

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION (ST). NO.33990 OF 2017

Babar Estate Private Limited & Ors.

.. Applicant

vs.

Gaffar Khan & Ors.

.. Respondents

Mr.Nikhil Karnavat with Ms.Sneha Patil i/b M/s.Maniar Srivastava Associates for the applicant

Ms.Aseem Naphade with Mr.A.P.Singh i/b M/s.S.K.Srivastav and Co. for the respondent

CORAM : K. K. TATED, J.

DATE : DECEMBER 18, 2017

PC.:

1. Heard.
2. Leave to amend the cause title.
3. Applicants filed the present Application under section 24 of the Code of Civil Procedure, 1908 for transfer the proceeding of the 1st Suit i.e. S.C.Suit No.3846 of 2007 before the Court No.31 of the Bombay City Civil Court at Bombay to this Court for hearing along with 2nd Suit i.e. High Court Original Side Suit No.540 of 2008.
4. The learned counsel for the Applicant submits that initially they filed Short Cause Suit No.3846 of 2007 against the Respondents for

declaration that Form No.32 under Compensation Act dated 7.11.2005 and 5.12.2005 by which Respondents were declared as Directors of applicant Company is null and void and not binding on them. He submits that in that Suit, the Respondent filed their written statement. Considering the pleadings on record Bombay City Civil Court, Mumbai framed following issues which reads thus:

- “1. Whether the Plaintiffs prove that they are sole directors of Plaintiff Company?*
- 2. Whether Plaintiffs proves that Form – 32 dated 7th November 2005 and 5th December 2005 presented by Plaintiff are null and void?*
- 3. Whether Plaintiffs are entitled for relief of declaration as prayed?*
- 4. Whether Plaintiffs are entitled for relief of perpetual injunction against Defendants?*
- 5. What order & decree?”*

5. The learned counsel for the Applicant submits that the Respondent along with the Applicant no.1 Company filed Suit No.540 of 2008 in the High Court of Judicature at Bombay on Ordinary Original Civil Jurisdiction for several reliefs including declaration that Respondents are directors of Application Company. Following are the prayers in Suit filed by Respondent in High Court:

“(a) For a declaration that the Plaintiffs No.2 & 3 are the exclusive Owner of 13,670 shares of Rs.100 each of the 1st Plaintiff company more particularly described in paragraph 2 of the plaint.

(b) For a declaration that the transfer of the said

13,670 shares of Rs.100 each of the 1st Plaintiff more particularly described in paragraph 2 hereto in favour of the Defendants is illegal, bad-in-law and not binding upon the Plaintiffs and be cancelled, quashed and/or set aside.

(c) For a declaration that the Defendants have no right, title or interest of whatsoever nature in the suit property more particularly described in Exhibit A hereto and in the said building Taj Tower/ Ali Tower and Cinema Hall constructed thereon.

(d) For a mandatory order an injunction of this Hon'ble Court directing the Defendants to disclose on oath the documents, Agreements, Deeds, Writings, receipts letters etc., in their possession and custody which are signed and executed by the plaintiffs No.2 & 3 in respect of the suit property and / or shares of the 1st Plaintiffs Company as security for the loan advanced by the Defendants to the 1st Plaintiffs and/or to the 2nd Plaintiff along with copies of the said documents.

(e) For a mandatory order and injunction of this Hon'ble Court directing the Defendants to produce the originals of the said documents so disclosed and the same be declared as illegal, null and void and not binding upon the Plaintiffs and be ordered to be delivered up and be cancelled.

(f) For a mandatory order and injunction of this Hon'ble Court directing the Defendants to disclose on oath the Agreements, Deeds, writings entered into by them as Directors of the 1st Plaintiff or otherwise for sale of the premises in Taj Tower / Ali Tower and Cinema Hall Constructed on the suit property and the consideration received by them along with copies of the documents.

(g) For a declaration that the Agreements for Sale,

Deeds, Conveyances and/or any other writing executed by the Defendants alleging themselves to be the Directors of the 1st Plaintiff company or otherwise thereby selling, disposing of agreeing to sell and/or creating third party right or interest in the premises in the said building Taj Tower / Ali Tower and Cinema Hall constructed on the suit property are illegal, bad-in-law, null and void and not binding upon the Plaintiffs.

(h) For a permanent order and injunction of this Hon'ble Court restraining the Defendants their servants and agents from selling, transferring, alienating, encumbering and/or creating third party right or interest on the suit property and/or in the premises in the building Taj Tower / Ali Tower and Cinema Hall constructed thereon or any part or portion thereof.

(i) That the Defendants be ordered and decreed to render true accounts of the amount advanced by them to the 1st Plaintiff and/or to the 2nd Plaintiff and the amounts received by them from the sale the premises in the building and Cinema Hall constructed on the suit property and after taking accounts the Defendants be ordered and decreed to pay to the Plaintiffs the excess amount collected / received by them together with interest thereon at the rate of 18% p.a. or at such other rate as this Hon'ble Court may deem fit.

(j) That the Defendants be ordered and decreed to pay to the Plaintiffs a sum of Rs.10,00,00,000/- (Rupees Ten Crores only) as per the particulars of claim Exhibit "J" hereto towards the loss, damages and mental agony suffered by the Plaintiffs.

(k) That pending the hearing and final disposal of the above suit this Hon'ble Court may be pleased to appoint Court Receiver, High Court, Bombay or some other fit and proper person as Receiver of the suit property more particularly described in Exhibit A hereto together with the building Taj Tower / Ali Tower and Cinema Hall

constructed thereon with all powers under order 40 Rule 1 of CPC 1908.

(l) That pending the hearing and final disposal of the above suit the Defendants their servants and agents be restrained by an order and injunction of this Hon'ble Court:

(i) selling, transferring, alienating, encumbering creating third party right, title or interest of whatsoever nature on the suit property and/or in the premises in the said building Taj Tower/ Ali Tower and Cinema Hall constructed thereon or any part or portion thereof.

(ii) From carrying out any further construction or development work of the said building Taj Tower / Ali Tower and Cinema Hall constructed on the suit property.

(iii) Receiving any further amount / monies from the prospective purchasers or any third parties in respect of the alleged sale of the premises in the said building Taj Tower / Ali Tower and Cinema Hall constructed on the suit property.

(iv) Operating and/or withdrawing or transferring any amounts from the bank accounts of the 1st Plaintiff opened by them.

(v) Preventing and/or obstructing the Plaintiff Nos.2 to 4 and their representatives from entering upon the said building and the suit property.

(m) That pending the hearing and final disposal of the above suit the Defendants be directed by an mandatory order and injunction of this Hon'ble Court to disclose on oath:

(i) The documents in their possession

which are signed and executed by the Plaintiffs No.2 & 3 in respect of the suit property and/or shares of the Plaintiff company as security for the loan advanced by the Defendants to the 1st Plaintiff and/or to the Plaintiff No.2 along with the copies thereof and to deposit the originals of the same with the office of the prothonotary and senior master of this Hon'ble Court for safe custody.

(ii) The documents, Agreement / writing deeds receipts, executed by the Defendants as Directors of the 1st Plaintiff or otherwise for sale and/or creation of any right or interest on the suit property and/or premises in the said building Taj Tower / Ali Tower and Cinema Hall constructed thereon and the amounts received by them along with the copies of the same.

(n) That pending the hearing the Defendants be directed by an mandatory order and injunction of this Hon'bie Court to submit true accounts of the amount advanced by them to the 1st Plaintiff and/or to Plaintiff No.2 in respect of the suit property and/or shares of the 1st plaintiff.

o) For ad-interim reliefs in terms of prayer clause (k), (l), (m) & (n) above.

(p) For costs of this Suit.

(q) For such other order and relief as this Hon'ble Court may deem fit in the. circumstances of the case.”

6. The learned counsel for the Applicant submits that in High Court

Suit they filed their written statement. He submits that this court by order dated 18.4.2016 in Suit No.540 of 2008 directed parties to file their affidavit of documents, compilation of documents, complete discovery and inspection and also exchange statement of admission and denial of documents with reasons for denial. He submits that thereafter matter appeared before this court (Coram: K.R.Shriram, J.) on 27.06.2017. At that time, this court framed following issues:

“1) Whether defendants prove that plaintiffs have no right and/or locus to file the suit against defendants?

2) Whether plaintiffs prove that the suit is within limitation?

3) Whether plaintiffs prove that plaintiff nos.2 to 4 are exclusive owners of 13,670 shares of plaintiff no.1, having Face Value @ Rs.10/each and bearing Share Certificate Nos.1, 2, 9, 10, 11 & 12 respectively?

4) Whether plaintiffs prove that plaintiff nos.2 & 3 deposited various documents, including the original shares certificates of 13,670 shares of plaintiff no.1 bearing Share Certificate Nos.1, 2, 9, 10, 11 & 12 respectively, with defendant no.1 as security for the financial assistance lent by defendant no.1 to plaintiff no.1?

5) Whether plaintiffs prove that transfer of 13,670 shares of plaintiff no.1 bearing Share Certificate Nos.1, 2, 9, 10, 11 & 12 respectively, in favour of defendants is illegal and not binding upon plaintiffs?

6) Whether plaintiffs prove that defendants have no right, title or interest of what so ever nature in the suit property, i.e., all that piece and parcel of land situated at Grant Road, Mumbai, admeasuring 2431.91 sq.yards and

bearing Cadastral Survey No.203 of Tardeo Division No.3 alongwith the building standing thereon known as Taj/Ali Towers, more particularly described in 'Exhibit A' to the Plaintiff?

7) Whether plaintiffs prove that the defendant no.1 agreed to release the original share certificates and the documents retained by him as security on payment of Rs.4,00,00,000/as full and final settlement, as alleged in paragraph no.19 of the Plaintiff?

8) Whether plaintiffs prove that defendants have recovered excess amount than what was advanced by them by way of loan to 1st plaintiff company?

9) Whether plaintiffs prove that defendants, with a malafide intention, have unlawfully filled and submitted blank forms and used the documents executed by plaintiffs as security, to grab and usurp the assets of plaintiff no.1?

10) Whether plaintiffs prove that plaintiff no.2 signed the Consent Terms dated 11th March, 2005 filed before the Sole Arbitrator Shri Kirit Mody, under pressure from defendant no.1?

11) Whether plaintiffs prove that resignation of plaintiff nos.2 and 3 as directors of plaintiff no.1 and intimation of said resignation to ROC is forged and fabricated by defendant no.1 in order to usurp and grab the assets and properties of plaintiff no.1?

12) Whether plaintiffs prove that defendants jointly and severally caused loss, damage and mental agony to plaintiffs and plaintiffs are entitled to a decree in the sum of Rs.10 crores as damages?

13) What decree? What order?"

7. The learned counsel for the Applicant submits that issue no.11 is in respect of directorship of the Respondents. He submits that

documents and evidence will be one and same in both the suits. Hence, he filed Application before the Bombay City Civil Court, Mumbai on 17.11.2017 requesting the court to adjourn the matter so that he can make appropriate Application before this court. That Application was rejected by the Bombay City Civil Court, Mumbai by order dated 17.11.2017 and matter adjourned to 19.12.2017 with cost of Rs.5,000/-.

8. The learned counsel for the Applicant submits that the issue involved in suit filed by them before Bombay City Civil Court, Mumbai and suit filed by Respondent before High Court is one and the same. He submits that even the documents and evidence will be one and the same. Hence, in the interest of Justice, this Hon'ble Court be pleased to transfer the suit filed before Bombay City Civil Court, Mumbai to High Court on the Original Side for hearing along with Suit No.540 of 2008 filed by the Respondents. He submits that if Application is not allowed, irreparable loss will be caused to them.

9. On the other hand, the learned counsel for the Respondent submits that they are denying the allegations made by the Applicant in the present Application. He submits that considering the facts of the suit filed by the Applicant in Bombay City Civil Court, Mumbai Suit No.3846 of 2007 and Suit filed by them before this court No.540 of 2008, it is not possible to deny that they had to lead the same evidence in both the Suits. He submits that except denial of the allegations made by the Applicant in the present Application they have no objection if suit filed by the Applicant in Bombay City Civil Court,

Mumbai is transferred to High Court for hearing along with Suit No.540 of 2008.

10. Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and the issue involved in both the Applications and the advocate for the Respondent admitted that they have no objection if Application is allowed, following order is passed:

A) Application is allowed in terms of prayer clause (a) which reads thus:

“(a) This Hon'ble Court be pleased to transfer the proceeding of the 1st Suit i.e. S.C.Suit No.3846 of 2007 filed by the Applicants pending before the Court No.31 of the City Civil Court at Bombay from the City Civil Court to this Hon'ble High Court before whom the proceedings in the 2nd Suit i.e. High Court Original Side Suit No.540 of 2008 filed by the Respondents is pending for adjudication.”

B) Misc. Civil Application stands disposed of accordingly.

C) No order as to costs..

Parties to act on authenticated copy of this order.

(K.K.TATED, J.)