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

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Judgment delivered on: 16.09.2019

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C.R.P. 18/2019

VINOD MADAN LAL NAWANDHAR Petitioner

versus

VIDISHA GARG & ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Varun Goswami with Mr. Sahil Agarwal, Advocates.

For the Respondent: Mr. S. S. Dahiya, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

C.R.P. 18/2019 & CM APPL.3398/2019 (stay)

1. Petitioner impugns order dated 26.09.2018, whereby, an application under Order VII Rule 11 CPC, filed by the petitioner, has been dismissed.
2. Learned counsel for the petitioner submits that the Suit filed by the respondent was barred on the principles of issue estoppel, *res judicata* order II Rule 2 CPC and also limitation.
3. Learned counsel for the petitioner submits that Respondent had earlier filed a Suit in the year 1993 seeking a declaration, permanent and mandatory injunction with regard to the same shares with respect

to which the present Suit has been filed.

4. Learned counsel for the respondent submits that the respondent, who is a bonafide purchaser of the shares, was not a party to the suit filed by the petitioner against his purchasers and as such could not take the defence.

5. The respondent filed a suit for declaration and permanent injunction in the year 1993 with the following prayer:-

“(a) To pass a decree of declaration declaring the plaintiff a owner and holder of all the 300 equity shares bearing certificates Nos. 102052- 57, distinctive Nos. 11341914- 11342213, including benefits therefore, if any, declared or to be declared by defendant No.1 in future, issued by M/s Hero Honda Motors Limited (Defendant No.1)

(b) To pass a declaration of permanent injunction thereby restraining the defendant No.1, its servants, agents, attorney, authorized representatives, etc. from proceeding/ processing and / or registering the transfer of any of the above mentioned 300 shares as detailed in para 1 of the plaint without due process of law and also without the consent of the plaintiff;

(c) To pass a decree of mandatory injunction thereby directing the defendant No.1 to issue duplicate share certificates in respect of the above mentioned 300 shares as detailed in para 1 of the plaint, including the benefits of dividends, rights and bonus thereof, if any, declared after 29.10.1990, or to be declared in future by the defendant No.1.

(d) To grant any other relief as deemed fit and proper in the facts and circumstances of the case in favour of the plaintiff and against the defendants.”

6. Said suit was dismissed by a judgment dated 19.10.2013 holding that the respondent had clearly concealed the material facts regarding the decree already having been passed by a competent Court with regard to the shares in question in favour of the present petitioner.

7. Said judgment was taken up in appeal by the respondent and the Appellate Court, by order dated 18.08.2015, specifically held as under:-

“14. Therefore, in view of the above discussion, the plaintiff has failed to discharge her initial burden to show that shares were purchased by her from the defendant no. 3 i.e. Garg Shares Trading Company vide bill no. 1695 dated 29.10.1990 by making payment vide cheque no. 991108 dated 07.10.1990. Accordingly, there is no need to proceed further whether the shares were fraudulently transferred or not in favour of the defendants no. 4 and 5 or whether there are concealment of material fact on behalf of the appellant. The appellant has failed to prove his case on merits as well. Accordingly, the present appeal stands dismissed without costs in view of the reasons given above in addition to the reasons given by Ld. trial court.”

8. Thereafter the respondent filed a Regular Second Appeal before this Court and by judgment dated 30.11.2015, the Court held as

under:-

11. On the other hand, defendant no.4, admittedly, had a decree passed by a competent civil court in his favour in respect of the same shares upon which the plaintiff had laid a claim. Even after the plaintiff learnt of the said decree, she did not take any steps to assail the same. The judgment and decree passed by the civil court could not have been nullified by filing another suit when no declaration was sought in respect of the said judgment and decree on the ground that the same was obtained fraudulently. Thus, the final decision of the First Appellate Court is missing the appeal of the appellant appears to be correct and does not call for interference.”

9. Matter was once again challenged by the respondent by filing a Special Leave Petition before the Supreme Court, which petition was dismissed by order dated 08.04.2016.

10. Thereafter the subject suit has been filed with the following prayer:

“(a) To direct defendant No.1 to provide clear and free title of these 300 shares (or equivalent thereof) in the name of plaintiff.

(b) To direct defendant No.2 not to give these 300 shares (certificates No.102052-57, distinctive Nos.11341914-11342213), including benefits (Dividends, Rights, Bonuses etc. w.e.f 29.10.1990) thereon, if any, declared or to be declared by defendant No.2 in future, issued by defendant No.2 M/s Hero Honda Motors Limited (Now Hero Moto Corp Ltd) to any other claimant till final decision of the court.”

11. Perusal of the prayer of the subject Suit clearly shows that the facts as well as the questions in issue in the second suit filed by the respondent, i.e., the subject suit as also the first suit are identical and the issues arising in the second Suit are identical to the issues that arose in the first Suit, which Suit was dismissed after a full-fledged trial and title to the shares was held to be that of the petitioner and not of the respondent/Plaintiff. Appeals against the said judgment were dismissed upto the Supreme Court.

12. Clearly the second Suit is barred by the principle of issue estoppel as also *res judicata* as laid down in Section 11 of the Code of Civil Procedure.

13. The Supreme Court in *Hope Plantations Ltd. v. Taluk Land Board*, (1999) 5 SCC 590 held as under:

“26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the

same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

27. As to what is issue estoppel was considered by this Court in *Gopal Prasad Sinha v. State of Bihar* [(1970) 2 SCC 905 : 1970 SCC (Cri) 584] . This case arose out of criminal prosecution; the accused was tried on a charge under Section 409 IPC for having committed criminal breach of trust for Rs 27,800 during the period between 31-1-1960 to 30-11-1960, when he was acting as cashier in the Public Works Department of the State. The accused contended that he had been put up on a trial in a previous case under Section 409 IPC for having committed criminal breach of trust with respect to certain amounts during the period 8-12-1960 to 17-8-1961 and in that case, the High Court had acquitted him holding that he was not in charge of the cash. The point of issue estoppel was, thus, raised by the accused. The trial court held that the aforesaid finding of the High Court could not operate as res judicata. The High Court affirmed the decision of the trial court. In this Court, it was contended that substantially it was the same issue that was tried during the earlier trial and if the accused was not the cashier from 8-12-1960 to 11-8-1961, he

could not be held to be the cashier from 31-1-1960 to 11-11-1960. The accused contended that the defence in both the cases was identical and the evidence also almost the same. This Court observed as under: (SCC p. 907, para 7)

“7. In our opinion, the High Court came to the correct conclusion. The basic principle underlying the rule of issue estoppel is that the same issue of fact and law must have been determined in the previous litigation. The question then arises: Was it the same issue of fact which was determined in the earlier case? A person may be acting as a cashier at one period and may not be acting as a cashier at another period, especially as in this case it was found that the appellant had never been appointed as a cashier. He was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. It seems to us that the later finding must necessarily be in contradiction of the previous determination. There can be no such contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different.”

31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had

been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule 1) review is not permissible on the ground that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment”.

14. Even if assuming the relief prayed by the respondent in the second suit was slightly different from the relief claimed in the first suit, respondent is barred under Order II Rule 2 CPC to file the subject Suit. A relief which could have been claimed in an earlier suit if omitted, is deemed to have been claimed and rejected.

15. The plea of the learned counsel for the respondent that the cause of action has arisen subsequently is not tenable in the eyes of law inasmuch as the respondent is seeking a relief in the subject Suit which directly emanates from the ownership of the shares i.e. entitlement to dividend, bonus or alternative shares to the original 300 shares which have been held to be belonging to the petitioner.

16. Clearly, the suit on its plain reading is barred by the principle of

res judicata and is also barred under order II rule 2 CPC and as such, the plaint was liable to be rejected under Order VII Rule 11.

17. The finding of the Trial Court that the issue is a mixed question of law and facts is erroneous inasmuch as there is no dispute on facts between the parties. In the earlier round i.e. the first suit filed by the respondent, it has been held upto the Supreme Court that the petitioner is the owner of the said 300 shares. Once it is held in favour of the petitioner that he is the owner of the said 300 shares in respect of which the first Suit was filed, all benefits, dividends, bonus or alternative share certificates, if issued, with regard to the said 300 shares, would also belong to the petitioner, who is the owner of the said shares. No disputed question of fact arises. The Trial Court has clearly erred in holding that the question raised by the petitioner is a mixed question of facts and law.

18. In view of the above, clearly the order of the Trial Court in rejecting the application under Order VII Rule 11 filed by the petitioner is not sustainable.

19. As noticed above, the second suit filed by the respondent is clearly barred on the principle of issue *res judicata* and Order II Rule 2 CPC. In my view, the Trial Court has erred in not allowing the application under Order VII Rule 11 filed by the petitioner.

20. Accordingly, the impugned order dated 26.09.2018 is set aside and the application under Order VII Rule 11 filed by the petitioner is

allowed. The Suit filed by the respondent is held to be barred by law and accordingly, the plaint is rejected under Order VII rule 11(d) CPC.

21. Petition is, accordingly, allowed in the above terms.

22. Order *Dasti* under signatures of the Court Master.

SEPTEMBER 16, 2019/st

SANJEEV SACHDEVA, J

