

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.351 OF 2017****IN****SUIT NO.522 OF 2015**

Arunabh Kumar

...Applicant/Defendant No.1

In the matter between

Prashant Raj

...Plaintiff

Versus

Arunabh Kumar And 2 Ors.

...Defendants

.....

Mr. V. Sreedharan, Senior Advocate, a/w. Mr. Anil Jarial, i/b. Legal Associates, for the Plaintiff.

Mr. J.P. Sen, Senior Advocate, a/w. Mr. Vindu Prakash Pandey, Mr. Pramod Kumar Pandya and Mr. Vivek Tripathi, i/b. Mr. Vindu Prakash Pandey, for Defendant No.1/Applicant in NMS.

Mr. Digajmaan G. Mishra, a/w. Mr. Atavarish Varshi, i/b. Mr. Rohan Munj, for Defendant No.2.

Mr. Mangesh Bhonde, a/w. Mr. Yashmaan Mishra, i/b. Synemarke Legal, for Defendant No.3.

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CORAM**: S.C.GUPTE, J.****DATED****: 24 OCTOBER 2018****P.C.:**

. Heard learned Counsel for the parties. This notice of motion is taken out under Order 7 Rule 11 of the Code of Civil Procedure. It is the case of the Applicant (Original Defendant No.1) that the plaint as it stands

does not make out any cause of action and that accordingly the plaint must be rejected.

2. The Plaintiff has come to the Court with a case of an oral agreement of 20 September 2012 , under which Defendant No.1 agreed to remunerate the Plaintiff for professional services rendered by him since May 2012, by (i) allotment of 4% Class A Shares (Non-dilutable) in the proposed company to be incorporated by Defendant No.1, which would act as an umbrella company for the entire media business of Defendant No.2, (ii) payment of producer's fee of 7.5% on all paid projects of the company and (iii) a sum of Rs.30 lakhs per annum as salary from October 2012 onwards with an option to convert the same into equity. The Plaintiff's case is that he accepted and acted upon this oral agreement, which was in fact said to be a novation of an earlier agreement arrived at between the parties in May, 2012, whereunder the Plaintiff had agreed to work as an advisor of the company for only a 1% share in exchange for the remuneration indicated therein. The Plaintiff seeks specific performance of this oral agreement by issuance of shares and payment of producer's fee and salary. In the alternative, the Plaintiff prays for compensatory damages for non-performance of the agreement.

3. The present application for rejection of plaint is on the footing that it is the Plaintiff's own case that the original oral agreement of 20 September 2012 was substituted and novated later. It is submitted that the Plaintiff's averments in paragraphs 4(n), 4(u), 4(z) and 4(bb) of his plaint imply that there were further agreements between the parties, by which the original bargain of 20 September 2012 was given a go-bye and

substituted by new bargain/bargains. Learned Counsel for the Applicant/Defendant No.1 relies on the Supreme Court judgments in the cases of **T. Arivandandam vs. T.V.Satyapal**¹ and **I.T.C. Limited vs. Debts Recovery Appellate Tribunal**², in support of his submissions. Learned Counsel submits that, as observed in these judgments, on a meaningful, as opposed to a formal, reading of a plaint, if a clear right to sue is not disclosed, the Court is bound to exercise its powers under Order 7 Rule 11 and no clever drafting creating an illusion of a cause of action could come to the rescue of the plaintiff in such a case.

4. Whilst there can be no quarrel with the proposition asserted in the two judgments cited by the learned Counsel, what is debatable is its applicability to the facts of the present case. It is trite to say that at the stage of an application for rejection of plaint under Order 7 Rule 11, the Court has to go by the plaint as it stands. If the plaint, as it stands, on a fair and meaningful reading, does not disclose a cause of action, the plaint would be rejected under Order 7 Rule 11. If, on the other hand, the plaint, as it stands, does support the plaintiff's cause of action, there is no case for rejection of the plaint merely because the plaint is also capable of supporting the defendant's contention. That would really be a matter of trial, to be decided after the parties are allowed to lead evidence. Such evidence alone would clarify the correct meaning of the averments made in the plaint.

5. It is submitted in the present case that the Plaintiff himself has averred in paragraph 4(n) of his plaint that there was an agreement

1 (1977) 4 Supreme Court Cases 467

2 (1998) 2 Supreme Court Cases 70

between the parties to accept payment of Rs.40 lakhs in substitution of the original bargain of 20 September 2012. Paragraph 4(n) suggests nothing of the kind. What it says is that in a settlement meeting of 6 May 2014, Defendant No.1 agreed to pay Rs.40 lakhs to the Plaintiff but refused to give any share in the proposed company to the Plaintiff. There is nothing to suggest that this was a bilateral bargain and not a unilateral offer. In fact the subsequent narration of this very paragraph suggests that this was indeed an offer and no commitment was given in that behalf. In fact the paragraph suggests that as of 6 May 2014, requests from the Plaintiff to the Defendants for a legal and viable settlement were completely ignored by the Defendants. So much for a concluded bargain between the parties as on 6 May 2014.

6. Learned Counsel then refers to paragraph 4(u) of the plaint. Paragraph 4(u) indicates that on 4 September 2014, Defendant No.1 had proposed to pay a sum of Rs.36 lakhs and 1% equity, which the Plaintiff did not agree to. After some discussion, the parties, however, arrived at “a mutually agreeable figure of Rs.36 lakhs” and “2% equity in TVF Media Labs”, which was still not converted into a company. The paragraph indicates that the Plaintiff had agreed to this compensation but it also indicates that though the figure was agreed between the parties, what the Plaintiff had proposed was to send an e-mail confirming this, which proposal was responded to by Defendant No.1 by claiming that an e-mail confirming this would come from his end and “he would need to inform his lawyer and team members, namely, Amit Golani and Biwapati Sarkar”. The plaint then goes on to narrate how the parties could not confirm this settlement and that there was no clarity in the matter of the settlement. So

much for this second concluded bargain between the parties in substitution of the original oral agreement.

7. Learned Counsel lastly refers to paragraphs 4(z) and 4(bb) of the plaint. The paragraphs indicate further discussions between the parties. Paragraph 4(z) takes a stand that during the course of these discussions, the Plaintiff conveyed to Defendant No.1 that “the previously agreed settlement” would be final and there was no scope for negotiation there. There is nothing to suggest here that the 'previously agreed settlement' referred to in this paragraph is the settlement of 4 September 2014 and not the original settlement of 20 September 2012. Be that as it may, in paragraph 4(bb) it is finally conveyed that the Plaintiff and Defendant Nos. 1 and 2 had mutually agreed on or about 15 November 2014 to a figure of Rs.29,65,000/ to be paid in four installments as provided therein. The paragraph also refers to interest in case of delayed payment and a further agreement that a separate agreement would be made for allocation of 2% equity to the Plaintiff into TVF Media Labs, whenever it would be converted into a company. The paragraph then narrates that the draft agreement was to be discussed when the Plaintiff's wife was available in India as she was at the relevant time working on a project in Doha; the timeline for signing the final agreement was set on 22 November 2014. The plaint then narrates that on that date, both the Plaintiff and his wife tried to get in touch with Defendant No.1 and 2 but neither of them answered their calls or responded to their messages. The further narration also indicates that a mutually agreed settlement was the one that was supposed to be signed on 22 November 2014 and not the oral agreement as to the figure of Rs.29.65 lakhs and 2% of equity

indicated earlier.

8. These averments do not suggest that what was discussed, or even agreed to, for that matter, in the subsequent meetings between the parties, i.e. meetings after 20 September 2012, was a full and final bargain in substitution of the original bargain of 20 September 2012. The plaint, as it stands, does not definitively imply that there was a novation or substitution of the contract, though, as I have indicated above, it may be possible to argue for Defendant No.1 that this is what the plaint really means or, at any rate, ought to mean. These are, as I have noted above, matters of defence, which are to be argued in the course of the trial and not at this threshold stage, where the Court is called upon to non-suit the plaintiff on the ground that his plaint does not disclose a cause of action.

9. In the premises, there is no merit in the notice of motion. The notice of motion is dismissed. Costs to be costs in the cause.

(S.C.GUPTE, J.)