

Mr. A.K. Chauhan for the Plaintiff.
Ms. Panchal i/b. MRK Law Associates for the Applicant / Defendant No. 7.

CORAM : S.J. KATHAWALLA, J.
DATED : 6TH OCTOBER, 2015

P.C.

1. The above Notice of Motion is taken out on behalf of Defendant No. 7 to strike out and / or delete the name of Defendant No. 7 from the cause title of the Plaint and to dismiss and reject the Suit.

2. The Plaintiff No. 1 in the Suit is a Company registered under the Companies Act, 1956, Plaintiff Nos. 2 and 3 are the Directors of Plaintiff No. 1 and are the sons of Vasantlal Ravchand Sanghavi, who was the founder Chairman of the Plaintiff No. 1. (hereinafter referred to as the deceased). The Plaintiff No. 4 is the widow of the said deceased, late Vasantlal Ravchand Sanghavi, who passed away on 16th May, 2009 at Mumbai.

3. The Defendant Nos. 1 to 6 are the Companies registered under the

Companies Act, 1956, having their addresses as shown in the cause title of the Plaint.

4. The reliefs sought by the Plaintiffs against the Defendants in the above Suit are reproduced hereunder :

> *"(a) That this Hon'ble High Court may be pleased to order / pass decree against the Defendants named above to pay a total sum of Rs.32,98,22,315/- (Rupees Thirty Two Crores Ninety Eight Lakhs Twenty Two Thousand Three Hundred Fifteen only) to the Plaintiffs abovenamed, which include interest @ 18% per annum ;*
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> *(b) That this Hon'ble High Court may be pleased to order the Defendants to deposit a sum of Rs.27,77,513/- per month by way of interest @ 18% per annum, on the legally payable dues / principal amounts of Rs.18,51,67,544/- in the Suit account payable to the Plaintiffs ;*
>
> *(c) This Hon'ble High Court may be pleased to restrain the Defendant Nos. 1 to 9 by themselves, their servants, agents and / or persons claiming through or under them from dealing in, disposing off and or creating any third party rights in respect of the movable / immovable properties of the Defendants in respect of the Plot bearing CTS No. 629 (Part) Corresponding Survey No. 341 of Village Bandra (East) Taluka – Andheri, admeasuring about 952 sq. mts.*
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> *(d) That this Hon'ble High Court may be pleased to restrain by an order of permanent injunction the Defendant Nos. 1 to 9, their servants, agents, and / or persons claiming through or under them from dealing in, disposing off and or creating any third party rights in respect of the movable / immovable properties of the Defendants, pending the hearing and final disposal of the above Suit ;*
>
> *(e) That this Hon'ble High Court may be pleased to appoint Court Receiver High Court Bombay, with all powers under Order 40 Rule*

1 of C.P.C. as amended from time to time, in respect of all the movable / immovable properties of the Defendant Nos. 1 to 9 till the hearing and final disposal of the above Suit.

(f) That pending the hearing and final disposal of above Suit, interim and ad-interim reliefs in terms of prayer clauses (c) and (d) above be granted".

5. The Plaintiffs have *inter alia* made the following allegations against Defendant No. 7 in the above Suit :

i. That Defendant Nos. 1 to 6 are the Companies, owned, managed and / or controlled of Defendant No. 7 ;

ii. That Defendant No. 7 represented to the Plaintiffs as well as to the deceased that he is representing the Defendant Nos. 1 to 6 ;

iii. That Defendant No. 7 was instrumental in inducing, cheating and misrepresenting the deceased as well as the Plaintiffs herein with the connivance of Defendant No. 8 ;

iv. That the main substantive cause of action in the present Suit lies against Defendant No. 7 ;

v. That Defendant No. 7 is the main guilty party to the whole transaction with the active and overt connivance of the Defendant Nos. 8 and 9 ;

vi. That Defendant No. 8 who is a Publisher of small time magazine in the diamond market had introduced Defendant No. 7 to the deceased ;

vii. That Defendant No. 7 was positioned by Defendant No. 8 to be a high profile businessman having varied commercial interest ;

viii. That Defendant Nos. 7 and 8 represented to the Plaintiffs and the deceased that Defendant No. 7 has got Joint Development Rights with Defendant No. 9 in respect of the plot bearing CTS No. 629 (Part) corresponding Survey No. 341 of Village Bandra (E) Taluka – Andheri, admeasuring about 952 sq. mts. (the Suit property) ;

ix. That Defendant No. 7 through Defendant No. 9 had executed Memorandum of Understanding dated 30th October, 2007 with the deceased relating to the Suit property for carrying out joint development of the Suit property ;

x. That the said MOU was not acted upon by Defendant Nos. 7 and 9 due to the reasons best known to them ;

xi. That a Memorandum of Understanding dated 29th November, 2008 was again executed by Defendant No. 7 through Defendant No. 1 with the deceased ;

xii. That on 13th March, 2008 Defendant No. 7 through Defendant No. 1 had executed another Joint Development Agreement in respect of the Suit property with the deceased ;

xiii. That Defendant No. 7 and Defendant No. 9 represented to the deceased that they have got a slum project adjoining Bandra-Kurla Complex. The Defendant Nos. 7 to 9 tabled various documents relating to the said property purported to have been executed in favour of Defendant No. 9. The Defendant Nos. 7, 8 and 9 misrepresented by stating that only a Letter of Intent (LOI) is awaited from the MHADA relating to the property and assured that the construction activities on the property shall commence shortly ;

xiv. That Defendant Nos. 7, 8 and 9 have taken from the Plaintiff No. 1 and the deceased, an aggregate sum of Rs.13,37,46,433/- (Rupees Thirteen Crores Thirty Seven Lakhs Forty Six Thousand Four Hundred Thirty Three only) in the name of Defendant No. 1. The said amount has been paid by cheque to the Defendant No. 1. The Plaintiff No. 1 has relied on bank statements in support of this contention, which is annexed and marked Exhibit-D to the Plaint ;

xv. That Defendant No. 7 has also received cheques for a total sum of Rs.5,14,21,111/- (Rupees Five Crores Fourteen Lakhs Twenty One Thousand Once Hundred Eleven only) in favour of Defendant Nos. 2, 3, 5 and 6 from time to time by inducing the Plaintiffs and the deceased by promising them that they will be receiving monthly / quarterly benefits ;

xvi. That the Defendant No. 7 made a categorical oral promise that he shall handover the monthly / quarterly benefit cheques of accrued profits from the investments as made in the business of Defendant Nos. 2 to 6 ;

xvii. In view thereof, the Plaintiff No. 1 and the deceased made the following investments with Defendant Nos. 2 to 6 from June-2008 till November-2008, the details of which are as follows :

Sr. No.	Company	Amounts invested	From A/c.	Chq. No.
1	M/s. BMSS Infrastructure Private Limited	2,00,00,000/-	VRS	992028
2	M/s. BKC Infrastructure Private Limited	2,01,55,000/-	SEIPL	551484
	M/s. BKC Infrastructure Private Limited	2,01,55,000/-	SEIPL	551485

	M/s. BKC Infrastructure Private Limited	2,01,55,000/-	SEIPL	551487
	M/s. BKC Infrastructure Private Limited	2,01,55,000/-	SEIPL	551489
3	M/s. VAMA International Private Limited	1,55,000/-	SEIPL	551486
	M/s. VAMA International Private Limited	1,55,000/-	SEIPL	551488
4	M/s. Jinbhuvish Power Generation Private Limited	1,11,11,111/-	VRS	992032
	Total	5,14,21,111/-		

In support of this contention, the Plaintiffs have relied on the bank statement of Sanghavi Exports International Private Limited and the passbook of the deceased.

xviii. That the Defendant Nos. 2 to 6 through Defendant No. 7 have miserably failed and neglected to pay the accrued profits to the Plaintiffs and the deceased. Even after repeated follow-ups, no monies in the nature of monthly / quarterly profits of any nature whatsoever were being paid to the Plaintiffs and the deceased.

xix. That the deceased caused a letter to be addressed to the Defendant No. 7 being letter dated 24th April, 2009, wherein the details of the investments made by the Plaintiff and the deceased were recorded. A copy of the said letter is annexed and marked as Exhibit-E to the Plaint ;

xx. That the Plaintiffs and the deceased were shocked to receive a reply dated 29th April, 2009 from Defendant No. 7 stating that the deceased has addressed a letter dated 24th April, 2009 to the Defendant No. 7 by mistake since Defendant No. 7 had no joint venture with the Company of the Plaintiff No. 1 ;

xxi. That after July-2009, (when the bank statements of the Plaintiffs and the deceased were shown to the Defendants) the Defendants assured from time to time to settle the account of the Plaintiffs. Several meetings were held between July-2009 till 10th November, 2011, which were pursued by the Plaintiffs, since the Defendant Nos. 7, 8 and 9 never organized any meeting on their own.

xxii. That Defendant Nos. 7, 8 and 9 started threatening the Plaintiffs from November-2011 with raids from the Income Tax / Sales Tax departments. The Plaintiffs approached the Joint Commissioner of Police (Crime), Mumbai in the month of January-2011 by way of a complaint for cheating, fraud and criminal breach of trust. The Plaintiffs through their Advocate also sent notice dated 29th October, 2010 to Defendant Nos. 7 and 8 stating that the undated agreement was signed by Plaintiff No. 2 under duress on 14th August, 2010. The same was not binding on the Plaintiffs and was repudiated. The said letter was replied by Defendant Nos. 7 and 8, wherein false allegations were leveled by Defendant Nos. 7 and 8 against the Plaintiffs.

xxiii. That on 13th January, 2011 a written complaint was submitted by the Advocate for the Plaintiffs to the Joint Commissioner of Police (Crime), Mumbai. One more complaint was filed with the Additional Commissioner of Police (Crime), Mumbai on 8th August, 2011 ;

xxiv. That the Plaintiff Nos. 2 and 3 have also filed a private criminal complaint against Defendant Nos. 7 and 8 and other accused on 30th

November, 2011 for the commission of an offence punishable under sections 408, 409, 420, 504, 506 (II) read with 120-B of Indian Penal Code, 1860 before the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai, in which an order under section 156 (3) of Code of Criminal Procedure was issued by the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai. The Defendant No. 7 has filed a Criminal Revision Application impugning the said order being No. 39 of 2012 ;

xxv. That the Defendant Nos. 1 to 6 through their Directors as well as Defendant Nos. 7 and 8 were dishonest from the very beginning. They induced the deceased and the Plaintiffs to part with the huge amount of Rs.18,51,67,544/- (Rupees Eighteen Crores Fifty One Lakhs Sixty Seven Thousand Five Hundred Forty Four only) from time to time, paid by cheques deposited in the accounts of Defendant Nos. 1 to 6 from the period 11th August, 2008 to 3rd November, 2008 favouring the Defendant Nos. 1 to 6. The Defendant Nos. 7 to 9 have misappropriated the entire funds and diverted it in other ventures.

6. The Defendant No. 7 in his Affidavit in support of the above Notice of Motion has stated that the allegations made against him by the Plaintiffs are baseless and false to the knowledge of the Plaintiffs and Defendant No. 7 is wrongly joined as party Defendant by the Plaintiffs with ulterior motives to extract monies from Defendant No. 7 even though there is no cause of action against him. It is alleged that Defendant No. 7 has no concern with the Company in any manner whatsoever

or any dealings with the said Company.

7. The aforestated allegations made in the Plaint by the Plaintiffs against Defendant No. 7 are very serious. Various police complaints as well as criminal complaints have also been filed in the past against Defendant No. 7. From the manner and nature of the allegations made in the Plaint, it cannot be said that no cause of action is shown against Defendant No. 7 or that the Defendant No. 7 is not a necessary and proper party to the Suit. The Defendant No. 7 has alleged that the allegations made in the Plaint against him are false and incorrect. However, the correctness of the allegations can be decided only after Defendant No. 7 files his Written Statement and the Suit proceeds to trial. In the circumstances, the question of allowing the above Notice of Motion to strike out and / or delete the name of Defendant No. 7 from the cause title of the Plaint and dismiss / reject the Suit at this stage does not arise. In view thereof, the Notice of Motion is rejected. However, there shall be no order as to costs.

(S.J.KATHAWALLA, J.)