IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1658 OF 2015

IN

NOTICE OF MOTION NO.591 OF 2009

IN

SUIT NO.2687 OF 2001

Ramgopal Radhavallabh Agarwal (Since deceased now represented A.Sharad Son of Ramgopal Radhavallabh Agarwal & Ors.	….Applicants/ Org. Defendants

IN THE MATTER BETWEEEN:

Navalkishor R. Agarwal	...Plaintiff.
Versus	
Ramgopal Radhavallabh Agarwal (Since deceased now represented A.Sharad Son of Ramgopal Radhavallabh Agarwal & Ors.	... Defendants
And	
Naresh Tarachand Jain	...Intervenor.

Mr. Sandip Shinde, advocate for plaintiffs.

Mr. Jamshed Ansari, advocate for applicant.

Mr. S.P.Kanuga with Mr. Hitesh Vyas, advocates for the defendant nos.1A to 1E.

CORAM : K.R.SHRIRAM,J
DATE : 20th October, 2015

P.C.:

1 This notice of motion is taken out on behalf of the defendants for dismissal of the suit on the basis of the finding recorded in Notice of Motion No.591 of 2009 in this Suit by a judgment dated 6.5.2014.

2 This suit has been filed by one Mr. Navalkumar Radhavallabh Agarwal against Mr.Ramgopal Radhavallabh Agarwal and Mr.Girdharilal G.Agarwal. In the plaint, it is case of the plaintiff that by a deed of partnership dated 5th march, 2001 entered into between the plaintiff, original defendant no.1 and defendant no.2, the parties commenced a business in partnership. The plaintiff has alleged to have contributed Rs.1 lakh by cash from his own funds and from his family members in the suit partnership firm. It is alleged that the defendants were managing the affairs of the partnership at their whims and fancies and in the manner they liked and obtained loans in the name of firm behind the back of the plaintiff. Defendant did not render any true and correct account of the partnership business.

3 It is alleged in the plaint that the partnership had only two immoveable properties i.e. First Floor premises, road side room and third floor block situated at 249, Kalbadevi Road, Mumbai 400 002. It is alleged that the defendant no.2 i.e. Mr.Girdharilal G.Agarwal being

the working partner and engaged in conducting the business activity of the firm removed all the keys of the office and asked the plaintiff to go away from the office of the firm immediately. It is alleged that the defendants failed to pay share capital of Rs.1 lakh to the plaintiff and other advantages of the partnership business and refused to allow the plaintiff to have excess to the original books of accounts of the firm. The plaintiff prayed for a declaration that the partnership business in the name and style of M/s.Sarita Tex stood dissolved form the date of filing suit or from such other date as this court deems fit. According to the plaintiff the plaintiff was entitled to have 25% share, defendant no.1, 25% share and the defendant no.2, 50% share in the profits and losses of the partnership. The plaintiff also prayed for an order and decree against the defendants in the sum of Rs.l lakh or such amount as may be found due with interest 18% per anum.

4 In the plaint, the plaintiff also prayed for appointment of court receiver and injunction. Receiver is sought in respect of the assets, partnership premises i.e. first floor premises, road side room and third floor block. Both the aforesaid suits were filed through Mr.J.V.Parmar advocate. In the said suit, the plaintiff filed notice of motion for appointment of court receiver and injunction. The Notice of Motion No.1926 of 2001 appeared before this court on 23rd August,

2001 for ad interim reliefs. The advocate representing the plaintiff made a statement that the defendants were served and undertook to file affidavit of service within one week. This court passed an ad-interim order in terms of prayer (b) restraining the defendants from dealing with or disposing of or encumbering the assets or partnership premises described in prayer (b) of the Notice of Motion. None appeared for the defendants on 23rd August 2001.

5 By an order dated 20th December, 2001 this court ordered that Motion to be placed on board in its own turn. On 8th January 2003 this court once again passed an order that the motion to come up in due course when the plaintiff through his advocate applied for urgent ex-parte reliefs. On 4th November 2003 this court recorded the statement of the advocate appearing for the plaintiff that all the defendants had been served with the copy of the notice of motion and affidavit in support and directed the plaintiff to file affidavit of service. Matter was adjourned for one week. On 7th November 2003 the plaintiff filed an affidavit of service alleging that he had gone to serve the proceedings upon the original defendants no.1 at the address mentioned in the cause title of the plaint and also defendants no.2 at his address mentioned therein. It is alleged that both the defendants had received the proceedings and had signed on the

reverse of letter dated 18th August, 2001. The service letter dated 17th august, 2001 which was marked to the defendant no.2 shows an endorsement 'received on 18th August, 2001 at 10.35 pm.The said letter contains the alleged signature of defendants no.1 and 2 and alleged acknowledgment of receipt of court papers.

6 The Notice of Motion No. 1826 of 2001 appeared before this court on 9th January 2004 when none appeared for the defendants. This court recorded that affidavit of service is filed by the plaintiff. None appeared for the defendants and no affidavit in reply was filed. The averments filed in the affidavit filed in support of notice of motion were accepted at face value. This court made the Notice of Motion absolute in terms of prayers (a) and (b) i.e. by appointment of receiver and by granting injunction as prayed. On 24th March, 2004 the plaintiff filed an affidavit alongwith Judges Order (73 of 2004) in Suit No.2687 of 2001. It is alleged in the said affidavit that the plaintiff had approached the court receiver to take physical possession of the premises on 12th February 2004 at 2.15 p.m. However it was found locked and therefore court receiver could not take possession of the suit property and could not execute the order passed by this court.

7 This Court while dismissing the Notice of Motion No.591 of 2009 that was taken on behalf of the defendants has made following observations about flat deprecated by plaintiffs and one Mr. Naresh K. Jain in paragraphs 37 and 38, which read as under:

> "*37. Mr. Kanuga also invited my attention to two separate affidavits filed by the plaintiff in the aforesaid two Notice of Motion admitting that the fraud is committed by the plaintiff in collusion with the intervener. Learned counsel appearing for plaintiff in both the matters submit that the fraud was jointly committed by the plaintiff and the intervener. It is submitted that though at all stages the court receiver had given possession of part of the properties to the plaintiff on record, the intervener has taken possession of the entire property from the plaintiff. The plaintiff is not in possession of any part of the suit property since quiet sometime. The plaintiff has tendered unconditional apology for such fraud committed on this court in the circumstances alleged in the affidavits filed by the plaintiffs in both the suits.*
>
> *38. Learned counsel appearing for plaintiff submits that in so far as Suit No.4816 of 2000 is concerned, the plaintiff had given a loan of Rs. 9 lacs to the original defendant. The intervener had assured the plaintiff of help to recover the said loan and in return he agreed to take payment of Rs. 1 lac from the plaintiff. It is submitted that the said suit was filed on his behalf by the intervener who engaged the advocates. The plaintiff tendered unconditional apology. Learned counsel submits that the intervener took forcible possession of some part of the suit property and had threatened the plaintiff of dire consequences if plaintiff did not let him use the suit property. It is submitted that considering the age of the plaintiff who is about 85 years old, court should take sympathetic view against the plaintiff for whatever wrong he has done. It is submitted that though at one stage plaintiff was put in possession of some part of the suit property by the court receiver, the intervener had dispossessed him and taken possession of the entire property."*

8 Despite, the submissions made by defendants, this Court was pleased to observe in the said order as under:

> "*73. In my view the record clearly indicates that the plaintiff as well as the intervener are the beneficiaries of this fraud committed upon the court and are liable to be thrown out from the premises in their respective possession obtained by committing a fraud on this court in this notice of motions itself. The intervener admittedly claims to be in possession of the entire property though part of it was not even subject matter of the suit. The intervener was fully involved in the entire fraud jointly with the plaintiff. I am thus not inclined to accept the submissions of Mr. Deshmukh, learned counsel appearing for the intervener that no order can be passed by this court against the intervener, he being neither party to the suit prior to such orders having been passed by this court nor after such orders are passed.*
>
> *74. A perusal of the chamber summons filed by the intervener clearly shows that the intervener had applied for amendment to the plaint and other reliefs. By two separate orders passed by this court in those two chamber summons, this court permitted the intervener to file affidavits in these two notice of motions and was allowed to be heard by this court. Pursuant to the liberty granted by this court, intervener filed affidavits opposing these two notice of motions and was heard at length by this court at the time of hearing of these two notice of motions. The intervener who is beneficiary of such orders obtained fraudulently and was party to such fraud is thus liable to be thrown away by this court in the notice of motions proceedings."*\

9 The counsel for plaintiffs states that plaintiffs do not wish to file any reply and rely upon the replies already filed in the Notice of Motion No.591 of 2009.

10 This Court after considering the reply has come to conclusion that plaintiffs have played fraud upon this Court and has obtained orders. It is settled law that any person who makes incorrect statement to the Court and plays fraud on the Court should be dealt with very firmly and thrown out at any stage. Such persons are playing with the justice and innocent parties got affected when people as plaintiffs file false cases and take orders by playing fraud. In my view, suit, therefore, should be dismissed with cost.

11 Suit is hereby dismissed and plaintiffs are directed to pay a sum of Rs.1 Lakh as cost to defendants.

(K.R.SHRIRAM,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1513 OF 2015

IN

NOTICE OF MOTION NO.765 OF 2009

IN

SUIT NO.4816 OF 2000

Ramgopal Radhavallabh Agarwal ….Applicants/
(Since deceased now represented Org. Defendants
A.Sharad Son of Ramgopal
Radhavallabh Agarwal & Ors.

IN THE MATTER BETWEEEN:

Chandrabhan Chunilal Agarwal ...Plaintiff.

Versus
Ramgopal Radhavallabh Agarwal
(Since deceased now represented ... Defendants
1A.Sharad Son of Ramgopal
Radhavallabh Agarwal & Ors.

And
Naresh Tarachand Jain ...Intervenor.

Mr. Sandip Shinde, advocate for plaintiffs.

Mr. Jamshed Ansari, advocate for applicant.

Mr. S.P.Kanuga with Mr. Hitesh Vyas, advocates for the defendant nos.1A to 1E.

CORAM : K.R.SHRIRAM,J
DATE : 20th October, 2015

P.C.:

1 Though not listed, the counsel for plaintiff has no objection if this notice of motion is also taken up for hearing.

2 In this suit, it was case of the plaintiff that the plaintiff and the original defendant Mr.Ramgopal R.Agarwal were the partners of a registered partnership firm known as M/s.Siddhivinayak Enterprises carrying on business at 1st Floor Premises, entire left wing situated at 249, Kalbadevi Road, Mumbai 400002 by virtue of a partnership dated 16th August, 2000 on the terms and conditions recorded therein. According to the plaintiff both parties were having equal shares in the said alleged partnership. According to the plaintiff the defendant was managing all the affairs of the partnership firm from the very beginning in consultation with the plaintiff. The plaintiff had alleged to have contributed Rs.9 lacs by cheque from his own fund and from his family members in the partnershipfirm. It is case of the plaintiff that the defendant was managing the affairs of the partnership at his whims and fancies and in the manner he liked by taking advantage of his attending the day to day business of the firm and was signing the hundies

in favour of the different parties and was obtaining loans in the name of the firm behind the back of the plaintiff and did not render any accounts.

3 It is alleged in the plaint that the said partnership firm had only one immoveable property i.e. businesses premises at 1st Floor Premises, (entire leftwing) situated at 249, Kalbadevi Road, Mumbai 400 002. It is also alleged that the said firm was however using godown on the Ground Floor of the said building for the purpose of storing the goods of the said firm. It is case of the plaintiff that on 7th November, 2000 defendant told the plaintiff to go away from the office immediately and forcibly removed all the keys of the office. On 21st November, 2000 the plaintiff filed Suit No. 4186 of 2000 against the original defendant interalia praying for a declaration that the suit firm stood dissolved as and from the date of filing of the suit or such other date as this court may deem fit. Plaintiff also prayed for an order and decree against the defendant to pay to the plaintiff a sum of Rs.9 lacs or such other amount as may be found due and payable by the defendant to the plaintiff coming to his share with interest at the rate of 18% per annum. In the plaint, the plaintiff also prayed for interim reliefs inter alia praying for appointment of court receiver of all the assets, partnership premises carrying on

business at first floor premises and godown on the ground floor situate at 249, Kalbadevi Road, Mumbai 400 002 etc., and also prayed for injunction.

4 Sometime in the year 2000, in the said Suit (No. 4816 of 2000) the plaintiff filed a Notice of Motion No. 3350 of 2000, inter alia, praying for appointment of court receiver of all assets, partnership premises carrying on business at 1st Floor Premises, entire left wing situated at 249, Kalbadevi Road, Mumbai 400 002 alongwith books of accounts , vouchers etc. and also prayed for an injunction against the defendant.

5 On 2nd December, 2000 plaintiff applied for ad-interim reliefs in the said Notice of Motion (3350 of 2000). The plaintiff through his learned advocate made a statement that the defendant was served. This court recorded that none was present for the defendant though served. This court appointed court receiver in terms of prayer clause (a) except the power of sale and also granted ad-interim injunction till court receiver takes possession in terms of prayer (a). The plaintiff was directed to comply with the requirement of order XXXIX of the Code of Civil Procedure in the matter of service on the defendant. Notice of Motion was made returnable after eight

weeks.

6 There was no firm by name M/s.Siddhivinayak Enterprises existing at all. The plaintiff did not produce any documents such as details of bank account,books of account, any sales of order or registration certificate to show that anysuch partnership firm was ever formed. Within three months from the date of execution of alleged partnership deed, the plaintiff filed a suit fraudulently for dissolution of such alleged firm though no such firm existed. There was no bank account ever opened in the name of the alleged firm. No amount was ever received by the defendant from the plaintiff by cheque or otherwise. Learned counsel submits that though this court passed an order while granting ad-interim relief directing the plaintiff to file affidavit and to comply with the provisions under order 39 in the matter of service on the original defendant, the plaintiff did not file any affidavit within reasonable time. It is submitted that in the affidavit dated 18th June, 2002 the plaintiff has alleged a fabricated receipt dated 15th December 2000 which contains a forged signature of the defendant.

7 This Court while dismissing the Notice of Motion No.765 of 2009 that was taken on behalf of defendant no.1 has made

following observations about the flat deprecated by the plaintiffs and one Mr. Naresh K. Jain in paragraphs 20, 37 and 38 which read as under:

> *"20 Mr.Kanuga, learned counsel invited my attention to the police complaint filed by the original defendant against the plaintiff and Mr.Nareshkumar Jain and the FIR filed by the concerned police station containing the statements recorded by the police of various parties including the said Mr. Nareshkumar Jain. Mr.Nareshkumar Jain filed a Chamber Summons no.1819 of 2009 in this suit inter alia praying for an amendment to the plaint, Notice of Motion and the proceedingssetout in the schedule appended to the said Chamber Summons. The said Mr.Naresh Tarachand Jain also applied for an injunction restraining the plaintiff and the defendant for any parties claiming through them from in any manner disturbing and/or interfering with the peaceful possession and/or from dispossessing him from two godowns on the ground floor, one room on left side wing of Vrindavan Bhavan, Kalbadevi Road, Mumbai 400 0022 without due process of law. In the said Chamber Summons the said Mr.Nareshkumar T.Jain (hereinafter referred to as the intervener) referred to various proceedings initiated against him, complaints filed against him before various courts and authorities.*
>
> *37. Mr. Kanuga also invited my attention to two separate affidavits filed by the plaintiff in the aforesaid two Notice of Motion admitting that the fraud is committed by the plaintiff in collusion with the intervener. Learned counsel appearing for plaintiff in both the matters submit that the fraud was jointly committed by the plaintiff and the intervener. It is submitted that though at all stages the court receiver had given possession of part of the properties to the plaintiff on record, the intervener has taken possession of the entire property from the plaintiff. The plaintiff is not in possession of any part of the suit property*

since quiet sometime. The plaintiff has tendered unconditional apology for such fraudcommitted on this court in the circumstances alleged in the affidavits filed by the plaintiffs in both the suits.

38. Learned counsel appearing for plaintiff submits that in so far as Suit No. 4816 of 2000 is concerned, the plaintiff had given a loan of Rs. 9 lacs to the original defendant. The intervener had assured the plaintiff of help to recover the said loan and in return he agreed to take payment of Rs. 1 lac from the plaintiff. It is submitted that the said suit was filed on his behalf by the intervener who engaged the advocates. The plaintiff tendered unconditional apology. Learnedcounsel submits that the intervener took forcible possession of some part of the suit property and had threatened the plaintiff of dire consequences if plaintiff did not let him use the suit property. It is submitted that considering the age of the plaintiff who is about 85 years old, court should take sympathetic view against the plaintiff for whatever wrong he has done. It is submitted that though at one stage plaintiff was put in possession of some part of the suit property by the court receiver, the intervener had dispossessed him and taken possession of the entire property."

8 Despite, the submissions made by defendants, this Court was pleased to observe in the said order as under:

"*73. In my view the record clearly indicates that the plaintiff as well as the intervener are the beneficiaries of this fraud committed upon the court and are liable to be thrown out from the premises in their respective possession obtained by committing a fraud on this court in this notice of motions itself. The intervener admittedly claims to be in possession of the entire property though part of it was not even subject matter of the suit. The intervener was fully involved in the entire fraud jointly with the plaintiff. I am thus not inclined to accept the submissions of Mr. Deshmukh, learned counsel appearing for*

> *the intervener that no order can be passed by this court against the intervener, he being neither party to the suit prior to such orders having been passed by this court nor after such orders are passed.*
>
> *74. A perusal of the chamber summons filed by the intervener clearly shows that the intervener had applied for amendment to the plaint and other reliefs. By two separate orders passed by this court in those two chamber summons, this court permitted the intervener to file affidavits in these two notice of motions and was allowed to be heard by this court. Pursuant to the liberty granted by this court, intervener filed affidavits opposing these two notice of motions and was heard at length by this court at the time of hearing of these two notice of motions. The intervener who is beneficiary of such orders obtained fraudulently and was party to such fraud is thus liable to be thrown away by this court in the notice of motions proceedings."*\

9 The counsel for plaintiffs states that plaintiffs do not wish to file any reply and rely upon the replies already filed in the Notice of Motion No.765 of 2009.

10 This Court after considering the reply has come to conclusion that plaintiffs have played fraud upon this Court and has obtained orders. It is settled law that any person who makes incorrect statement to the Court and plays fraud on the Court should be dealt with very firmly and thrown out at any stage. Such persons are playing with the justice and innocent parties got affected when people as plaintiffs file false cases and take orders by playing fraud. In my view, suit, therefore, should be dismissed with cost.

11 Suit is hereby dismissed and plaintiffs are directed to pay a sum of Rs.1 Lakh as cost to defendants.

(K.R.SHRIRAM, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1870 OF 2009

IN

SUIT NO.2687 OF 2001

Navalkishor R. Agarwal ...Plaintiff.

Versus
Ramgopal Radhavallabh Agarwal
(Since deceased now represented ... Defendants
A.Sharad Son of Ramgopal
Radhavallabh Agarwal & Ors.

And
Naresh Tarachand Jain ...Applicant.

Mr. Sandip Shinde, advocate for plaintiffs.

Mr. Jamshed Ansari, advocate for applicant.

Mr. S.P.Kanuga with Mr. Hitesh Vyas, advocates for the defendant nos.1A to 1E.

CORAM : K.R.SHRIRAM,J
DATE : 20th October, 2015

P.C.:

In view of the fact that suit itself is dismissed, nothing survives in the Chamber Summons and the Chamber Summons, accordingly, stands disposed of.

(K.R.SHRIRAM, J.)

Shivgan

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

COURT RECEIVER REPORT NO.442 OF 2015
IN
SUIT NO.4816 OF 2000

Chandrabhan Chunilal Agarwal ...Plaintiff.

Versus
Ramgopal Radhavallabh Agarwal
(Since deceased now represented ... Defendants
1A.Sharad Son of Ramgopal
Radhavallabh Agarwal & Ors.

Mr. Sandip Shinde, advocate for plaintiffs.

Mr. S.P.Kanuga with Mr. Hitesh Vyas, advocates for the defendant nos.1A to 1E.

CORAM : K.R.SHRIRAM,J
DATE : 20th October, 2015

P.C.:

Court receiver to hand over possession of the property to Defendant Nos.1A to 1E. Receiver is hereby discharged.

2 The counsel appearing for Defendant Nos.1A to 1E on instructions undertakes to pay fees of the Court Receiver within one week of receiving accounts.

3 Court receiver to act upon an authenticated copy of this Court.

4 Court Receiver's Report No.442 of 2015, accordingly, stands disposed of.

(K.R.SHRIRAM, J.*)*