IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.183 OF 2015
IN
NOTICE OF MOTION (L) NO.1511 OF 2014
IN
SUIT NO.949 OF 2014

Mr. Murgan Muthiah Thevar. .. Appellant
Vs
Mrs. Renudevi Satish Choudhary and Ors. .. Respondents
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Shri K.H. Halai along with Shri P.Rajan and Shri Ali Naqvi i/b Halai & Co for the Appellant.
Shri Farhan along with Shri Ganesh Ambekar i/b M/s. Thakore Jariwala & Associates for the Respondent No.1.
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CORAM : A.S. OKA & A.M. BADAR, JJ
DATED : 24TH NOVEMBER 2016

P.C.

1. Heard learned counsel appearing for the Appellant/Original Plaintiff. The challenge in this Appeal is to the order dated 3rd February 2015 passed by the learned Single Judge by which the prayer for interim injunction made by the Appellant has been rejected. Only prayer for interim relief was for restraining the first Respondent/first Defendant from transferring or alienating the shares of the Appellant, the particulars of which have been pleaded in the Plaint. The Respondent in this Appeal are the Defendants.

2. Prayer Clause (a) of the Plaint filed by the Appellant reads thus:

> "(a) That this Hon'ble Court may be pleased to declare that the Plaintiff is entitled to a retransfer of the suit shares viz. 11,50,000/- shares of Defendant No.2 pledged with and transferred to the Defendant No.1 by the Plaintiff as set out in Schedule A of the said agreement dated 1/2/2013 (Ex.A hereto)."

3. Apart from the said prayer based on the agreement dated 1st February 2013 between the Appellant and the first Respondent, there is a prayer made in the alternative for grant of damages in the sum of Rs.3,74,90,000/-, the particulars of which have been set out in Exhibited G to the Appeal. According to the Appellant/Plaintiff, the said amount represents the value of the shares as of 3rd June 2014 along with interest thereon at the rate of 18% per annum.

4. The Agreement dated 1st February 2013 provides that a loan of Rs.2 crores was granted by the first Respondent to the Appellant. Clause 4 of the said Agreement provides that in consideration of the said loan facilities, securities mentioned in Exhibit-A which include the shares subject matter of the suit shall be provided by the Appellant to the first Respondent as exclusive charge towards the repayment of the amount. The contention is that the substantial amount has been repaid by the Appellant.

5. In Paragraph 6 of the impugned order, the learned Single Judge has recorded the following findings:

> "6. In the first place, 8 lakh shares of Sudar Industries, which are the subject matter of the present suit, admittedly belong to Defendant No.3. It also emerges that there is an outstanding owed by Defendant No.3 to Defendant No.1 and that these 8 lakh shares have been held as a security by Defendant No.1 to secure those outstandings. Thirdly, there is nothing to show apart from the Plaintiff's solitary letter, which came too late in the day, namely, on 3 June 2014, that 8 lakh shares of Sudar Industries were arranged as a security only for the outstandings of the Plaintiff. There is no contemporaneous document on record to support the Plaintiff's case in that behalf. In this background, the Plaintiff cannot be said to have made out a prima facie case that 8 lakh shares of Sudar Industries were pledged by Defendant No.3 with Defendant No.1 to secure the advance made by Defendant No.1 to the Plaintiff and that upon recovery of that advance, Defendant No.1 was bound to return the shares to the Plaintiff. The facts on record are equally consistent with the case of Defendant No.1 that these shares were pledged by Defendant No.3 with Defendant No.1 to secure the advance made by Defendant No.1 to it. In that view of the matter, the Plaintiff cannot be said to have made out a prima facie case for the reliefs claimed in the Motion."

6. The learned counsel appearing for the Appellant has a serious quarrel with the finding as according to him, a substantial amount has been paid by the Appellant.

7. In Paragraph 7 of the impugned order, the learned Single Judge has observed that the suit filed by the Appellant can be very well decreed in terms of the prayer made in the alternative for grant of market value of the shares along with interest thereon. Thus, monetary relief will be adequate to compensate the Appellant in the event of success in the suit in as much as the loss which may be caused by the loss of shares can be always assessed in terms of money.

8. As far as an Appeal against the interim order passed on the Application under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 is concerned, the law is well settled. The scope of the Appeal is considerably restricted as compared to an Appeal under Section 96 of the said Code or an Appeal against the final judgment. The Apex Court has repeatedly held that such an Appeal against exercise of discretionary jurisdiction is an Appeal on principle. In such Appeal, the Appellate Court will not reassess the material while dealing with the said Appeal and no interference can be made with the exercise of discretion unless the same has been exercised arbitrarily and capriciously. This well settled law has been reiterated by the Apex Court in the case of ***Mohd. Mehtab Khan and Others v. Khushnuma Ibrahim Khan and Others***[1].

1 (2013)9 SCC 221

9. Hence, in the present case, we are of the view that no interference can be made in the impugned order by which interim injunction has been refused. Accordingly, the Appeal is dismissed.

10. Notice of Motion (L) No.414 of 2015 does not survive and the same is disposed of.

11. We make it clear that we have not made any adjudication on the merits of the controversy in the main suit and all contentions of the parties are kept open.

(A.M. BADAR, J) (A.S. OKA, J)