

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION (ST) NO. 20484 OF 2017
IN
APPEAL FROM ORDER (ST) NO. 15040 OF 2017

Shunal Dilip Kapur	...Applicant
<i>In the matter between</i>	
Alok Chopra	...Appellant
<i>Versus</i>	
Ravi Fisheries Ltd & Ors	...Respondents

Ms Komal Joshi, i/b ALMT Legal, for the Applicant.
Mr Shunal Kapur, Applicant/Ori Respondent No.5 present in person.
Mr Mayur Khandeparkar, with Mr Shriraj Dhruv, Mr Mithesh Naik, i/b Dhru & Co, for the Appellant.

CORAM: G.S. PATEL, J
DATED: 24th July 2017

PC:-

1. This is a Civil Application moved by the 1st Respondent and the 5th Respondent to the Appeal. It is made in somewhat unusual circumstances. It seeks that an order of 18th July 2017 be recalled. The 5th Respondent Shunal Kapur, who is present in Court also offers certain assurances and undertakings. I will return to this shortly.

2. The order of 18th July 2017 was dictated in open Court. As it happens, due to there being a large number of other matters in which orders were passed on that day and the previous day, the order of 18th July 2017 in Appeal from Order (ST) No.15040 of 2017 was not transcribed or corrected for a couple of days. Before it could be finalised and signed, the present Civil Application was filed. It was moved with notice on Friday, 20th July 2017 at 11 am. I permitted production at 3 pm that day and then, at 3 pm, held it over till 11 am on the supplementary board today so that Mr Khandeparkar for the Appellant might take appropriate instructions.

3. In light of what is proposed in the present Civil Application, a short background is necessary. The Appeal was filed by one Alok Chopra, not a party to the Special Civil Suit No.38 of 2017 in the Thane District Court. I granted Mr Chopra leave to Appeal. I allowed the appeal immediately. I also dismissed the suit in its entirety. I did so because I found that the 5th Respondent, Shunal Kapur, and, through him, the 1st Respondent, Ravi Fisheries Ltd, a company of which he claims to be a director had grossly abused the process of this Court.

4. Shortly stated, Ravi Fisheries filed the suit against the 2nd Respondent, Bombay Cold Storage, a partnership firm, and claimed an injunction against disposal or alienation of an industrial or commercial immovable property. I found there was blatant suppression in the plaint. It was not disclosed that Bombay Cold Storage was already dissolved. That the heirs of the original partners were in arbitration was mentioned, but it was not stated in the plaint that Shunal Kapur had agreed before the learned sole arbitrator, a

senior counsel of this Court, to the sale of this very property. It was not disclosed that this property was in the physical possession at that time of Shunal Kapur's own separate company, Respondent No.12, Paradime Foods Pvt Ltd. Through Ravi Fisheries, Shunal Kapur purported to serve the dissolved firm of Bombay Cold Storage at the address in question and effectively accepted service there through his company Paradime Foods, since the premises were then under his control and he had not yet delivered possession of them. He then told the Thane Court that the defendant Bombay Cold Storage was non-responsive, and on this complete misrepresentation, falsehood and suppression obtained an injunction order. Throughout the plaint, vital material were suppressed. There was a clear attempt to mislead. There was a clear attempt to obstruct the arbitral proceedings. There was a clear suppression of material.

5. Citing a long line of authorities of the Supreme Court,¹ I found that Ravi Fisheries Limited and Shunal Kapur were entitled to no relief at all. They were not even entitled to a hearing. What made matters significantly worse is that Shunal Kapur did not have the authority to file the plaint in the first place, his fellow directors

1 *SP Chengalvaraya Naidu v Jagannath & Ors*, (1994) 1 SCC 1; *Ashok Leyland Ltd v State of Tamil Nadu & Anr*, (2004) 3 SCC 1; *AV Papayya Sastry & Ors v Government of A.P. & Ors*, (2007) 4 SCC 221; *Dalip Singh v State of UP*, (2010) 2 SCC 114; *Oswal Fats & Oils Ltd v Additional Commissioner (Administration) & Ors*, (2010) 4 SCC 728; *Hari Narain v Badri Das*, (1964) 2 SCR 203; *Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody*, (1964) 3 SCR 481; *A Shanmugam v Ariya Kshatriya Rajakula Vamsathu, etc*, (2012) 6 SCC 430; *Maria Margarida Sequeira Fernandes & Ors v Erasmo Jack De Sequeira*, (2012) 5 SCC 370; *Sciemed Overseas Inc v BOC India Ltd*, (2016) 3 SCC 70; *Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors*, (2017) 5 SCC 496.

having confirmed that they had never authorised the filing of the suit by Shunal Kapoor on behalf of Ravi Fisheries.

6. Having regard to the settled law, I dismissed the suit. I allowed the appeal. And I also imposed significant costs of Rs.25 lakhs. I directed these costs to be paid to three well-regarded causes since Mr Khandeparkar for the Appellant waived those costs on behalf of the Appellant.

7. It is at this stage that the present Application comes to be filed and here, in an Affidavit that he has himself made, Mr Shunal Kapur tenders an apology. He claims he was ill advised. He says that the consequences were unintended. He also undertakes to unconditionally withdraw Special Civil Suit No.38 of 2017 filed in the Thane District Court.

8. Quite naturally he also seeks a recall of the order and therefore that the order of costs not being imposed on him.

9. In response to a question today, Mr Shunal Kapur, who is present in Court, states that he is willing to make payment of costs of Rs.50,000/- to the Tata Memorial Hospital, Mumbai as a demonstration of his contrition and sincerity. The statement is accepted. The amount is to be paid within two weeks from today.

10. His statement that the suit will be unconditionally withdrawn is also accepted. The parties will appear before the Trial Court on 1st August 2017 and will obtain the necessary orders including for

refund of Court fees if any. The Trial Court will act on production of an authenticated copy of this order. The withdrawal is to be effected by Mr Shunal Kapur, Respondent No.5.

11. The matter will be kept on 2nd August 2017 at 11 a.m. on the supplementary board for compliance with these directions.

12. In the arbitration proceedings I am told there was some issue regarding the delivery of possession of the godown-gala in question. It is confirmed that possession has been delivered but some cold storage machinery is said to be still lying in those premises. This cold storage machinery belongs to Respondent No.12, Paradime Foods. Respondent No.5, Shunal Kapur agrees that he will, whether through Respondent Nos.3 or 4 or Respondent No.12, that this machinery is removed by 14th August 2017. If the machinery is not removed by that date, Shunal Kapur agrees and undertakes to this Court that he and all other claimants will forgo all claims to that machinery. He confirms that he has the authority to bind Respondents Nos. 3, 4 and 12 to this limited extent. These statements are accepted as undertakes to the Court.

13. The Civil Application is disposed of in these terms. As regards the Appeal, it has already been allowed. That order will continue to that extent.

14. List the matter for compliance on 2nd August 2017.

(G. S. PATEL, J.)