

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No.107 of 2015

1.M/s.AAT Academy India Limited
Formerly known as Access Atlantech Edutainment India Ltd.,
having its Corporate Office at 6/9 Damodaran Street,
Off - Mayor Ramanathan Salai, Chetpet, Chennai 600 031.
And its Registered office at
No.1176, Trichy Road,
Ramanathapuram, Coimbatore 641045.
represented by its Managing Director Rathish Babu.

2.Rathish Bau

... Appellants

versus

1.Tasneem Patel

2.Greycells Education Limited,
(Previously known as Greycells Entertainment Limited)
having its registered office at
D-2, 1st Floor, Poddar Chambers,
126, Mathuradas Compound,
N.M.Joshi Marg, Lower Parel (West)
Mumbai 400 013.

3.Bela Desai

4.Sanjay Chainani

5.Keynote Commodities Limited
The Ruby, 9th Floor,
Senapati Bapat Marg, Dadar West,
Mumbai, Maharashtra 400 028
represented by Vineet Suchanti

... Respondents

Appeals filed under Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent Act, against the order dated 06.02.2015 made in A.No.1152 of 2014 in C.S.Diary No.6040 of 2014, on the file of this Court.

For Appellant : Mr.Karthic Seshadri
for Mr N.P.Vijaykumar

For Respondents : Mr.P.Giridhar for R.1 to R.5

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

The appeal arises out of the impugned order dated 06.02.2015 of the learned Single Judge dismissing the application of the appellants/plaintiffs in A.No.1152 of 2014, for leave to sue at Chennai, predicated on a reasoning that the exclusion clause in the agreement inter se the appellants and the first respondent disentitled the appellants of such right.

2. The first appellant is a public limited company engaged in the field of education and learning with the second appellant being its Founder and Managing Director. The first appellant is stated to have been in the look out for funds for expansion in the year 2008 when the second appellant is stated to have met an investment banker where he was introduced to the third and fourth respondent as the Founder and Promoter of the second respondent company involved in the same nature of business. The 2nd to 4th respondents are stated to have joined hands in the process of investment to be made with the first appellant. A Memorandum of Understanding was executed on 18.07.2008. It is not necessary to get into the details of nature of the transaction, but suffice to say that as per the appellants, the investment made by the second respondent was not in accordance with the Memorandum of Understanding.

3. In April 2010, once again the second appellant was stated to be in need of financial assistance. When the third respondent promised financial arrangements for the second appellant through the first defendant and the second appellant acted in good faith, though he claims that he never met the first defendant. The appellants claim that they were made to believe that some documents were required to be executed as letter of guarantee, as also share

transfer deed in respect of the loan transaction, but were not supposed to act upon and these documents were to be held by the third respondent. A letter of guarantee was executed on 17.04.2010 and blank share transfer deeds dated 13.04.2010 along with bill of exchange were sent to the third respondent. The financial assistance of Rs.37,50,000/- after deducting interest for a period of 90 days of loan was received by the second appellant which, however, could not be repaid on account of cash flow problems, though interest is stated to have been paid for the subsequent period. However, the first defendant by letter dated 03.10.2011, recalled the loan and sought to invoke, the pledge of one lakh shares.

4. It is the case of the appellants that they believed that the shares were in custody of the third respondent and the pledge could not have been invoked by the first respondent. This matter escalated the exchange of communications and legal notices and ultimately has resulted in the appellants seeking to lay a claim for a Judgment and decree as follows:

- "a."For a declaration that sale of suit schedule shares of the 1st plaintiff by the 1st defendant in favour of the 5th defendant and/or any further alienations thereof is illegal, null and void and consequently
- b. For a mandatory injunction directing the defendants 1 to 5 to return the suit schedule shares held by the 1st plaintiff in 2nd defendant to the 1st plaintiff.
In the alternative to prayer (a) and (b) seek a judgment and decree as per prayer (c.)
- (c.) For a direction to Defendants 1 to 5 to jointly and severally render true and fair account of the sale of the suit schedule shares and to jointly and severally compensate the plaintiffs for the loss suffered which is estimated for the present at Rs.60,00,000/- (Rupees Sixty Lakhs only) or such other sum that may be found due and payable upon an account being taken, as damages to the plaintiffs together with interest at 18% per annum on the damages till realisation of the said amount.
- (d) For a declaration that personal guarantee dated 17.04.2010 executed by the 1st plaintiff in favour of the 1st defendant is a sham and nominal document.
- (e) Costs for the suit
- (f) Such other relief in the interest of justice."

5. The opposition for leave to sue substantially arises out of the jurisdiction clause contained in the documents. Clause-18 of the guarantee in this behalf is reproduced as under:

"18.JURISDICTION:

18.1.Each party agrees that the courts in the city of Mumbai, India, shall have exclusive jurisdiction to settle the disputes which may arise out of or in connection with this Guarantee and that accordingly any suit, legal action or proceedings (together referred to as "Proceedings") arising out of or in connection with this Guarantee may be brought in Courts in Mumbai and the Guarantor irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of Courts in Mumbai."

6. The aforesaid ouster clause is not disputed on behalf of the appellant, but the case is predicated on a reasoning that the binding documentation in this behalf was with the first respondent and the nature of the suit is such that the relief goes beyond that and is more in the nature of a breach of trust by the appellants against the respondents on account of alienation of the shares. It is however admitted that while claiming as aforesaid, a specific prayer has been made for declaration to cancel the personal guarantee.

7. We may notice that all the respondents are Mumbai based, including the first respondent and since the cause of action for the suit is stated to be the letter of guarantee dated 17.10.2010 containing the ouster clause, the same should be given effect to while the appellants contend that the first appellant is registered at Chennai, having a registered office in Chennai and the documents were executed by the parties inter se at Chennai from the various communications ensued.

8. The learned single Judge rejected the application for leave predicated on a reasoning of cancellation of the personal guarantee sought, and held that the judicial pronouncements in this behalf, make it quite clear that if two or more courts of competent jurisdiction exist, it is always open to the parties to agree to the exclusive jurisdiction of one of those courts.

9. On hearing the learned counsel for the parties, we see no reason to take a different view. The appellants merely by inclusion of certain parties in the suit cannot give a go-by to the exclusion

clause. The appellants have tried to build a case based on breach of faith and trust as according to them, the shares illegally transferred were never supposed to be in the custody of the first respondent, but in the custody of the third respondent, even though there is no documentation in this behalf. The appellants also seek to absolve themselves of the liability of the consequences of transfer of shares by claiming that the documents executed were never supposed to be acted upon. This story prima facie is difficult to accept. The fact however remains that the suit arises from the consequences of the principal document being the guarantee, while the appellant seeks to assign role to the other parties, all the respondents are ad idem that the competent court would be at Mumbai. It is not the case of the added parties that since they are not party to the ouster clause, the Mumbai Courts should not have jurisdiction, but the stand is to the contrary.

10. Learned counsel for the appellant made a prayer to save the suit at Chennai by claiming that if prayer (d) was not there, he would have been able to maintain the suit at Chennai. We would not comment on this proposition as that was not the fact pleaded before the learned Single Judge.

11. We are also unimpressed by the arguments of the learned counsel for the appellants that the plaintiffs being the dominus litis, it is the prerogative of the plaintiffs to institute the suit in any court which has jurisdiction. In this context, it was submitted that other than the first respondent, others cannot compel the appellants to give up the role as dominus litis and to institute the suit in another court according to their convenience (even though it is alleged that no such plea of convenience was raised). In our view, the prerogative of the appellants as dominus litis is circumscribed by the contractual documents where the jurisdiction has been exclusively conferred on the Mumbai court, one of the courts of competent jurisdiction. The appellant cannot wish it away. The first respondent also insists that the suit shall be at Mumbai. The other respondents are not compelling the appellants to give up their role as dominus litis, but having been impleaded are entitled to plead that the transaction arises out of a document which confers jurisdiction on one court to the exclusion of the others and that they are joining in this request along with the first respondent.

12. Learned counsel for the appellants sought to rely on the Judgment in P.R.Shah, Shares and Stock Brokers Private Limited vs. B.H.H.Securities Private Limited and Others (2012 (1) SCC 594), delivered in the context of the Arbitration and Conciliation Act,

1996, on the limited aspect that as third parties to an arbitration agreement cannot be compelled to join in the arbitration proceedings, nor can they insist that they have the right to join the arbitration proceedings, on analogy, the same position would arise in case of leave to sue. In our view, the Judgement could have no application to the facts of the case where the appellants, contrary to the written agreements, seek to build the case on the alleged oral understanding to include the third parties with the object of creating jurisdiction other than at a place where exclusive jurisdiction has been conferred. The exclusive jurisdiction is conferred in terms of a clause in the guarantee, which agreement is sought to be cancelled and which has given rise to the controversy and the claim in the suit by the additional parties who want the suit to be tried as per the ouster clause.

13. We have no hesitation in concluding that the original side appeal is devoid of merits and it is accordingly dismissed. Parties to bear their own costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ksr

To

The Sub - Assistant Registrar,
Original Side,
High Court, Madras.

+2cc's to Mr.N.P.Vijaya Kumar, Advocate, S.R.No.40688
+1cc to Mr.P.Giridharan, Advocate, S.R.No.41002

O.S.A.No.107 of 2015

PVR(CO)
CA(25/08/2015)

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