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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L.) NO.249 OF 2018
IN
NOTICE OF MOTION NO.658 OF 2018
IN
SUIT NO.3022 OF 2009

Geojit Financial Services Ltd. ...Appellant
Vs.
Mr.Mukesh Konde & Ors. ...Respondents

Mr.Anishak Dave i/b.Mayur Faria for Appellant.
Ms.Surabhi Chatterji i/b. The Law Point for Respondents.

CORAM : NARESH H. PATIL AND G.S. KULKARNI, JJ.

DATE : 6th JUNE 2018

P.C.:

The appellants/plaintiffs have filed this appeal challenging the order dated 13th April 2018 passed by the learned Single Judge whereby Notice of Motion No.658 of 2018 filed by defendant No.10 namely Sophia Growth, A share class of Somerset India Fund, seeking the release of an amount of Rs.4,91,61,278/- previously deposited in the Court and invested, with accrued interest.

2. The appellants/plaintiffs are corporate share and stock broker and trading members of Bombay Stock Exchange Limited (for short, "BSE").

In the suit in question, the relief as sought by the appellants/plaintiffs are against their constituents respondent Nos.1 to 3/defendant Nos.1 to 3.

3. For convenience the parties are referred as they stand before the trial Court namely the appellants as “plaintiffs” and the contesting defendant in this appeal Somerset India Fund as “defendant No.10” and “defendant no.5” as the Bombay Stock Exchange as the “B.S.E”.

4. The case of the plaintiffs as set out in the plaint is that the plaintiffs were defrauded by their constituents defendant Nos.1 to 3 in regard to the sale of 1,64,474 shares held by defendant No.10, on the credit of the Bombay Stock Exchange (BSE)/defendant No.5 of one RTS Power Limited (for short, 'RTSPL') on 11 February 2009. The appellants' case is that this sale of shares was rigged or artificially controlled in regard to its trading price for Stock Exchange.

5. At the outset, it may be noted that initially defendant No.10 was not impleaded as a party defendant to the suit. Even as on date as the plaint stands, there are no reliefs in the suit claimed against defendant No.10. It would be appropriate to note the reliefs as prayed in the plaint which read thus:-

"a) that defendant No.5 be ordered to carry inquiry in the entire trade of the said scrip in between the period September 2008 to February 2009 and annual the entire transaction in respect of the said scrip on 11.02.2009 with respective Plaintiffs by respective defendants 1 to 4.

b) that till the investigation of the fraud and manipulation of trade is carried out, Defendant No.5 should restrain all its members from paying out.

c) that even defendants 1, 2, 3 and 4 jointly and or severally be ordered and decree to pay to the respective plaintiffs the amount mentioned in particulars of claim with interest @ 24% per annum from 11.02.2009 till the payment of realization.

d) that in the event of this Hon'ble Court annulling the said transactions of respective Plaintiffs in respect of the said scrip, Defendant No.5 be ordered to refund the said amount to the Plaintiffs in such manner and in such proportion as the Plaintiffs respectively have paid for the said shares to Defendant No.5.

e) that in the event of defendant No.5 not annulling the transactions in that even defendants 1, 2, 3 and 4 jointly and or severally be ordered and decree to pay to the respective plaintiffs the amount mentioned in particulars of claim (Exhibit " " hereto) with interest @ 24% per annum from 11.02.2009 till the payment of realization.

f) that this Hon'ble be pleased to order Defendant No.5 to restrain such brokers who are passing the moneys in respect of the sale / purchase of shares of the said scrip of 11.02.2009 for Settlement No.0809-214 from paying their respective clients or to deposit the entire amount with defendant No.5 pending the inquiry.

g) that pending hearing and final disposal of the suit Defendant No.6 be ordered by this Hon'ble Court to give particulars of accounts of Defendant Nos.1, 2 and 3 with them and also the statement of account in respect of the said respective account from 01.08.2008 till date.

h) that pending hearing and final disposal of the suit, Defendant Nos.1, 2, 3 and 4 be also directed by this Hon'ble Court to give entire statement of all the accounts they had in any other banks over and above defendant No.6 and the statement of accounts of such banks from 01.08.2008 till date including particulars of their assets.

i) Ad-interim and interim reliefs in terms of prayers (g) and (h) above.

j) Costs.

k) Such further and other reliefs as the nature and circumstances of the case may require."

6. The plaintiffs being aggrieved by the conduct of defendant Nos.1 to 3 in the sale of the said shares had also approached the Securities and Exchange Board of India (SEBI) as also the Economic Offences Wing (EOW). Both the SEBI and EOW have undertaken investigation. The

investigation reports, which are on record, reveal that there is no material or evidence of criminality or any involvement of defendant No.10 in the alleged transactions of the sale of its shares, of RTSPL on 11 February 2009.

7. It needs to be noted that on 17 February 2009 the suit in question was filed by the plaintiffs seeking directions against the Bombay Stock Exchange to carry out an inquiry into the transaction in the scrips of RTSPL. Defendant No.10 was not made a party to the suit as also to the plaint contained no allegation of any nature whatsoever was made against Defendant No.10 who was only a seller of its shares on the floor of the Stock Exchange and entitled to receive the sale consideration. A notice of motion was filed by the plaintiffs seeking ad-interim reliefs on which the learned Single Judge has passed an order dated 17 February 2009, directing defendant Nos.1 to 3 to furnish the details of their bank accounts to the plaintiffs. On the adjourned date of hearing of the said notice of motion i.e. on 18 February 2009, the Court recorded a statement on behalf of the BSE, that BSE would take necessary steps including blocking of funds to the extent of the plaintiffs' claim, as at that point of time the investigation on the complaint of the appellant was pending with the EOW as also with the SEBI. The EOW in its inquiry opined that the matter was pertaining to a civil dispute and it

was not a case of cheating under Section 420 of the IPC.

8. As defendant No.10 did not receive the amounts due to it under the said transaction of sale of shares, on 24 February 2009 defendant No.10 addressed a letter to its broker and custodian and inquired about the transaction and claimed the payment. The custodian i.e. Standard Chartered Bank, on 25 February 2009 replied to the defendant No.10 inter-alia stating that they were advised by BSE to suspend payment in relation to the trades carried out in respect of the shares of RTSPL. The defendant No.10 also co-operated with the investigation undertaken by the SEBI and EOW.

9. Defendant No.10 however being adversely affected by the statement made on behalf of BSE in the suit, of blocking the funds as payable to defendant No.10 under the said transaction of sale of its said shares, on 19 May 2009, filed Chamber Summons No.857 of 2009 inter-alia seeking to implead itself as a party to the suit. This chamber summons was not pressed. Thereafter in 2014 defendant No.10 was made a party to the suit by the plaintiffs.

10. The plaintiffs on 03.05.2012 filed another Notice of Motion No.1342 of 2012, inter-alia seeking directions that monies withheld by BSE in respect of the scrips of RTSPL be kept in a separate bank account

and the same be invested. The learned Single Judge by an order dated 11 May 2012, directed the BSE to deposit the amounts in an escrow account in the form of Fixed Deposits of a nationalized bank and renew it from time to time. However, no specific reference was made to the defendant No.10 in the said order.

11. Thereafter defendant No.10 addressed several letters inquiring to the BSE inquiring as to whether the investigation was completed by them and also requesting them to bring closure to the matter as an amount more than Rs.4.91 Crores of the defendant No.10's, had been wrongfully withheld by BSE. The plaintiffs also filed Notice of Motion No.963 of 2013 seeking a relief that BSE be restrained from making any payments to defendant No.10 and also seeking an order and injunction against defendant No.10 from recovering any payments from the BSE/defendant No.5. In an order passed on the said notice of motion, the fixed deposits were handed over to the Prothonotary and Senior Master of this Court with direction to renew the Fixed Deposits from time to time. Thereafter by an order dated 11 May 2012 passed by the learned Single Judge, it was recorded that investigation in respect of the transactions was completed and that nowhere in the course of investigation it was found that defendant No.10 was involved in rigging the price of any scrip. Further defendant No.10 was also not found to

have any connection with any alleged manipulation involving buyers and sellers of the said shares.

12. It is on the above premise that the defendant No.10 moved the notice of motion in question before the learned Single Judge on which the impugned order has been passed, contending that defendant No.10 was an innocent seller, in the normal course of trading of 1,64,474 shares of RTSPL on 11 February 2009. It was contended that while the shares have been transferred to the purchasers defendant Nos.1 to 4, Defendant No.10 did not receive the sale consideration of Rs.4,91,61,278/- through the settlement mechanism of BSE. This was only on account of the complaint filed by the plaintiffs-brokers, who alleged that they had been defrauded by their clients i.e. defendant Nos.1 to 4 who had not paid into the plaintiffs' accounts the value of the shares purchased by them through the plaintiffs. Defendant No.10 contended that plaintiffs may have been defrauded by defendant Nos.1 to 4 which had nothing to do with defendant No.10 who was a innocent seller of the said shares and has no connection with the shares of defendant Nos.1 to 4. It was contended that in the course of prolonged investigation by various authorities including SEBI and EOW, not a single allegation was made, leave alone established against defendant No.10. As also the suit contains no prayers against defendant No.10 and

thus, the order depriving the defendant No.10 of the consideration of the sale transaction, legitimately due and payable to it from the sale of said 1,64,474 shares sold by it on 11 February 2009, is surely not even in aid of any final relief in the suit. Defendant No.10 therefore, moved the said notice of motion seeking the following relief:-

> "(a) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct release to the Applicant of the amount of Rs.4,91,61,278/- (Rupees Four Crore Ninety One Lakh Sixty One Thousand Two Hundred and Seventy Eight only) along with interest accrued thereon lying with the Prothonotary & Senior Master and attributable to the sale of 164474 shares of RTS Power Limited ("the shares") by the Applicant."

13. By the impugned order, the learned Single Judge has allowed the said notice of motion inter-alia observing that there was no material whatsoever against defendant No.10 and that defendant No.10 was in any manner involved in the alleged manipulation. The relevant observations are found in paragraphs 6, 7 and 10 of the impugned order. The learned Single Judge has permitted the defendant No.10 to withdraw the amounts in terms of the directions in paragraph 8 which reads thus:-

> "8. Mrs Rajashree Kale today gives me a statement of the amounts lying to the credit of the suit. All these amounts are invested. The earliest of these matures on 12th June 2018 and the last of these matures on 4th May 2019. Mr.Sen on behalf of the Somerset has instructions to state that Somerset will await the maturity of FDR No.50300096574306 on 12th June 2018. The maturity amount is Rs.6,65,28,921/-. From this, the amount requested by Somerset, i.e. Rs.4,91,61,278/- with interest accrued due computed from 2nd May 2013 (which is when a deposit was made of Rs.4,90,50,484.40, inclusive of interest up to that date), will be allowed to be withdrawn by Somerset. If there is any shortfall in the interest computed due, or the amount of this Fixed Deposit is not sufficient to cover the payout with interest to Somerset, it

(viz., Somerset) will await till the maturity of the immediately next investment on 13th July 2018."

14. The learned Counsel for the plaintiffs in assailing the impugned order would submit that the release of the said amount in favour of defendant No.10 would cause serious prejudice to the plaintiffs in as much as, deposit of the said amount with this Court provided security, in the event the plaintiffs succeed in the suit. In support of his contention, learned Counsel for the plaintiffs has drawn our attention to certain parts of the reports of the SEBI and more particularly paragraph 28 of the said report to contend that there are findings against defendant Nos.1 to 4. However, the learned Counsel for the plaintiffs is not in a position to point out any involvement of defendant No.10 in the allegations as made by the plaintiff. If that be the case and if the reports of the EOW as also SEBI do not in any manner show the involvement and that too remotely of the defendant No.10, then one would wonder as to why the amount which the defendant No.10 is entitled in view of the sale of its shares be withheld.

15. The learned Single Judge has correctly observed that for 9 years the plaintiffs have failed to place on record any material which would show any involvement of defendant No.10. The learned Single Judge has rightly observed that the security that the plaintiffs seek might have

been necessary, had there been any material, even prima facie, of defendant No.10's culpability or involvement and there is none. Since the filing of the suit in 2009, the plaintiffs could not bring on record any such material against defendant No.10 except to say that the plaintiffs do not know if defendant No.10 had any involvement in the alleged fraud, which certainly would not be good enough. Certainly, the learned Single Judge would be correct in his observation that the suit is not a public interest litigation of any kind that might lend itself to a wide ranging enquiry ordered by a court and in view of an unambiguous finding by the EOW that there is no material to show criminality by defendant No.10, and the same being confirmed by SEBI's report. Thus surely there was no justification of withholding the said amounts which were legitimately due to the defendant No.10.

16. We accordingly see no reason to interfere with the well reasoned order passed by the learned Single Judge. The appeal is without any merit. It is accordingly dismissed. No costs.

[G.S. KULKARNI, J.] **[NARESH H. PATIL, J.]**