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

NOTICE OF MOTITION NO.840 OF 2010
IN
SUIT NO.847 OF 2010

DB Reality Limited .. Plaintiff
Versus
Mahal Pictures Private Limited
And Others .. Defendants

ALONGWITH
NOTICE OF MOTION (L) NO.87 OF 2016
IN
NOTICE OF MOTITION NO.840 OF 2010
IN
SUIT NO.847 OF 2010

Waseem Amrohi .. Applicant

<u>In the matter between</u> :

DB Reality Limited .. Plaintiff
Versus
Mahal Pictures Private Limited
And Others .. Defendants.

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Mr. Sanjay Jain a/w Mr. Darshan Mehta and Ms. Shreya Jha i/b Dhruve Liladhar & Co., for the Plaintiff.
Ms. Tanmayi Rajadhyaksha a/w Mr. S. Kalekar i/b RMG Law Associates for Defendant No.1.
Mr. Rishi Jha i/b RKM Legal for Defendant No.2.
Ms. Ratna Bhargavan i/b R. Bhargavan & Associates for Defendant Nos.3, 4 and 7.
Mr. Pramod Patil for Defendant Nos.5 and 6.
Dr. Veerendra Tulzapurkar, Senior Advocate i/b Mr. Nachiket Khaladkar for Defendant No.8.

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CORAM : S.C.GUPTE, J.

DATE : 14 JULY 2016.

<u>Order :</u>

. By this Notice of Motion (Notice of Motion No.840 of 2010), the Plaintiff has asked for various reliefs concerning the Plaintiff's shares in the first Defendant Company, which are purportedly dealt with by Defendant Nos.3 to 8 by practicing a fraud, forgery, etc. At the hearing of the Notice of Motion, the Plaintiff, however, only presses relief in terms of prayer clause-(b), namely, a temporary injunction restraining Defendant Nos. 1 to 5 from acting or relying upon the purported share transfer deed of 18 February 2010. The companion Notice of Motion (Notice of Motion (L) No.87 of 2016) taken out by original Defendant No.4 seeks an order directing the Plaintiff as well as Defendant Nos. 1, 2, 5, 6 and 8 to maintain status quo with respect to the suit shares.

2 The Plaintiff's case may be briefly set out as follows :

One Shandar Kamal Amrohi (since deceased), the original Plaintiff herein, was the shareholder in respect of 3600 fully paid up shares of the face value of Rs.10/- each of the first Defendant Company ("suit shares"). The Company was promoted by Kamal Amrohi, the famous film director, and is a closely held private company limited by shares. By an agreement dated 7 February 2008, the original Plaintiff agreed to sell and transfer the suit shares to Defendant No.5 at or for a consideration of Rs.40 crores. Defendant No.5 from time to time paid a total sum of about Rs.2.43 crores towards such transfer. The transfer of the suit shares was objected to by

Defendant Nos.2 and 3, who were family members of the original Plaintiff and directors of the first Defendant Company. (Articles of Association of the Company contained restrictions regarding transfer of shares to an outsider.) Sometime later, in 2008, a suit was filed by Defendant No.5 against the original Plaintiff in the Bombay city Civil Court at Dindoshi, affirming his right to purchase the suit shares. On 2 September 2008, consent terms came to be filed in that suit, whereunder the original Plaintiff undertook not to create any right in the suit shares save in favour of Defendant No.5. After the signing of these terms, on 7 February 2010, a document styled as an 'addendum to agreement for sale of shares' came to be executed between Defendant No.5 and the original Plaintiff. Defendant No.5 handed over a cheque of Rs.25 lacs to the original Plaintiff and promised to pay the balance amount of the consideration of Rs.40 crores for purchase of the suit shares. (This agreement is claimed to be a novation of the original agreement for sale of suit shares.) Defendant No.5, thereafter, filed another suit (Suit No.326 of 2010) before the City Civil Court at Dindoshi for a permanent injunction restraining the original Plaintiff and the first Defendant Company from dealing with or disposing of the suit shares except in favour of Defendant No.5. The original Plaintiff was away when this suit was filed. An ad-interim application was made by Defendant No.5 in that suit on 10 February 2010, when some advocate appeared for the original Plaintiff and waived notice on his behalf. An ad-interim status quo order was thereupon passed in the suit. (The original Plaintiff claims to have had no notice of this suit or not to have appointed any advocate to represent him in the suit.) By a letter dated 12 February 2010, the original Plaintiff called upon his bankers not to accept any cheques into his account without his written authorization.

The original Plaintiff, thereafter, learnt about filing of Suit No.326 of 2010 and reliefs obtained therein. On 18 February 2010, Defendant No.4 claimed to have arranged a pay order for the balance consideration of Rs.40 crores, and withdrew his Notice of Motion in the suit on the ground that the parties were likely to settle the matter. The original Plaintiff's case is that the entire action was collusive on the part of Defendant Nos. 3 to 8. It is alleged by these Defendants that on 18 February 2010, the original Plaintiff signed a purported share transfer form in favour of Defendant No.4. The original Plaintiff claims this to be a forgery; he was not even at his residence at the time when and where the form is claimed to have been signed by him. No money has been paid to the original Plaintiff towards the balance consideration. On the same day, i.e. 18 February 2010, a purported pledge agreement was franked and later executed between Defendant Nos.3, 4 and 7 on the one hand and Defendant No.8 on the other. (The amount of balance consideration of Rs.40 crores, according to the original Plaintiff, was apparently raised from Defendant No.8 on the basis of a pleadge of the suit shares.) On the same day, a notice convening a meeting of Board of Directors of the first Defendant Company was issued, and even an entry was made in the inward register for “lodging of equity shares for transfer”, without physically lodging the suit shares with transfer deeds. On 23 February 2010, the original Plaintiff reported a theft of the suit shares and forgery of his signatures to the Police. Though no meeting was held on 25 February 2010, purported Minutes of the Board Meeting of that day were issued, approving the transfer of the suit shares. On 2 March 2010, the original Plaintiff terminated the 'novatio' of 7 February 2010 by way of abundant caution. In August 2010, a settlement was arrived at between the parties, whereunder Defendant Nos.2, 3 and 4 resigned from the Board of Directors of the first Defendant Company, the present Plaintiff acquired the shareholding of the original Plaintiff, Defendant No.8 acquired the shareholding of Defendant No.3 and representatives of the present Plaintiff and Defendant No.8 were appointed as Directors of the first Defendant Company. On 21 August 2011, the original Plaintiff died. By a Chamber Summons, the present Plaintiff was brought on record as his successor. In view of the settlement referred to above, the present Plaintiff does not press other reliefs in the Motion, but merely seeks to restrain Defendant No.1 to 5 from acting upon the purported share transfer deed of 18 February 2010.

3 The chief controversy in the suit, as of date, pertains to the alleged transfer of suit shares on 18 February 2010 by the original Plaintiff. The right of Defendant No. 5 to purchase the suit shares was hotly contested by the original Plaintiff at the time, claiming impersonation by an advocate on his behalf and ad-interim reliefs obtained against him by playing a fraud. That was at 4.15 p.m. on 17 February 2010 in Notice of Motion No.490 of 2010 in S.C. Suit No.326 of 2010 before the Dindoshi Court, when the original plaintiff moved for vacating the ad-interim order granted against him in that suit. Without any resolution of these disputes, it is *prima facie* inconceivable that the original Plaintiff could have executed a share transfer in favour of Defendant No.4. The circumstances attending the alleged transfer of shares also create a grave cloud of suspicion over the transfer. On 18 February 2010, at about 2.50 p.m., the purported transfer deed is franked at Bank of India in Fort, Mumbai and is claimed to have been signed by the original Plaintiff at Bandra on or before 3.30 p.m. On the same day, a pledge agreement as between Defendant Nos.3, 4 and 7,

and Defendant No.8 is franked; a notice convening the Board Meeting for considering the transfer is issued; an entry is made in the inward register claiming lodgment of shares alongwith transfer deed for registering the transfer. All this is claimed to have happened on 18 February 2010 and that too without the original Plaintiff receiving any amount from out of the balance consideration of over Rs.37 crores. Besides, it is inconceivable that physical custody of the shares was with Defendant No.4 on that day for such lodgement, since the shares were supposed have been pledged with Defendant No.8 presumably for raising funds towards the balance consideration. According to Defendant No.4, the shares were transferred by Defendant No.1 in his favour in the Board Meeting of 25 February 2010. Defendant No.2, who is claimed to be a participant of this meeting, has in his affidavit asserted that no such meeting ever took place. 'Appointment' of Defendant No.3 as a chairperson and casing of a casting vote by her, are also circumstances shrouded in mystery. It is *prima facie* inconceivable and improbable that any transfer of the suit shares took place as between the original Plaintiff and Defendant No.4 on 18 February 2010 or any other date.

4 Defendant Nos.3, 4 and 7 have advanced various arguments on the basis of a purported will and trust deed of the settlor, Kamal Amrohi. It is submitted that Kamal Amrohi, who originally owned the company, the studio and the land, bequeathed the properties by a will amongst his three children, namely, the original Plaintiff, Defendant No.2 and Defendant No.3, and appointed them as equal proportionate shareholders and directors of the first Defendant company. It is claimed that the will probated by this Court at the instance of Defendant No.3 shows that the

testator, Kamal Amrohi, was entitled to 65 fully paid shares of Rs.500 each, had created a trust by executing a deed of trust, settling all dividend and income during the life of the settlor on himself and thereafter to be divided in favour of his three children, named above, in equal shares; that $1/3^{rd}$ shares in the company, which would go to the original Plaintiff upon the demise of the settlor, were to go him for his lifetime, to be divided thereafter equally between the other two children, namely, Defendant No.2 and 3 and thereafter equally amongst the settlor's grand-children including Defendant No.4 and 7; that Defendant No.3, as the managing director of the company after the demise of the settlor, was to have a casting vote in the Board of Directors; and that if the trust were to fail for any reason, the property of the trust be divided amongst his four grand children, namely, the four children of Defendant Nos.2 and 3 after they attain the age of 40 years. It is submitted that the suit shares (3600 shares of the first Defendant company) were, thus, received by the original Plaintiff as part of the inheritance and through such arrangement, and could not have been dealt by him in favour of the present Plaintiff.

5 In this behalf, it is pertinent to note that this case is set up for the first time in Suit No.697 of 2011, there being no suggestion of it earlier and that too in the face of various affidavits filed earlier in the present Notice of Motion. The plea is, besides, inconsistent with the original case pleaded in the present suit by these Defendants, namely, transfer of the suit shares by the original Plaintiff in favour of Defendant No.5 and thereafter in favour of Defendant No.4 through Defendant No.5. Besides, reliefs, if any, on the basis of this new plea ought to have been obtained in Suit No.697 of 2011. No application for any interim relief is made so far in Suit No.697 of 2011

in that behalf.

6 In the premises, the Plaintiff has made out a *prima facie* case for the reliefs claimed in the Notice of Motion. The Defendants cannot be permitted to act on the alleged transfer of the suit shares. As a condition of such interim relief, it is, however, in the interest of justice that the Plaintiff should not be permitted to create any third party rights in respect of the suit shares or deal with them.

7 It is accordingly ordered that pending the hearing and final disposal of the suit, the alleged transfer of the suit shares on 18 February 2010 shall not be acted upon by the Defendants. So also, pending the hearing and final disposal of the suit, the Plaintiff shall be entitled to assert its rights as a shareholder in respect of the suit shares, but without the right to dispose of the same or create any third party rights with respect thereto.

8 Notice of Motion No.840 of 2010 and (L) No. 87 of 2016 are disposed of accordingly.

9 Learned Counsel for Defendant No.3, 4 and 7 seeks a stay of this order, there is no question of staying an injunction order which is passed after hearing both parties fully. Application for stay is rejected.

(S.C.GUPTE, J.)