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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 665/2015

DR. JANG BAHADUR SINGH

..... Plaintiff

Through: Mr. Sanjeev Sindhwani, Senior
Advocate with Mr. Naresh Nath, Advocate.

versus

JASMOHAN SINGH & ORS.

..... Defendants

Through: Mr. Ashwani K. Mata, Senior Advocate
with Mr. N.P.S. Chawla, Advocate for Defendant
No.1.

Mr. Amit Sibal, Senior Advocate with Mr. Gaurav
Varma and Mr. Vinay Tripathi, Advocates for
Defendant Nos. 2 and 3.

Ms. Rekha Palli, Senior Advocate with Mr. Sujoy
Datta and Ms. Shruti Munjal, Advocates for
Defendant No.4.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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31.08.2016

**IA No. 7969/2015 (under Order VII Rule 11 CPC) & IA No. 10155/2016
(under Order VI Rule 17 CPC) & CS (OS) No. 665 of 2015**

1. IA No. 7969 of 2015 is an application filed by Defendants 1 to 4 seeking rejection of the plaint. IA No. 10155 of 2016 is an application filed by the Plaintiff seeking amendment of the plaint.

2. The background to both these applications is that the above suit was filed

by the Plaintiff Dr. Jang Bahadur Singh for a decree against Mr. Jagmohan Singh (Defendant No. 1), Ms. Gurleen Kaur (Defendant No. 2), Mr. Gurmohan Singh (Defendant No. 3), Ms. Jasleen Kaur (Defendant No. 4), Mrs. Pamela Manmohan Singh (Defendant No. 5), Mr. Gurmit Singh (Defendant No. 6) and Mr. Jagmit Singh (Defendant No. 7) for:

(i) a declaration that the Plaintiff continues to be the absolute owner of the 2,40,002 shares of Frick India Limited ('FIL') purchased by him on 25th August, 1982;

(ii) a declaration that the term 'transfer' in the agreement dated 22nd December, 2011 means transfer in against payment of fair market value and not transfer in recognition of a past *Benami* transaction;

(iii) a decree restraining Defendant No. 1 and the other Defendants as well as FIL from affecting, causing directly or indirectly any transfer of the 1,20,001 shares in the books of FIL so as to in any way diminish the plaintiff's ownership of the said shares;

(iv) to restrain the Defendants from making a prayer to any court outside India in respect of the shares of FIL.

3. Summons were first issued in the suit on 12th March, 2015. On that day, an interim order was passed in IA No. 5143/2015 restraining the Defendants from enforcing orders dated 6th October, 2014 and 5th March, 2015 passed against the Plaintiff by the Superior Court, Massachusetts in the USA. The Court in the above order noted that the Defendants in this suit had filed a

suit on 17th November 2011 in the Probate and Family Court, Massachusetts in the USA claiming benami ownership of shares of FIL. It noted that an agreement was signed between the parties on 22nd December, 2011 which contemplated transfer of 20% of Plaintiff's shares in FIL to the Defendants. A suit had also been filed by the Defendants against the Plaintiff for declaration and injunction in the Superior Court in Massachusetts in the USA on 28th March, 2012. Prior thereto, the Plaintiff had filed on 3rd March, 2012 a petition before the Company Law Board in India.

4. While in the Defendants' motion for a summary judgment was declined on 15th October, 2012, the second cross-motion before the Superior Court of Massachusetts in the USA resulted in a summary judgment dated 6th October, 2014 directing the Plaintiff to execute a standard share form in accordance with para 3 of the said judgment. The Superior Court held that the Plaintiff had "failed to demonstrate a relationship between the allegations of improper management at Frick, and the issue of whether the transfer [of] funds and shares pursuant to the terms of the Agreement is legal under Indian law." The Court also noted that the Plaintiff had filed an appeal against the judgment dated 6th October, 2014 which had been dismissed on 5th March, 2015. The Plaintiff's petition seeking stay of the said judgment was rejected on 5th March 2015. The Superior Court then appointed an escrow agent and the Plaintiff was directed to execute the security transfer form by 12th March, 2015.

5. Upon service of summons in this suit, the Defendants had filed IA No. 7969 of 2016 in which notice was directed to be issued on 21st April, 2015.

Meanwhile, the Defendants also filed an appeal being FAO (OS) No. 124 of 2015 in the Division Bench (DB) of this Court against the order dated 12th March, 2015.

6. On 17th March 2015, the DB passed the following order:

“FAQ(OS) 124/2015 & CM 4944/2015 & 4946/2015

We have heard the learned counsel for the parties at length. Mr. Manish Kumar Saryal, who appears for respondent no.1 states that the impugned order may be set aside and that he has instructions to withdraw IA. No. 5143/2015 in CS(OS) No. 665/2015 which is pending before the learned single Judge at this stage.

In view of the statement made by the learned counsel for respondent no. 1, the impugned order dated 12.03.2015 is set aside and the application being IA. No. 5143/2015 stands dismissed as withdrawn as stated above.

The appeal stands disposed of.

Insofar as the second prayer made in the appeal with regard to the survival of the suit as such, the appellant shall have liberty to make the same before the learned single Judge.

Dasti under the signature of the Court Master.”

7. The Plaintiff in fact did sign the share transfer form in terms of the order of the Appellate Court in Massachusetts, USA. However, the Plaintiff filed an application being CM NO. 8013 of 2015 before the DB seeking recall of the order dated 17th March, 2015. The submission made on behalf of the Plaintiff before the DB was that the counsel who made a statement on behalf of the Plaintiff before the Court on 17th March, 2015 mistook the

instructions given by the Plaintiff. It was suggested that the Plaintiff never meant to instruct the counsel to withdraw the application IA. No. 5143/2015. The DB, however, declined to accept the said explanation and dismissed the application on 10th May, 2016 thus reaffirming the order dated 17th March, 2015.

8. When the matter was subsequently heard in this Court on 1st August, 2016, the following order was passed:

“IA No.7969/2015 (of D-1 to 4 u/O 7 R-11 CPC)

1. The plaintiff has instituted the present suit (i) for declaration that the plaintiff is and continues to be the owner of 2,40,002 shares of Frick India Ltd. purchased by him on 25th August, 1982; (ii) for declaration that the term 'transfer' in agreement dated 22nd December, 2011 between the plaintiff on the one hand and the defendants No.1 to 4 on the other hand means "transfer against payment of fair market value and not transfer in recognition of a past benami ownership"; (iii) for injunction restraining the defendants and Frick India Ltd. (not a defendant to the suit) from affecting transfer of 1,20,001 shares out of 2,40,002 shares aforesaid in the books of Frick India Ltd. from the name of the plaintiff to the names of the defendants No. 1 to 4; and, (iv) for injunction restraining the defendants from making a prayer to a court of law outside India in respect of the said shares.

2. The senior counsels for the defendants No.1 to 4 have argued that though the application was filed on the ground of the suit as per the averments in the plaint being not maintainable, the suit in fact has become infructuous. It is stated that 1,20,001 shares out of 2,40,002 shares of Frick India Ltd. earlier held in the name of the plaintiff have since been transferred in the name of the defendants

No.1 to 4 and thus none of the reliefs claimed in the suit survive.

3. The senior counsel for the plaintiff is unable to controvert that in view of the transfer having been affected the reliefs (iii) & (iv) aforesaid claimed in the suit do not survive. It is however his contention that the reliefs (i) & (ii) aforesaid, of declaration survive.

4. I am however unable to agree.

5. The reliefs of declaration are combined with the consequential relief of injunction and once the consequential relief of injunction as claimed no longer survives, the plaintiff ought to have, if entitled, applied for amendment of the plaint to claim the consequential relief to which the plaintiff may in the changed circumstance be entitled to.

6. The senior counsel for the plaintiff has not pressed the argument further and states that time be given to amend the plaint.

7. It is not as if the need for amendment has arisen today only. The suit became infructuous much earlier and the plaintiff had sufficient time, if desired, to apply for amendment.

8. Though reasons are sought to be given for not applying for amendment of the plaint earlier but again, there is no merit therein. The judgment of the Foreign Appellate Court is of 13th May, 2016 and there was ample time available to the plaintiff to take appropriate steps, if any available. In fact the statement today, that application for amendment of the plaint will be filed within two days or within one week, itself shows that the plaintiff has been lacking in pursuing his claim.

9. The proceedings in the Court cannot be at the whim and fancy of litigants. If litigants such as these, who are litigating for high stakes, with a battery of legal advisors spanning over several jurisdictions, are found to be not diligent, they have to face the consequences.

10. As of today the suit is infructuous and liable to be dismissed as such and there is no ground to grant the adjournment sought. The plaintiff, if is entitled to any relief in the changed circumstance, can always sue therefor.

11. The senior counsel for the plaintiff, on instructions, offers to bear the actual costs borne by the defendants of today's hearing.

12. It is deemed appropriate to accept the said offer of the plaintiff and to adjourn the proceeding subject to the plaintiff paying conditional costs of Rs.7.80 lakhs disclosed by counsels for defendants of today's hearing to the counsels for the defendants.

13. List on 31st August, 2016.”

9. Mr. Sanjeev Sindhvani, learned Senior counsel appearing for the Plaintiff, first informed the Court that the costs in terms of the order dated 1st August, 2016 have been paid. Mr. Sindhvani submitted that this Court should permit the Plaintiff to amend the plaint by incorporating the amendments and reliefs as set out in paras 10 and 11 of the application IA No. 10155 of 2016 which read thus:

“10. That thus the plaintiff seeks leave of Hon'ble Court to amend plaint in the following manner:

(i) The plaintiff may be permitted to incorporate para No. 113A immediately after existing para 113 to the

following effect:-

"113A. That during pendency of present suit, on 16.06.2016 the defendant Nos. 1 to 4 have made a statement before the Hon'ble National Company Law Tribunal that a board resolution dated 14.06.2016 has been passed and transfer of shares has been effected in the board meeting which was held on the same day. In view of said statement, the Hon'ble NCLT directed the defendants to supply relevant documents to plaintiff within 15 days.

The defendant Nos. 1 to 4 have thereafter on 01.07.2016 provided to plaintiff a copy of the Transfer Register pertaining to Frick India Limited reflecting the purported transfer of 50% shares (1,20,001 shares) belonging to plaintiff in favour of defendant Nos. 1 to 4. The plaintiff has also been provided with copy of Form No. MGT-10 regarding changes in shareholding position of the company showing the purported reduction of 50% shareholding of plaintiff and other declarations pertaining to acquisition of said shares by defendant Nos. 1 to 4, admitting the acquisition with non-monetary consideration.

The plaintiff submits that purported transfer of shares is illegal and invalid as same is based on the said order passed by the US Court, which has no jurisdiction in the matter and also for the reason that the order is not conclusive and binding for the reasons as stated above.

Neither the said order passed by the US Court nor the purported transfer of shares carried on the basis thereof shall affect in any manner the ownership of plaintiff of his shares in the company.

The purported transfer is per se unlawful and invalid also for the reason of having been carried out pendente lite,

during the pendency of the present suit, where the jurisdiction of the US Court as well as the validity and enforceability of the orders passed by the said court are under challenge and are subject matter of adjudication.

The alleged transfer of shares is null and void having no sanctity in the eyes of law and is liable to be declared as such by the Hon'ble Court. The defendants are liable to be directed by the Hon'ble Court to reverse the entries made in the Transfer Register pursuant to the resolution/meeting dated 14.06.2016 purportedly diminishing the shareholding of the plaintiff. Further, defendants are also liable to be restrained from selling the said shares or dealing with them in any manner whatsoever".

(ii) The para relating to cause of action may be permitted to be amended by incorporating para 116A in the following manner;-

"116A. The cause of action further arose in favour of plaintiff on 16.06.2016 when it was informed by defendant Nos. 1 to 4 before the Hon'ble NCLT that the transfer of shares has already been effected in the board meeting held on 14.06.2016. The cause of action also arose on 01.07.2016 when the plaintiff was provided with the photocopy of the Transfer Register of the company and other documents reflecting the purported transfer".

(iii) The para relating to valuation and court fee may be allowed to be amended by incorporating para 119A in the following manner:

"119A. The value of the suit for purpose of court fee and jurisdiction for the relief of declaration is Rs.200/- since the purported transfer of shares is for nonmonetary consideration. The value of the suit for the relief of mandatory injunction is Rs.200/-.The appropriate court fee on the said reliefs has been separately paid.

(iv) The prayer clause may be allowed to be amended by incorporating the following reliefs;

"(iii)- pass a decree of declaration declaring the transfer of 1,20,001 shares of Frick India Limited from the shareholding of the plaintiff to defendant Nos. 1 to 4 on 14.06.2016 for non-monetary consideration, as null and void having no effect whatsoever;

(iv). pass a decree of mandatory injunction directing the defendants to reverse/correct the entries carried out in the Transfer Register of defendant No. 8 on 14.06.2016 and other records purportedly transferring 1,20,001 shares belonging to plaintiff in favour of defendant Nos. 1 to 4 and restoring the shareholding position as existed prior thereto"

The original prayer (iii) may be allowed to be amended and be read as under:

(v) Pass a decree of permanent injunction restraining the defendants from selling the said 1,20,001 shares or dealing with the same in any manner whatsoever and/or from affecting or causing any transfer of the said shares. The original prayer (iv) shall thus be numbered as prayer No. (vi)

11. That in view of the aforesaid, it is also necessary for the plaintiff to implead the company Frick India Limited as defendant in the suit (as defendant No. 8) for due implementation and enforcement of direction relating to reversal/correction of the entries carried out for transfer of shares in its Transfer Register and other records. As such, Frick India Limited, which is thus a necessary and proper party, may kindly be allowed to be impleaded as defendant in the suit and the memo of parties may be permitted to be amended accordingly."

10. Mr. Ashwani K. Matta, learned Senior counsel appearing for Defendant No. 1, Mr. Amit Sibal, learned Senior counsel appearing for Defendant Nos. 2 and 3 and Ms. Rekha Palli, learned Senior counsel appearing for Defendant No. 4 pointed out that the fact that the suit had been rendered infructuous did not change even with the additional pleas and prayers that the Plaintiff was seeking to incorporate. They urged that the suit was itself an abuse of the process of law as the Plaintiff was trying to re-agitate the issues that were already examined in the proceedings between the parties in the Superior Court as well as the Appellate Courts in Massachusetts and in which a judgment was rendered against the Plaintiff upon contest. It is pointed out that with the order of the Appellate Court, Massachusetts in USA not having been appealed against by the Plaintiff before the Supreme Court of USA, it had attained finality.

11. It is pointed out by Senior counsel for the Defendants that the said orders of the Court of the first instance and the Appellate Court have not been challenged by the Plaintiff in the suit and even by way of the present application for amendment. It is pointed out that on the principle of comity of jurisdictions, this Court should not entertain any such plea. There was no cause of action for the Plaintiff to file this suit and in any event the suit was barred by law. Reliance is placed on the decisions in ***Rajesh Kumar Aggarwal v. K. K. Modi* (2006) 4 SCC 385**, ***Guru Nanak Vidya Bhandar Trust v. Union of India* 2006 (88) DRJ 567** and ***S.K. Sikka v. Hindustan Papers Corporation Ltd.* 2006 (87) DRJ 478**.

12. Mr. Sanjeev Sindhvani, on the other hand, refers to Section 13 CPC

which deals with the foreign judgments. He points out that there are averments in paras 7 to 10 of the plaint which give the reasons why the judgment of the foreign court is without jurisdiction and, therefore, not binding on the parties. Mr. Sindhwani further urged that if the aforementioned decree of the Superior Court of Massachusetts in the USA had been sought to be executed in the Indian Courts by the Defendants, then under Section 44A read with Section 47 of the CPC the Plaintiff would have an opportunity to object to the execution of the such decree on the grounds set out in Section 13 CPC. According to Mr. Sindhwani, notwithstanding that there is no specific prayer even in terms of the amended plaint seeking a declaration as to the invalidity of the decree passed by the US Court, this Court in the interests of justice and equity may not only permit the present amendment but also permit the Plaintiff to now further amend the plaint to incorporate such reliefs.

13. The Court is of the view that the amendment as sought by the Plaintiff cannot be allowed for several reasons. As noted in the order dated 1st August, 2016, with the transfer of the 1,20,001 shares of FIL in favour of the Defendants having already taken place, prayers (iii) and (iv) do not survive. Yet, they are sought to be retained even post-amendment, if allowed. The Court had also pointed out that the Plaintiff's plea that prayers (i) and (ii) survive is untenable since there cannot be a bare declaration without a consequential injunction. To this the answer is that in the amendments sought the Plaintiff seeks reversal of the entries in the share register of FIL.

14. The above submission overlooks the fact that the change in the share

register was as a result of the orders of the Superior and Appellate Court in USA which attained finality. As pointed out by Mr. Matta, the parties have acted upon the agreement which was affirmed by the Courts in Massachusetts, USA on two occasions. The Plaintiff having chosen not to appeal the said judgments to the Supreme Court of Massachusetts, and not seeking a declaration as to their invalidity in these proceedings cannot be permitted to re-agitate those very issues before this Court. Therefore, the question of entertaining the consequential prayer for reversal of the entries in the share register of FIL does not arise.

15. The averments in the plaint assailing the above judgments of the courts in the USA cannot erase the fact that there is no prayer, even in the proposed amended plaint, for declaration of their invalidity. Section 13 CPC furnishes the grounds for seeking such invalidation. However, there has to be a specific prayer to that effect. Such relief has also to be valued separately. The Plaintiff having himself participated in the proceedings in the USA courts cannot fall back on equity to persuade the Court to permit him to challenge the said judgments in these proceedings without even so much as a prayer to that effect.

16. There may be good reasons for the Plaintiff not challenging either in the original plaint or in the amended plaint the judgments of the Superior and Appellate Court in Massachusetts to be null and void. The principle of comity of jurisdictions precludes such a challenge particularly where the Plaintiff has chosen to submit to the jurisdiction of those Courts and act by way of acceptance of the finality of the said orders.

17. There was no occasion for the Defendants to file any execution proceedings in the Indian Courts since the orders of the USA Courts were complied with by the parties. The Plaintiff, therefore, cannot rely on Section 44A and 47 of the CPC to seek permission to challenge the binding orders of the Courts in the USA to which the Plaintiff is a party. The net result is that there is no valid and subsisting cause of action that justifies the Plaintiff filing the present suit. The plaint is vulnerable to rejection both in terms of clauses (a) and (d) of Order VII Rule 11 CPC.

18. There is merit in the contention of the Defendants that the present suit has been filed by the Plaintiff only to re-agitate the very issues that have attained finality in the orders of the USA courts. In ***Rajesh Kumar Aggarwal*** (supra), the Supreme Court observed in para 18 as under:

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the largest interest of doing full and complete justice to the parties before the court.”

19. The Court is satisfied that permitting the amendments as sought would amount to re-agitation of the very issues that have attained finality in the proceedings between the parties in the US. The Court would also refer in this context to the following observations made by the Supreme Court in ***K.K. Modi v. K.N. Modi (1998) 3 SCC 573***:

“43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p.344) explains the phrase “abuse of the process of the court” thus:

“This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely

groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

20. The Court is satisfied that the above dictum applies to the case on hand on all fours and that permitting this suit to continue would tantamount to condoning what clearly is an abuse of the process of law. The Court is of the view that the plaint ought to be rejected in terms of the Order VII Rule 11 (a) and (d) CPC.

21. Accordingly, IA No. 10155 of 2016 by the Plaintiff under Order VI Rule 17 CPC is dismissed and IA No. 7969 of 2015 by the Defendants under Order VII Rule 11 CPC is allowed and the plaint is rejected. The suit is dismissed.

S.MURALIDHAR, J

AUGUST 31, 2016

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