IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.8509 of 2017
Date of Decision.01.06.2018

Munish Gupta and others ...Petitioners

Vs

Suresh Kumar Gupta and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Alok Jain, Advocate
Mr. Sonam Sharma, Advocate and
Mr. Sumeet Goel, Advocate
for the petitioners.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate and
Mr. Arun Singla, Advocate
for respondent No.1 to 3.

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AMIT RAWAL J.(ORAL)

The present revision petition has been preferred by defendant No.1 to 6 against the order dated 08.05.2017 (Annexure P-5) passed by the Ld. Civil Judge (Sr. Division) Faridabad whereby the ad interim application filed by the respondents-plaintiffs along with the suit has been allowed and the order dated 11.10.2017 (Annexure P-1) whereby the appeal preferred by the petitioners against the order of the trial Court has been dismissed.

Respondent No.1 to 3 instituted the civil suit bearing No.797 of 2017 for possession by way of specific performance of agreement to sell dated 10.10.2006 and as well as for mandatory injunction on the premise that defendant No.1 and 2 i.e. petitioner No.1 and 2 herein namely Munish Gupta and Ashish Gupta represented that they along with defendant No.3 to 6 were the promoters and shareholders of a company M/s Cosmo Bio Sciences Pvt. Ltd. (hereinafter called as 'the company') and offered to sell their shares in the abovesaid company to the plaintiffs as the afore-mentioned company was owner of land, building, plant, shed situated at Plot No.1095, Sector 58, Faridabad.

It was averred in the plaint that defendant No.1 and 2 handed over to the plaintiffs a copy of balance sheet, list of shareholders, their respective values, conveyance deed of plot No.1095, Sector 58, Faridabad. On 10.10.2016, an oral agreement was entered between the plaintiff and defendant No.1 and 2 to purchase the shares of defendant No.1 to 6 for a total sale consideration of ₹4,81,25,000/- and a sum of ₹47 lacs was transferred in the Bank account of petitioners-defendant No.1 to 3 by the plaintiffs through RTGS. The defendants agreed to transfer their respective shares in the Company on 31.03.017 in favour of the plaintiffs on receipt of the balance sale consideration. It was also averred that plaintiff No.1 and 2, who were the Directors of M/s Supertec Machines Pvt. Ltd, shifted their machines in the premises of the Company and had also applied for loan from Aditya Birla Finance Limited whereby an amount of ₹1,80,00,000/- had been sanctioned. In the catalogue, the address of the factory premises was given as Plot No.1095, Sector 58, Faridabad.

A notice dated 10.03.2017 purportedly was addressed to defendant No.1 to 6 with regard to payment of balance sale consideration but the defendants did not turn up nor came forward for performing their part of agreement to sell. On 02.04.2017, defendant

No.1 to 6 had thrown machinery belonging to the plaintiffs out of the factory premises as their intention had become dishonest and greedy, therefore, the plaintiffs sought the following reliefs in the prayer clause:-

> *"i) That a decree of possession by way of specific performance of agreement to sell dated 10.10.2016 may kindly be passed in favour of the plaintiffs and against the defendants inter-alia directing the defendants No.1 to 6 to execute all the documents required for the transfer of their shares of M/s Cosmos Bio Sciences Pvt. Ltd. and also to handover the peaceful physical possession of the aforesaid land/building Plot No.1095, Sector 58, Faridabad.*
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> *ii) That a decree of permanent injunction restraining the defendants inter alia from selling, executing, transferring, creating third party interest, alienating in any manner whatsoever in the company M/s Cosmos Biosciences Pvt. Ltd. and its assets especially Plot No.1095, Sector 58, Faridbad.*
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> *iii) A decree of mandatory injunction may kindly be passed inter alia directing the defendants No.1 to 6 to execute all the documents required for the transfer of their shares; had over to the plaintiffs all the documents of pertaining to the company M/s Cosmos Biosciences Pvt. Ltd. and also to resign from the directorship of the company M/s Cosmos Biosciences Pvt. Ltd.*

iv) Any other relief which this Hon'ble Court may deem fit and proper may kindly be granted in favour of the plaintiffs and against the defendants. Cost of the suit may also be awarded to the plaintiffs.

Along with the aforementioned suit, the respondents-plaintiffs moved the application for interim stay claiming following relief:-

"In view of the above it is respectfully prayed that the present application may kindly be allowed and the respondents/defendants No.1 to 6 may kindly be restrained from alienating, selling, parting with possession or creating any third party interest in any manner whatsoever, in the assets of M/s Cosmos Biosciences Pvt. Ltd. The respondents/defendants No.1 to 6 may further be restrained from transferring their respective shares in the company M/s Cosmos Biosciences Pvt. Ltd in any manner/whatsoever.

Any other relief, which this Hon'ble Court may deem fit and proper may kindly be granted in favour of the plaintiffs and against the defendants."

The petitioners-defendants contested the suit by filing the written statement by raising various preliminary objections qua non-joinder and mis-joinder of necessary parties, maintainability, locus standi and cause of action. On merits, it was denied that defendant No.3 to 6 were managed by defendant No.1 and 2 and the factum of handing over the document did not mean completion of transaction. The amount deposited by the plaintiffs was without consent of the defendants. It was never agreed between the parties to receive an amount of ₹47 lacs as advance money, for, the transactions were between companies and therefore, the deposit of amount in personal account did not tantamount to passing of the consideration. The circle rate of the plot measuring 4780 sq. yards was ₹10,500/- sq. yards and the constructed portion over the shed was 25587 sq. ft.

On the basis of pleadings and the sufficient materials i.e. documents for adjudication of the *lis* and as well as the ad interim application, the trial Court vide order dated 08.05.2017 allowed the application filed by the plaintiffs. The appeal laid before the lower Appellate Court was dismissed whereby the lower Appellate Court rejected the argument of the petitioners-defendants that the aforementioned Company in the absence of any Resolution cannot be liable for the acts of petitioners-appellants being shareholders/Directors.

Mr. Ashok Aggarwal, Ld. Senior Counsel assisted by Mr. Alok Jain, Mr. Sonam Sharma and Mr. Sumeet Goel appearing for the petitioners in support of the revision petition raised the following submissions:-

(i) The manner and mode in which the suit for specific performance of the oral agreement to sell was presented, the suit, *prima facie*, was not maintainable, for, there was no Resolution of the Company authorizing defendant No.1 and 2 being the shareholders in the aforementioned company for entering into agreement to sell.

(ii) No original copies of the conveyance deed and other document as alleged in the plaint were handed over to the defendants.

(iii) It was basically the plaintiffs, who wanted to keep the machinery in the premises and when they were not allowed, made an allegation that machineries kept in the plot were thrown out. It is settled law that when the suit is not maintainable, interim injunction cannot be granted.

(iv) There is no conflict with regard to the agreement, much less, the description of the shares, for, the property is of the company and not of the defendants i.e. petitioners herein. Defendant No.1 and 2 are the Directors and shareholders of the company. The share holder is only entitled to share in the profit but not to its assets as well. Shareholder of a company is not analogous to a partner of partnership firm as the position of a partnership firm is entirely distinct from a shareholder. The respondent plaintiff had not been able to *prima facie* make out a case i.e. ingredients of Order 39 Rule 1 and 2 CPC.

(v) The Additional District and Sessions Judge has overlooked the vital documents annexed with the written statement in the form of circle rate bearing signature of the concerned authority which *prima facie* refuted the claim of the respondent-plaintiff. The circle rate of the building is ₹700/- per sq. ft., therefore, the total amount of the property would come to ₹7,01,43,096/- against the alleged transaction of ₹4,81,25,000/-. The Civil Judge also failed to consider the basic ingredients for grant of injunction.

(vi) The only reason assigned by the appellate court was that the amount of ₹47,00,000/- was transferred in the account of the petitioners in pursuance of the oral agreement dated 10.10.2016 without any explanation by the petitioners as to how such huge amount had been transferred in their account. The aforementioned finding is not only vague but erroneous as no explanation has come on behalf of the respondents as to how the said amount transferred as it was deposited without the consent of the petitioners.

(vii) No injunction can be granted against a person who is not even party to the suit i.e. the company, therefore, the suit for specific performance was not maintainable.

(viii) The respondents are not ready and willing to pay the settled amount, for, not even a single document has been produced which show the capacity of the respondents to pay the balance sale consideration.

(ix) Company is a juristic person and runs through the Resolution. No individual person being a shareholder or a Director can perform the act on behalf of the company in the absence of any Resolution.

(x) The photographs produced on record by the respondents-plaintiffs in no manner proved that the machines were thrown out from the premises, for, no sane person would hand over the possession of the premises in the absence of receipt of balance sale consideration. Despite objections, the company has not been impleaded, therefore, the suit and application for *ad interim* injunction was not maintainable.

In support of such contentions, reliance was laid to the judgment of Larger Bench of Hon'ble Supreme Court in ***Mrs. Bacha F. Guzdar, Bombay Vs. Commissioner of Income Tax, Bombay AIR 1955 SC 74*** to contend that shareholder acquires right of share in the profit and not right in the assets as well. The emphasis has also been laid to para 7 of the aforementioned judgment to contend that company is a juristic person and is distinct from the shareholder. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company which is liable to be distributed amongst shareholders.

Reliance has also been placed to para 11 and 12 of judgment of Delhi High Court rendered in ***Pelikan Estates Pvt. Ltd. Vs.***

Kamal Pal Singh 2004(113) DLT 290 that no *prima facie* case was existed as to the evolution of a binding contract for sale of the property and therefore, injunction could not have been granted. ***Brij Mohan Vs. Smt. Sugra Begum (1990) 4 SCC 147*** to contend that heavy burden lies on the plaintiff to prove that there was consensus *ad idem* between the parties for a concluded oral agreement to sell for sale of immovable property. It has to be established by the plaintiff that vital and fundamental terms for sale of the immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement.

Per contra, Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Govind Chauhan and Mr. Arun Singla appearing for the respondents-plaintiffs submitted that there is no illegality and perversity in the impugned orders under challenge, for, there is very little scope for interference with the orders passed on interim application and the misc. appeal affirming the said order. During course of hearing a compendium of documents being part and parcel of the records of the Courts below was passed, a copy of the same was also handed over to the senior counsel appearing for the opposite side to point out following facts:-

(i) The company i.e. Cosmo Bio Science Pvt. Ltd. need not be necessary party in view of the judgment rendered by the Hon'ble Supreme Court in ***M.S. Madhusoodhanan and another Vs. Kerala Kaumudi Pvt. Ltd. and others AIR 2004 SC 909***. In order to elaborate his argument, he referred to para 139, 141 and 142 of the judgment (supra) to contend that subject to the restriction a holder of shares in a private company may agree to sell his shares to a person of his choice and such agreements are specifically enforceable under Section 10 of the Specific Relief Act, for, the shares would fall within the phrase "not easily obtainable in the market". Therefore, it is not imperative to the company that it should be party to any agreement relating to allotment of new shares before such agreement can be enforced.

(ii) In order to demonstrate whether the suit property was an asset of the company or of an individual or having a value of ₹4,81,25,000/-, he drew attention of this Court to the list of shareholders in the company consisting of following partners:-

Sr. No.	Shareholder Name	Amount (value share sale) ₹
1.	Munish Gupta	25,00,000/-
2.	Ashish Gupta	25,00,000/-
3.	M.G. Financial Services Pvt. Ltd.	31,25,000/-
4.	Allied Precision Industries Pvt. Ltd.	1,03,75,000/-
5.	Kairav Textiles Pvt. Ltd.	56,25,000/-
6.	Allied Hitech Industries Pvt. Ltd.	1,12,50,000/-
7.	Allied Hitech Industries Pvt. Ltd.	1,27,50,000/-

(iii) The conveyance deed on behalf of the Estate Officer, HUDA, Faridabad in favour of the company was executed through the Director, Ashish Gupta. In order to buttress his argument, attention of this Court was drawn to Independent Auditor's Report at Flag 2 of the compendium wherein at page 18 of the same, the assets of the company was shown as under:-

ASSETS			
Non-Current Assets			
Fixed Assets			
Tangible Assets	6	3,16,28,457	3,25,76,379
Non-Current investments	7	1,28,83,500	1,24,25,000
Deferred tax assets (net)	8	9,26,367	6,47,364
CURRENT ASSETS			
Cash and Bank Balances	9	25,35,207	2,68,924
Short-term loans and advances	10	50,98,985	8,16,203
Total		**5,30,72,516**	**4,67,33,870**

In the balance sheet extracted aforementioned, under the column of assets, the ownership of the property i.e. intangible property has not been shown in the name of company.

(iv) The emphasis was also laid to clauses 14 and 22 of the letter of allotment dated 02.03.2004 where it was stated that a period of three years from the date of offer of possession was given for the purpose of making the unit operational failing which the plot shall be resumed after forfeiture of 10% of the total sale consideration. A condition was also imposed while allotment of the plots having investment of more than ₹30 crores, thus, the allottee was/is required to ensure the investment of ₹30 crores within a period of three years from the date of offer of possession, failing which the allotment would be cancelled and at the time of completion certificate, the allottee was required to submit detailed account statement of expenditure of ₹30 crores or more on land, building, plant and machinery and miscellaneous fixed assets incurred on completion of the project.

By referring to the aforementioned condition, it was submitted that since the Directors and shareholders did not have sufficient means to invest ₹30 crores for making the company operational, they had entered into agreement for selling the aforementioned plot having a share value of ₹4,81,25,000/-. If at all, the amount of ₹47 lacs was deposited without consent of the petitioners-defendants, they ought to have returned the amount or would have taken appropriate measures in accordance with law as the respondents-plaintiffs had no knowledge of the account number which actually was sent to the plaintiffs via SMS.

(v) The suit was filed on 05.04.2017. There is no explanation on behalf of the petitioners-defendants as to why the amount of ₹47 lacs was deposited in their account. The catalogue printed by the plaintiffs showed that they shifted their machinery in the plot and had also obtained a loan from Aditya Birla Finance Limited of ₹1,80,00,000/-. Legal notice dated 10.03.2017 was addressed to the petitioners-defendants but there was no reply. The suit is slated for plaintiffs' evidence and they have no objection in case appropriate direction is issued to the trial Court to expedite the trial, for, PW1 to PW5 have been examined but the defendants are intentionally not cross-examining the witnesses as they are awaiting the decision of the present revision petition. The defendants categorically admitted the receipt of the amount but came out with a plea that no final deal was done. In this regard, he has drawn attention of this Court to the written statement, Annexure P-4 (colly). Emphasis has been laid to judgment of Company Law Board rendered in ***Nileshkumar Narayanbhai Panchal Vs. Jap Agro Foods (P) Ltd. and others 2016(194) Comp Cas 333*** to submit, that in a petition filed under Section 397 and 398 of the Companies Act, 1956 alleging oppression and mismanagement and violation of terms of MoU, the Company Court would be barred by jurisdiction and it would be the domain of the Civil Court.

(vi) Mr. Aggarwal submitted that notice was not addressed to the company but only to the petitioners-defendant No.1 and 2. In support of such contention, reliance was laid upon para 265 and 270 of the judgment rendered by Hon'ble Supreme Court in ***Vodafone International Holdings BV Vs. Union of India and another (2012) 6 SCC 613*** that share is a right to a specified amount of the share capital of a company carrying out certain rights and liabilities. Shares are bundles of intangible rights against the company and are transferable like any other movable property under the Companies Act. In other words, they are presumed to be freely transferable, thus, urges this Court for dismissal of the revision petition as the respondents-plaintiffs have been able to prove the basic ingredients for seeking injunction i.e. prima facie case, balance of convenience and irreparable loss and in support of same, relied upon various judgments..

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Ashok Aggarwal for the following reasons:-

(i) It is not in dispute that the parties can enter into oral agreement for sale of the tangible and intangible property. I would not be commenting upon documents referred to during the course of arguments, for, they are subject to proof and would be a matter of evidence to be examined by the trial Court at an appropriate time and stage but *prima facie*, a perusal of the list of share holders reveals that the share holding of the company is to the tune of Rs.4,81,25,000/-. Clauses 14 and 22 of the Letter of Allotment reads as under:-

14. A period of 3 years from the date of offer of possession will be given for making the unit operational failing which the plot shall be resumed after forfeiting 10% of the total sale consideration of the plot. No further extension shall be granted under any circumstances. The policy regarding extension in time limit shall not be applicable in case of this allotment.

22. Since the allotment of plots having investment of more than Rs.30.00 crores is made on ongoing basis without advertising the same, the allottee has to ensure that an investment of Rs.30.00 crores is made within a period of 3 years from the date of offer of possession, failing which the allotment shall be cancelled and the plot along with the structures raised on it shall revert to HUDA. At the time of applying for the completion certificate/self certification the allottee has to submit detailed account statement of expenditure of Rs.30.00 crores or more on land, building, plant & machinery and miscellaneous fixed assets incurred on completion of the project.

It is obligatory on the part of the allottee to invest ₹30 crores and submit proof thereof within the period prescribed, failing which the allotment was liable to be cancelled. The aforementioned condition leads to irresistible conclusion that the parties had intended to enter into oral agreement. The respondents-plaintiffs have already obtained loan of ₹1,80,00,000/- which shows their intention for payment of the balance sale consideration on performance of the agreement over and above the receipt of consideration of ₹47 lacs.

(ii) Silence on behalf of the petitioners-defendants by not corresponding with the respondents-plaintiffs on deposit of the amount in their account is also a clincher that they had agreed to enter into agreement, for, it was not a voluntary act on behalf of the plaintiffs as the amount was deposited on disclosure of the bank accounts through RTGS. Both the parties have referred to the case laws with regard to expression of shares, right of the share holder to draw profit but not permitted to deal with the assets of the company whereas in respect of agreement to sell of shares, the company is not necessary to be impleaded. In my view, it would also be in the domain of the Civil Court subject to documentary and oral evidence brought on record for adjudication of the *lis.* Therefore, the orders under challenge granting stay with regard to alienation or creation of third party rights, in my view, are fully justified as the respondents-plaintiffs have parted with substantial amount of ₹47 lacs.

(iii) Legal notice sent to the petitioners-defendants remained unanswered. If at all, there was no truthfulness in the alleged claim of the plaintiffs, no explanation has come forward for not replying the aforementioned notice. It would be too premature to decide at this stage whether the company would be a necessary party or not.

(iv) Coming to the argument of Mr. Aggarwal with regard to company being a juristic person and all the acts of the company are to be done by means of Resolution, there is no dispute to the aforementioned argument but the fact of the matter is that concededly defendant No.1, 2 and others are the shareholders in the company i.e. M/s Cosmo Biosciences Pvt. Ltd. They are having a total share holding of ₹4,81,25,000/- and not more or less. That is why it was agreed to be sold for that amount otherwise the defendants could have been burdened with liability of capital gain. If all, the petitioners were serious in pursuing the suit, they ought to have cross-examined the witnesses of the plaintiffs but did not do so despite having appeared before the trial Court. The plaintiffs have already examined PW-4 i.e. clerk from HUDA to submit that the allottee was required to show investment of ₹30 crores, which has not been shown or proved in the record. Even notice Ex.PW4/B had been served upon Ashish Gupta, Director of the Company in this regard.

As an upshot of my finding, I do not find any illegality and perversity in the orders under challenge, however, while upholding the same, I deem it appropriate to dispose of the revision petition with a direction to the trial Court to dispose of the suit within a period of 10 months from the date of receipt of certified copy of this order by affording 4-4 effective opportunity to the parties to the *lis* to lead evidence in accordance with law.

Anything observed, herein above, shall not be construed to be an expression of opinion on merits of pending suit.

(AMIT RAWAL)
JUDGE

June 01, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No