

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1223 OF 2018
IN
SUIT NO. 2812 OF 2001

Jayesh H Pandya ...Plaintiff
Versus
Sukanya Holdings Pvt Ltd & Ors ...Defendants

Mr Mangal Bhandari, *i/b Jacinta D'silva, for the Plaintiff.*
Mr Satish Shah, *i/b DP Barretto, for Defendant No. 1.*
Mr Mayank Bagla, *i/b Bagla & Associates, for Defendants Nos. 4 & 11.*

CORAM: G.S. PATEL, J
DATED: 6th March 2019

PC:-

1. This is the by now legendary Sukanya Holdings Private Limited litigation. The suit itself seeks dissolution of a partnership firm called Hetali Construction Company. Sukanya Holdings Private Limited was a partner in the firm. About this at least there is no dispute although there is a dispute about everything else. The Plaintiff, Jayesh Pandya, said that he, Sukanya Holdings, his brother Deepak Pandya, the 2nd Defendant and one Ms Jaykriti Mehta were the partners of Hetali Construction Company. In paragraph 1 of the Plaint he describes this as a registered partnership firm. Jayesh also

says that Jaykirti retired, but Hetali Construction Company continued with three partners, viz., himself, Deepak and Sukanya Holdings. Jaykirti's 10% in the partnership firm was divided between the three continuing partners. The share of Jayesh and Deepak together went up to 55%. The share of Sukanya Holdings went up from 40% to 45%.

2. An issue of maintainability of the suit was framed as a preliminary issue on the footing that if there was no registered firm the suit itself did not lie. This was answered on 25th January 2010 in appeal in favour of the Plaintiff.

3. KR Shriram J framed issues on 21st November 2016. The trial proceeded. During the course of that trial, Jayesh was cross-examined by counsel for Sukanya Holdings. He was asked two questions, and his answers to these questions are the inspiration for the present Notice of Motion. These questions are set out in Exhibit "B" to the Affidavit in Support of the Notice of Motion. I will reproduce these questions 46 and 47 and their answers in full.

46. Q. Is Exhibit P-2 the Deed of Partnership of the firm of which you are seeking dissolution in the present suit?

Ans. The constitution of the partnership has changed as Jaykirti Mehta has retired.

47. Q. I repeat my previous question since you are not answering the question. Is Exhibit P-2 the Deed of

Partnership of the firm of which you are seeking dissolution in the present suit?

Ans. No.

4. I may note that the document Exhibit “P2” in evidence is the same deed of partnership that was annexed as Exhibit “C” to the Plaint. This is the deed of partnership of 30th April 1992 to which Jaykirti, Jayesh, Deepak and Sukanya Holdings were all parties.

5. What Sukanya Holdings now says in this Notice of Motion is that the suit must be dismissed ‘in view of the admission made by the Plaintiff in cross-examination that the Plaintiff is not seeking dissolution of the firm in existence as per the deed of partnership dated 30th April 1992 marked as Exhibit “P2”’.

6. I have heard Mr Shah for Sukanya Holdings at some length. I am not persuaded of the correctness of this submission. To my mind, correctly read, the two questions pertain not to the firm itself, but seek to identify its deed of partnership. Jayesh was twice asked whether the document Exhibit “P2” was the deed of partnership of the firm *of which he was seeking dissolution in this suit*. Indeed, it seems to me that the question itself contains a clear admission by Sukanya Holdings that Jayesh is indeed seeking a dissolution of the firm, but Sukanya Holdings only seeks to identify the document of constitution of the firm i.e. its deed of partnership. The subject of both questions is not the firm itself but the deed of partnership. I notice that the question was not: “*Are you seeking dissolution of the firm Hetali Construction Company?*” Had that been the question, and

had Jayesh answered no to it, or one very like it, then perhaps Sukanya Holdings was correct. But it was not his answer that he is not seeking dissolution of the firm. It could not have been, for that was not the question put to him at all. His answers, correctly read, only say that according to him, the Plaintiff, Jayesh Pandya, the firm continued but with a changed constitution i.e. a change in the respective percentage holdings of the continuing partners. The Plaintiff did not say that he had abandoned his claim to dissolution or was not pressing it. This is much too extreme a reading of the questions given that the prayer for dissolution is prayer clause (a) of the Plaintiff itself.

7. The question also leaves open issues as to how Sukanya Holdings conducted itself vis-à-vis Hetali Construction Company Limited after the retirement of Jaykirti. Did Sukanya Holdings continue to do business as a partner or participate in partnership business? Did the firm, with Sukanya Holdings as a partner, continue to file returns, operate bank accounts, acquire and dispose of assets and, generally, go about the business of Hetali Construction as a partnership firm? These are all questions for trial.

8. Mr Shah agrees, with his usual fairness, that an admission must be clear, unequivocal and unambiguous. Once that is done, he submits, unless explained, it furnishes the best evidence. An admission that gives a valuable right to a Defendant is not readily allowed to be withdrawn. An admission is substantive evidence on its own. All of this is true in law but where Mr Shah and I disagree is whether these answers to questions 46 and 47 do indeed constitute an admission of the quality and character necessary to serve as a

foundation for a judgment under Order XII Rule 6 of the CPC. In other words, are these statements an unambiguous, unequivocal and clear admission by the Plaintiff that he is not seeking dissolution of the firm Hetali Construction Company Ltd? On any reasonable reading of the two questions and their answers, I do not think it is possible to arrive at this conclusion.

9. The Notice of Motion will have to be dismissed and it is. In the facts and circumstances of the case there will be no order as to costs.

10. In view of the pendency of this Motion, further recording of evidence was stayed. Obviously, the cross-examination of the Plaintiff can now resume.

(G. S. PATEL, J)