

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4827 OF 2016**

Mr. Ramal Advani

Petitioner

Vs

Mr. Vashulal M. Talreja and Anr.

.. Respondents

Mr. A.R.Pai i/b Neuty N. Thakkar, Advocate for Petitioner.

Mr. Vashulal M. Talreja, Respondent no.1 in-person.

Mr. Sanjiv Punolekar i/b P.R.S.Legal, Advocate for Respondent no.2.

CORAM : R.G.KETKAR,J.

DATE : 22/04/2016

PC:

1. Heard Mr. A.R.Pai, learned counsel for the petitioner, Mr. Vaushal M. Talreja, respondent no.1 in-person and Mr. Sanjiv Punolekar, learned counsel for respondent no.2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 4.4.2016 passed by the learned Judge, presiding over Court Room No. 28 of the Bombay City Civil Court at Bombay in Chamber Summons No. 246 of 2016 in Summary Suit No. 3734 of 2011 (High Court Summary Suit No. 1340 of 2011). By that order, the learned trial Judge dismissed the Chamber Summons taken out by the petitioner, hereinafter referred to as 'defendant no.2' under Order VII, Rule 11 (a) and (d) of C.P.C for rejection of plaint on the ground that the suit does not disclose any cause of action qua defendant no.2 as also on the ground that from the statement in the Plaint the suit appears to be barred by

limitation.

3. Respondent no.1, hereinafter referred to as 'plaintiff', instituted Summary Suit under Order XXXVII, Rule 2 of C.P.C. against respondent no.2, hereinafter referred to as 'defendant no.1' and applicant-defendant no.2 for recovery of sum of Rs.43,14,544/- with further interest on Rs. 30,00,000/- at the rate of 15% per annum from the date of filing of the suit till passing of decree and at the rate of 15% per annum or at such other rate the Hon'ble Court deems fit and proper from the date of passing of the decree till payment or realization and costs of the suit.

4. The plaintiff came with the case that he was acting as Advocate for defendant no.2 in arbitration proceedings which had been initiated by defendant no.2 against defendant no.1. The plaintiff appeared on behalf of defendant no.2 in arbitration proceedings from 1.7.2001 till 9.8.2007 when Award was made. The dispute was amicably settled and Consent Terms were drawn on 6.8.2007. Award was made on 9.8.2007 in terms of the Consent Terms. Clause (3) (b) provided that defendant no.2 agreed that defendant no.1 shall issue cheque of Rs. 30 lacs to the plaintiff on behalf of defendant no.2 being his professional fees and other incidental expenses incurred by him since 2001 out of the total consideration of Rs. 3.33 crores, which was to be paid over to defendant no.2 by defendant no.1. It appears that the plaintiff instituted Darkhast proceedings, being Execution

Application No.151 of 2009, for execution of the Consent Decree and in those proceedings he took steps for issuing warrant of attachment. That warrant of attachment was challenged by filing Chamber Summons No. 588 of 2009. By order dated 2.2.2011, Chamber Summons was disposed of after recording statement of the plaintiff that he will withdraw the execution proceedings with liberty to file Summary Suit for recovery of Rs. 30 lacs with interest at the rate of 15% per annum from September, 2007. In pursuance thereof, the plaintiff instituted suit on 4.3.2011. In paragraph 21, it is asserted that fresh cheque was issued by defendant no.1 on 9.3.2008 for Rs. 30,00,000/- under covering letter dated 25.2.2008. By the impugned order, the learned trial Judge has rejected the Chamber Summons taken out by defendant no.2.

5. In support of this petition, Mr. Pai submitted that the plaintiff is a total stranger in the sense that he is not a party to the contract between defendant no.1 and defendant no.2. He is also not partner of M/s Advani Consultancy Services and M/s Vinky Developers. The plaintiff being stranger to the contract cannot sue on the basis of that contract. He further submitted that in fact in a Summary suit instituted by the plaintiff, unconditional leave to defend was granted to defendant no.1. No orders were passed against defendant no.2 In view thereof, summary suit is now converted into Regular Civil Suit.

6. Mr. Pai further submitted that in view of Rule 20 of Bar Council of India Rules, 1975, the plaintiff cannot maintain the suit. Rule 20 lays down that an Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof. Perusal of clause (3)(b) of the Consent Terms clearly shows that the plaintiff agreed to share proceeds of the arbitration proceedings. Even on this count, the suit is barred by law, viz. Bar Council of India Rules, 1975.

7. Mr. Pai further submitted that suit is also barred by limitation. The Award was made on 9.8.2007 and the suit is instituted on 4.3.2011. In support of his submissions, Mr. Pai relied upon the following decisions:

(i) M.C.Chacko Vs. The State Bank of Travancore, AIR 1970 SC 504, to contend that the plaintiff being a stranger to contract cannot enforce terms of the contract.

(ii) Seth Bhabhootmal Seth Nathmal Oswal Vs Moolchand Munnalal Sagotia, AIR 1943 Nag. 266 and in particular paragraphs 5 and 7 thereof.

8. On the other hand, respondent no.1 supported the impugned order.

9. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the arbitration proceedings were conducted between defendant no. 1 and

defendant no.2. Controversy between defendant no.1 and defendant no.2 was amicably settled in terms of Consent Terms dated 6.8.2007. Clause 3(b) thereof reads as under.

“(b) The Claimant has agreed that respondent shall issue cheque of Rs. 30.00 lacs to Mr. V.M.Talreja on behalf of the claimant being his professional fees and other incidental expenses incurred by him since 2001 out of the total consideration of Rs. 3.33 crores.”

Perusal of clause 3(b), extracted herein, above shows that claimant therein (defendant no.2 herein) agreed that the respondent therein (defendant no.1 herein) shall issue cheque of Rs. 30 lacs to Mr V.M.Talreja, (plaintiff herein), on behalf of defendant no.2 being his professional fees and other incidental expenses incurred by him since 2001 out of total consideration of Rs.3.33 crores. In pursuance of that Consent Terms, Consent Decree was passed on 9.8.2007 and the Award was also made on the same day. It is not in dispute that the plaintiff instituted execution proceedings in the year 2009 for executing the Consent Decree. He took steps for issuing warrant of attachment which was challenged by filing Chamber Summons. Chamber Summons was disposed of on 2.2.2011 after recording statement of the plaintiff that he wishes to withdraw execution application with liberty to file Summary Suit. In paragraph 21 of the plaint, the plaintiff asserted that defendant no.1 issued cheque on 9.3.2008 and which was dishonoured . The suit is

instituted on 4.3.2011. In view thereof, I do not find that the learned trial Judge committed any error in prima facie holding that suit is within limitation.

10. Mr. Pai submitted that the plaintiff is a total stranger in the sense that he is not a party to the contract between defendant no.1 and defendant no.2 as also he is not partner of M/s Advani Consultancy Services and M/s Vinky Developers and, therefore, he cannot maintain suit at least against defendant no.2. I do not find any merit in this submission as well. Perusal of clause 3(b) of the Consent Terms clearly shows that on behalf of defendant no.2, defendant no.1 agreed to make payment of Rs.30 lacs to the plaintiff. In other words, liability was of defendant no.2 to make payment of Rs. 30 lacs to the plaintiff. That liability was agreed to be taken over by defendant no.1. In view thereof, it cannot be said that the plaintiff cannot maintain suit against defendants no. 1 and 2. The learned trial Judge has considered provisions of Indian Trusts Act and in particular Section 3 thereof. The learned trial Judge observed that whether the plaintiff became beneficiary or not, is a matter of evidence which can be gone into in the trial. Having regard to the fact that defendant no.2 has taken out proceedings under Order VII, Rule 11, I do not find that the learned trial Judge has committed any error in that regard.

11. Mr. Pai further submitted that there is no cause of action

qua defendant no.2. For the reasons recorded earlier, I do not find any merit in the submission as well. Mr. Pai relied upon the decisions referred herein above in paragraph 6. In the case of M.C.Chacko (supra), the Apex Court held that a person who is not a party to a contract cannot enforce terms of a contract subject to certain well recognised exceptions about beneficiaries under terms of contract can maintain action. In the present case, whether the plaintiff is beneficiary or not, is a matter of evidence. In view thereof, I do not find that the decision in the case of M.C.Chacko (supra) advances the case of defendant no.2.

12. In so far as the decision in the case of Seth Bhabhootmal Seth Nathmal Oswal (supra) is concerned, one of the questions that fell for consideration was whether a stranger to the consideration and moreover one who is not a party to the contract, can sue in such a case. In my opinion, having regard to clause 3(b) of the Consent Terms, even this Judgment is not applicable to the facts of the present case. Hence, Petition fails and the same is dismissed.

13. It is expressly made clear that the observations made herein are tentative and prima facie and are made only for the purpose of considering correctness of the impugned order. The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits in accordance with law uninfluenced

by the observations made in the impugned order and in this order. Order accordingly.

(R.G.KETKAR, J.)