

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No. 628/2017**

% **5th March, 2018**

ABHISHEK GUPTA

..... Plaintiff

Through: Mr. Ashish Mohan, Mr. Mohit
Kumar, Ms. Chetan Rai Wahi
and Mr. Akshit Mago,
Advocates.

versus

SHREE SALASAR POLYFLEX PVT. LTD. & ORS. Defendants

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

I.A. No. 13785/2017 (for exemption)

1. Exemption allowed, subject to all just exceptions.

I.A. stands disposed of.

CS(OS) No. 628/2017 and I.A. No. 13784/2017 (for stay)

2. This suit for declaration is filed by the plaintiff seeking the relief that the plaintiff be declared as a lawful joint owner of 9,95,000 shares as detailed in the prayer clause as also para 1 of the plaint. The 9,95,000 shares of which plaintiff claims declaration to be

a lawful joint owner is of the defendant no.1 company. Plaintiff is seeking the relief of holding the plaintiff to be a lawful joint owner with the defendant no. 2 in the suit Sh. Sanjay Gupta.

3. As per the plaint, plaintiff pleads that the plaintiff was allotted 9,95,000 shares in the defendant no. 1 company on account of the plaintiff being involved with the project of the defendant no. 1 company since its inception being the project of recycling of PET plastic bottles for converting the same into polyester fiber. Plaintiff pleads that he was the original shareholder along with the defendant nos. 2 and 3 for 5000 shares of face value of Rs.10 each and that thereafter the plaintiff along with defendant no. 2 as a joint holder was issued 9,95,000 shares of the defendant no. 1 company. Plaintiff pleads that he was granted joint ownership of 9,95,000 shares along with the defendant no. 2 on account of the plaintiff providing consideration of his services and expertise in setting up of the defendant no.1's factory unit in Rajasthan.

4. A reading of the plaint shows that after pleading that the plaintiff is the joint owner of the subject 9,95,000 shares with the defendant no. 2, however, the plaintiff's name was not indicated in the

list of shareholders of the defendant no. 1 company maintained through its register of shareholders. This is pleaded in para 12 of the plaint. Plaint thereafter in para 19 of the plaint refers to a complaint made by the plaintiff in the Police Station Malviya Nagar, New Delhi and thereafter it transpired, as stated in para 20 of the plaint, that in the share register of the defendant no. 1 company under the name of the plaintiff the word 'joint' was struck-off and was replaced with 'second' which was stamped afterwards. Plaintiff pleads that this endorsement of plaintiff being the second holder of the subject shares is a manipulation and this came to light only during the proceeding ensuing from the criminal complaint filed by the plaintiff as stated in para 19 of the plaint. The plaintiff pleads that the plaintiff is not the second holder of the subject 9,95,000 shares of the defendant no. 1 company but that he is the joint owner with the defendant no.2 of these 9,95,000 shares of the defendant no. 1 company. Accordingly, a decree for declaration is prayed of the plaintiff being lawful joint owner of 9,95,000 shares of the defendant no. 1 company.

5. Plaintiff has filed this suit as a suit only seeking declaration of ownership of being a joint owner of the subject shares

with the defendant no. 2. Though, plaintiff mentions in the plaint that in the share register of the defendant no. 1 company there is an entry of the plaintiff being only shown as a second holder of the shares, yet the plaintiff does not seek the relief of an injunction to be issued to the defendant no. 1 company to rectify the register of members for showing the plaintiff as a joint holder and not the second holder of the subject shares. In other words there is a dichotomy in the plaint because plaintiff cannot seek the relief of being declared as a joint owner of the subject shares with the defendant no. 2, with the register of members of the defendant no. 1 company remaining as it is showing the plaintiff to be only a second holder of the shares and not the joint holder/joint owner of the shares with the defendant no. 2. Plaintiff therefore could not have sought the relief only for declaration because plaintiff has to sue for the further relief of injunction for rectification of the register of the members of the defendant no. 1 company to remove the plaintiff being shown as the second shareholder and that the plaintiff must be shown as a joint owner/joint holder of the subject shares with the defendant no. 2.

6. Section 34 of the Specific Relief Act, 1963 provides that Court will not grant the relief of declaration when the plaintiff in the suit has to seek further relief but does not seek that further relief.

Section 34 of the Specific Relief Act reads as under:-

“34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and whom, if in existence, he would be a trustee.”

7. In the present case as already observed above plaintiff by seeking the relief of declaration simplicitor of being a joint owner will still not be seeking the requisite complete relief because even if this relief as prayed by the plaintiff is granted to the plaintiff yet the register of members of defendant no. 1 company since will show the plaintiff to be only a second holder and not a joint owner/joint holder with the defendant no. 2, the plaintiff will in the records of the defendant no.1 company only be a second holder as the register of the shareholders has to be taken by the defendant no.1 company as reflecting the final position of the shareholders of the defendant no.1

company. In order to cure this divergence between the relief of declaration of the plaintiff as the joint owner with the factual position of the register of members of the defendant no.1 company yet will continue showing the plaintiff only as a second holder, the plaintiff necessarily had to sue and seek the relief of injunction against the defendant no. 1 company to correct its register of members and to remove the word second holder from the register of members. There cannot be disconnect between the physical shares issued to the plaintiff showing the plaintiff to be a joint owner and the records of defendant no. 1 company showing the plaintiff only to be the second holder. It is only for such reason that Section 34 of the Specific Reliefs Act has been enacted to ensure that a plaintiff is bound to seek further relief and a plaint cannot be drafted in a convenient way for avoiding to plead the correct and complete causes of action and reliefs as required by law. Intelligent drafting of the plaint cannot prevent the law from coming into application, and therefore plaintiff cannot as per the present plaint simply seek declaration though plaintiff has to claim the necessary further relief of rectification of the register of members

of the defendant no. 1 company by removing the expression 'second holder' found in such register of members.

8. Order VII Rule 11 CPC provides that where plaint is found to be barred by law then the suit plaint has to be rejected. The bar to the present suit is by virtue of law being the legal provision of the Proviso to Section 34 of the Specific Relief Act. Since the Proviso to Section 34 of the Specific Relief Act says that Courts will not entertain suit for declaration if a further relief is to be claimed but is not claimed, then such a suit is barred by law in terms of Section 34 of the Specific Relief Act.

9. Learned counsel for the plaintiff has firstly placed reliance upon the judgment of the Supreme Court in the case of *M/s. Ammonia Supplies Corporation (P) Ltd. Vs. M/s Modern Plastic Containers Pvt. Ltd. & Ors., (1998) 7 SCC 105* to argue that after seeking the relief in this suit the plaintiff will approach the Company Court or any other appropriate forum for seeking rectification of register of members, however I do not find any such ratio of the Supreme Court in the case of *M/s. Ammonia Supplies Corporation (P) Ltd. (supra)* that after a civil suit is decided thereafter another

fresh proceeding will have to be filed before the Company Court etc for seeking rectification of the register of members. I may note that the judgment of the Supreme Court in the case of *M/s. Ammonia Supplies Corporation (P) Ltd. (supra)* was an appeal from a Full Bench Judgment of this Court in the case of *Ammonia Supplies Corporation (P) Ltd. Vs. Modern Plastics (P)Ltd.& Ors. AIR 1994 Delhi 51* and the Full Bench judgment of this Court had held that a Company Court cannot be approached under Section 155 of the Companies Act for rectification of the register of members if there are seriously and heatedly disputed questions of fact which have to be tried for rectification of register of members and in which case it is only the civil court which should be approached by filing of a civil suit. The judgment of the Supreme Court in *M/s. Ammonia Supplies Corporation (P) Ltd. (supra)* case reiterates the principle that disputed questions of fact will have to be decided by a civil court. Neither in the judgment of the Full Bench of this Court in *Ammonia Supplies Corporation (P) Ltd. (supra)* nor of the Supreme Court in *M/s. Ammonia Supplies Corporation (P) Ltd. (supra)* holds that after the civil suit is decided with respect to the disputed questions of fact as to

who is or is not the owner of the shares, even thereafter proceedings will have to be initiated under the Companies Act for rectification of the register and that rectification of register cannot be prayed/granted in the civil suit. In fact a holistic reading of the judgment of the Full Bench of this Court as also the Supreme Court in fact lays down that all aspects, including rectification of register of members, will be finally decided in the suit once seriously disputed questions of fact arise and that remedy of rectification of register of members by approaching the Company Court under Section 155 of the Companies Act is not the proper remedy.

10. Learned counsel for the plaintiff then sought to place reliance upon the judgment of the Division Bench of the Bombay High Court in the case of *Mt. Munnabai w/o Ramlal & Anr. Vs. Mt. Sharadabai w/o Bhola Prasad*, AIR 1946 Nag 235 to argue that a consequential relief need not be claimed if consequential relief has to be claimed in separate proceedings and for which purpose reliance is placed upon para 10 of this judgment and which para reads as under:-

“10. The relief which the plaintiff really wants is the partition of the tenancy holding. This relief can be granted to her by a Revenue Officer under s. 93, C.P. Tenancy Act, 1820 and the jurisdiction of the civil Court to grant her this relief is barred, under S. 105(0), Tenancy Act, 1920. The

Revenue Officer however is not empowered to decide a question of title in view of the proviso to S. 93 of the Act. Under S. 169(1) (c), Land Revenue Act, 1917, a Revenue Officer is empowered to inquire summarily into the merits of the question of title and pass orders thereon in a case arising out of imperfect partition but no such power has been given where such a question is raised on an application for partition of the tenancy holding. In order that the plaintiff may get the relief of partition of the tenancy holding she has first to obtain a declaration of title in the civil court and after this has been done she has to move a Revenue Officer who will then partition the tenancy holding. Under the proviso to S. 93, Tenancy Act, she is compelled to file a suit for a declaration of title in a civil Court as a preliminary or a step to her obtaining the relief of partition of the tenancy holding by a Revenue Officer.”

11. In my opinion, the plaintiff can seek no benefit from the ratio of the judgment in the case of *Mt. Munnabai (supra)* wherein the facts were pertaining to a decision to be taken by a revenue officer under the C.P. Tenancy Act, 1920 and with respect to questions of title to be decided by the civil court, because as already observed above there is no requirement that in the present suit plaintiff cannot, and in fact should, seek the relief of rectification of register of members because rectification of register of members will have to be sought as a further relief after the plaintiff obtains the necessary declaration in the present suit. Reliance placed by the plaintiff upon the judgment of *Mt. Munnabai (supra)* therefore does not help the plaintiff and the cited such judgment will not apply to the facts of the present case.

12.(i) Reliance is also placed by the plaintiff upon the judgment of the Full Bench of the Allahabad High Court in the case of ***Chief Inspector of Stamps Vs. Mahanth Laxmi Narain and Others, AIR 1970 Allahabad 488*** to argue that Full Bench of the Allahabad High Court has held that provision of Order VII Rule 11 CPC should not be applied at the time of admission of the plaint, however I do not find anything in the observations made by the Full Bench judgment of the Allahabad High Court that Order VII Rule 11 CPC will not apply although the plaint is since inception found to be barred by law and therefore the plaint should not be registered as a suit and summons should not be issued in a suit. Obviously, the Full Bench of the Allahabad High Court could not have held so because that would be against the direct language of Order VII Rule 11 CPC that a plaint has to be rejected in case the suit plaint is found to be barred by law and in this case the suit is barred by Section 34 of the Specific Relief Act because plaintiff had to and was bound to seek further relief of rectification of register of members but the plaintiff deliberately to avoid payment of court fee has filed the suit only as a suit for

declaration without claiming mandatory further relief as is required by law.

(ii) Reliance was also placed on behalf of the plaintiff on the aforesaid Full Bench judgment of the Allahabad High Court to argue that the proposition of law as to what relief is or is not a consequential relief, and in this regard there is no dispute as to the proposition of law laid down by the Full Bench judgment of Allahabad High Court as to when a relief would be or not be a further relief and in this regard this Court has already arrived at a conclusion being that consequential and further relief being injunction with respect to rectification of register of members being a further and consequential relief which had to be prayed but is not. I may note that Proviso to Section 34 of the Specific Relief Act does not use the word consequential relief but it only uses the word further relief and therefore so far as the bar of the suit on account of the Proviso of Section 34 of the Specific Relief Act is concerned, it has only to be seen whether the plaintiff had to seek further relief, and as already held above the plaintiff had to seek the further relief of injunction of rectification of the register of members.

13. Admittedly, as per the plaint the value of the shareholding of the plaintiff is Rs.4.50 crores. Plaintiff will therefore ordinarily will have to pay approximately 1% of the court-fees in case the plaintiff had sought, which the law mandated him to do, the further relief of rectification of register of members, but the plaintiff has deliberately not sought further relief of rectification of register of members because plaintiff wanted to only illegally pay a fixed court fees of Rs.20 on the plaint and which can be done if only a suit for declaration is filed. Obviously by clever drafting a plaintiff in a suit cannot avoid payment of court fees when plaintiff is claiming relief of ownership of shares worth Rs.4.50 crores with the fact that such relief is necessarily inextricably interlinked to rectification of register of members by removing the word second holder as against the name of the plaintiff as found in the register of members of the defendant no. 1 company.

14. In view of the aforesaid discussion, the suit being barred by law i.e Section 34 of the Specific Relief Act, and therefore this Court by applying Order VII Rule 11 CPC holds that the suit plaint is liable to be and is accordingly rejected.

MARCH 5, 2018

AK/ib

VALMIKI J. MEHTA, J