

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

% **Date of decision: 7th January, 2019**

+ **CS(OS) 600/2016**

SUNIL ALAGH

..... Plaintiff

Through: Mr. Manav Gupta, Ms. Esha Dutta,
Mr. Sahil Garg and Mr. Devang
Kumar, Advs.

Versus

SHIVRAJ PURI & ANR

..... Defendants

Through: Mr. Prabhav Ralli, Adv. for D-2 with
D-2 in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This suit for recovery of money is ripe for framing of issues.
2. The counsel for the plaintiff states that the written statement of the defendants does not raise any material proposition of fact or law on which an issue arises and the suit is entitled to be decreed forthwith.
3. The counsel for the plaintiff and the counsel for the defendant No.2 Raghuraj Puri have been heard and the files perused.
4. The plaintiff has instituted this suit for recovery of Rs.2,39,50,000/-, pleading (i) that the plaintiff based at Mumbai is the sole proprietor of M/s SKA Advisors; (ii) that the plaintiff and the defendant No.2 Raghuraj Puri have been known to each other for long and have had family relations; (iii) that the defendant No.1 Shivraj Puri is the son of defendant No.2 Raghuraj Puri and the defendants have been residents of Gurgaon, Haryana and are in the business of rendering financial and advisory services in the name of M/s Normans Consultancy Private Limited; (iv) that in April, 2013, the

defendants had approached the plaintiff for financial help in the form of short term loan, to enable the defendants to establish their new business and had assured the plaintiff that the loan amount would be expeditiously returned along with bank interest; (v) that the defendant No.1 sent to the plaintiff the bank account details of defendant No.2 to enable the plaintiff to transfer the loan amount to defendant No.2's account; (vi) that it was the defendant No.1 who used to handle most of the financial affairs on behalf of both the defendants and the defendant No.1 met the plaintiff at New Delhi on several occasions for the said purpose; (vii) that the plaintiff, between 25th April, 2013 and 19th June, 2014, from time to time transferred monies by way of loan to the bank account of the defendant No.2 at New Delhi of which particulars were furnished by the defendant No.1; (viii) that a total of Rs.3,47,50,000/- was so transferred by the plaintiff to the bank account of the defendant No.2 through RTGS; (ix) that the defendants failed to return the said amount and after much delay returned a total sum of Rs.1,08,00,000/- only, from time to time, between 29th April, 2013 to 25th June, 2014, leaving a balance of Rs.2,39,50,000/-; (x) that the defendants, though through emails and otherwise assured to return the said balance but failed to do so; (xi) that the plaintiff subsequently discovered that the defendant No.1 and his wife Deeksha Puri were habitual criminals and were convicted in the Citybank fraud case which was to the tune of approximately Rs.300 crores to Rs.400 crores; and, (xii) that the defendants, on 26th September, 2014 entered into a Memorandum of Settlement with the plaintiff and had undertaken to return the amount of Rs.13.15 crores. Hence, this suit for recovery of Rs.2,39,50,000/- with *pendente lite* and future interest @ 12% per annum.

5. The suit was entertained and summons ordered to be issued to the defendants. The defendants have filed a joint written statement *inter alia* pleading, (a) that this Court had no territorial jurisdiction to entertain the suit as neither of the defendants are residing within the territorial jurisdiction of this Court nor carrying on business within the territorial jurisdiction of this Court, though at one point of time had their office at Barakhamba Road, New Delhi but the said office was sold off in 2013 itself; (b) that admittedly the monies were never transferred to the account of the defendant No.1 and thus the plaintiff cannot seek recovery of monies against the defendant No.1; (c) that the monies given by the plaintiff to the defendant No.2 were for the purpose of investment in the Stock Market and only the profit and loss was to the plaintiff's account; (d) that the plaintiff was given profits as and when the same accrued; (e) that the defendants were merely the consultant and were entitled for commission; (f) that the defendants performed their obligations with utmost diligence and cannot be held liable on account of losses suffered on account of investments made from the monies transferred by the plaintiff to the account of defendant No.2 for the purpose of investment in Stock Market; (g) that the monies were transferred by the plaintiff to the account of the defendant No.2 strictly on the said understanding and the plaintiff who is a highly educated person and has held high positions in a large number of Private Limited Companies fully understood that he was to be liable for the losses; (h) that the plaintiff had started transferring monies to the account of the defendant No.2 on the said understanding and the said monies, on receipt in the account of the defendant No.2 were transferred into other bank accounts like SP Puri HUF Account and be finally invested into the accounts maintained with the stock broking

companies specifically Destimoney Securities Private Limited and Globe Capital Market Limited; (i) that the defendants, from time to time forwarded to the plaintiff the profits earned on the said investments; (j) that some of the amounts invested by the defendant No.2 on behalf of the plaintiff did not bear any profit and resulted in losses as is evident from financial statement of Destimoney Securities Private Limited; (k) that the aforesaid facts are well-established and duly noted by the learned Additional Session's Judge in order dated 27th November, 2014 disposing off an application preferred by the defendants under Section 439 of the Code of Criminal Procedure, 1973 (CrPC) in FIR No.98/2014; (l) that the defendants never operated any firm for providing financial and advisory services by the name of Normans Consultancy Private Limited; (m) that no amounts are outstanding from the defendants to the plaintiff; and, (n) that the defendants have returned the principal amount invested by the plaintiff along with profits accrued, as and when the same was received.

6. The need to refer to the replication filed is not felt.

7. The suit came up before this Court on 23rd March, 2018 when it was ripe for framing of issues. The counsel for the plaintiff contended that no issue arises and the plaintiff was entitled to a decree under Order XV of the Code of Civil Procedure, 1908 (CPC). On perusal of the plaint and the written statement on 23rd March, 2018, a direction was issued for the personal appearance before this Court of the defendant No.2.

8. The counsel for the defendants, who had filed joint written statement on behalf of the defendants, on 23rd March, 2018, sought discharge from appearance on behalf of the defendant No.1 stating that the proceedings to declare the defendant No.1 as a proclaimed offender were underway. The

counsel was so discharged and since none else appeared on behalf of the defendant No.1, the defendant No.1, on 23rd March, 2018 was proceeded against *ex-parte*. Today, it is informed that the defendant No.1 has since been declared as the proclaimed offender. The defendant No.1 remains *ex-parte* till date.

9. The counsel for the plaintiff has referred to the judgment reported as ***Sunil Alagh Vs. Shivraj Puri*** (2017) 241 DLT 578 in another suit, also filed by the plaintiff herein against the two defendants herein, dismissing the application of the defendants for leave to defend and passing a decree in favour of the plaintiff herein and jointly and severally against the defendants, for recovery of Rs.9.15 crores with interest @ 10% per annum with effect from the date of institution of the suit and till realisation and states that the facts of the present suit are the same as that of CS(OS) No.556/2016 and on parity therewith, this suit is also entitled to be decreed forthwith. It is also stated that no appeal has been preferred by the defendants against the said judgment, decree wherein is under execution.

10. The counsel for the defendant No.2 states that the defendant No.2 is present in Court in compliance of the earlier direction and has otherwise argued, (I) that this Court does not have territorial jurisdiction to entertain the present suit and the plea to the said effect of the defendants in their written statement raises an issue which disentitles the plaintiff from a decree under Order XV of the CPC; (II) that the monies admittedly received by the defendant No.2 from the plaintiff were for investments in the Stock Market, as pleaded in the written statement, and the defendant No.2 is not liable to return the said monies; the same also raises a triable issue; (III) that no decree under Order XV of the CPC can be passed today owing to the Proviso

to Rule 3 of Order XV of the CPC, and in any case today; and, (IV) that the defendant No.2 had no knowledge of the transaction in his bank account which was being operated by the defendant No.1 on behalf of defendant no.2.

11. With respect to the argument of the counsel for the defendant No.2 qua territorial jurisdiction, having not found any denial in the written statement of the defendants, of the bank account of the defendant No.2 to which monies were transferred by the plaintiff being at New Delhi, I have enquired so from the counsel for the defendant No.2.

12. The counsel for the defendant No.2, on enquiry, states that the account of the defendant No.2 in which the monies were received from the plaintiff was at New Delhi and does not press the argument of territorial jurisdiction any further.

13. That brings me to the argument of the counsel for the defendant No.2, of the monies though admittedly received from the plaintiff, having been received for the purpose of investment in the Stock Market and having been so invested and the defendant no.2 thus being not liable to repay the same to the plaintiff.

14. Having not found any particulars in that regard in the written statement of the defendants, again an enquiry is made from the counsel for the defendant No.2.

15. The counsel for the defendant No.2 has only drawn attention to para (h) of para 9 of the preliminary objections/submissions in the written statement, where it is pleaded that the monies were transferred by the defendant No.2 from his account to other bank accounts like SP Puri HUF Account and were finally invested into the accounts maintained with the

stock broking companies, specifically Destimoney Securities Private Limited and Globe Capital Market Limited. The counsel for the defendant No.2 during the hearing, on the said plea, has also invited attention to pages 108 & 109 of documents filed by the defendants under List of Documents dated 10th April, 2017 being a photocopy of the account maintained by SP Puri HUF with Kotak Mahindra Bank and containing entries of transfer of monies therefrom to the accounts of Destimoney Securities Private Limited. The counsel states that similarly, other statements of account have also been filed.

16. At this stage, another contention of the counsel for the defendant No.2, also taken in the written statement, of the defendant No.1 only dealing with the monies received from the plaintiff, though in the account of the defendant No.2, may be dealt with.

17. It cannot be lost sight of that the defendant No.2 has filed the written statement jointly with defendant No.1 and has signed and verified the written statement and also appended his affidavit therewith. It is not the plea or the contention, that any dealing by the defendant No.1 with the monies in the bank account of defendant No.2 is contrary to instructions of the defendant No.2 or that the defendant No.1 has misappropriated any monies from the said account. The defendant No.1 is not a stranger but the son of defendant No.2. The defendant No.2, if had authorised/permitted the defendant No.1 to operate his account, remains bound by the actions by the defendant No.1 on behalf of the defendant No.2 with the monies in the said account and cannot wash away his hands therefrom by taking the specious plea and by seeking framing of issue thereon. The defendant No.2, by taking the said plea, also cannot in law renege from his obligation, again in law, to take specific pleas

in his written statement and furnish all particulars required to be furnished. It is not the plea that the defendant No.1 was/is in collusion/conspiracy with plaintiff or was/is enemical to the defendant No.2. Rather, the pleas in the written statement, taken by both the defendants, negate the plea of the defendant No.2 having no knowledge.

18. Issues, under Order XIV, are to be framed on 'material' and not on 'every' proposition of law or fact. If the Court is to find, as does in this case, that the proposition of the defendant No.2, of having authorised the defendant No.1 to deal with the money and thus having no knowledge is not a 'material proposition', i.e. having no effect on the outcome of the suit, it is not required to frame an issue thereon.

19. I have enquired from the counsel for the defendant No.2, whether not investments in Destimoney Securities Private Limited and Globe Capital Market Limited could have been made either by way of Fixed Deposit or in equity and if not, in what manner the investments claimed to have been made on behalf of the plaintiff, were made. Not only has nothing in this regard been stated in the written statement, no answer is coming forward today also. In fact the only documents to which attention is drawn are of transfer of monies from the account of SP Puri HUF who is a stranger to this suit, to the account of Destimoney Securities Private Limited, and does not prove any transaction by defendants on behalf of the plaintiff. Moreover, if the monies of the plaintiff were to be invested, the same ought to have been invested in the name of the plaintiff and there is no plea of any such investment having been made in the name of the plaintiff or details of any account with respect thereto. Thus, the said plea, of the monies admittedly received from the plaintiff having been invested and having suffered losses, is also not found to

be having the particulars to constitute a material plea for an issue to be framed thereon. If on such pleas also, the suits were to be put to trial, then such trial will serve no purpose except to delay the disposal of the suit and that too to the prejudice of the plaintiff and to the benefit of the defendants.

20. The only other argument of the counsel for the defendant No.2 with respect to Order XV Rule 3 of the CPC is to be noted to be rejected and is an attempt to twist the clear provisions of law. Not only does Order XIV Rule 1 of the CPC requires framing of issues on ‘material proposition of fact or law’, but Order XV Rule 1 of the CPC also provides that where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

21. Order XV Rule 3(1) with Proviso thereto is as under:

“3. Parties at issue.—(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence that the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.”

22. As would be evident, the same is not attracted where the parties are not found at issue and applies only when the parties are at issue. Moreover,

as far as the argument of the counsel for the defendant No.2, of the defendant No.2 being required to be put to notice of judgment forthwith against the defendant No.2 is concerned, not only is there is no provision therefor but even otherwise, once the counsel comes prepared on the date of framing of issues which is the date of first hearing, the counsel is expected to come prepared and not make a mere appearance for another opportunity to be given. In this regard it may also be noted that it was the contention of the counsel for the plaintiff as far back as on 23rd March, 2018 and as recorded in the order of that date, that the suit is entitled to be decreed forthwith under Order XV of the CPC and the counsel for the defendant No.2 has had sufficient time in this suit to respond thereto and has in fact already argued and raised this plea only to seek another adjournment.

23. The written statement thus, as far as the defendant No.2 is concerned, does not raise any material proposition of law or fact requiring the framing of issues.

24. As far as the defendant No.1 is concerned, though admittedly the monies were received from the plaintiff in the account of the defendant No.2, but on the pleas in the written statement and on the arguments raised on behalf of the defendant No.2, the liability of the defendant No.1 jointly and severally with the defendant No.2 for refund of the said monies to the plaintiff is writ large. Moreover, the defendant No.1 having chosen not to contest the suit, following the principle laid down in *Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.* 2013 SCC Online 508, *Dara Projects Private Limited Vs. Business India Exhibitions Pvt. Limited* 2017 SCC OnLine Del 8069 and *Kanungo Media (P) Ltd. Vs. RGV Film Factory*

2017 SCC OnLine Del 8768, need to relegate the plaintiff to *ex-parte* evidence qua the defendant No.1 is not felt.

25. The suit thus succeeds.

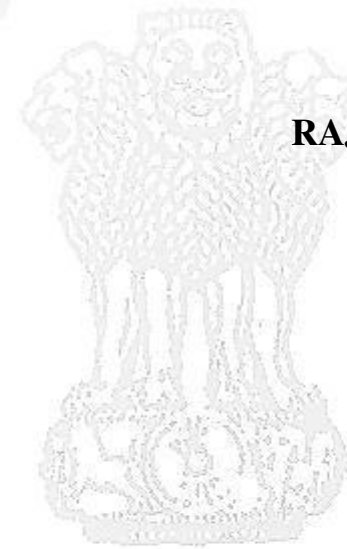
26. A decree is passed, in favour of the plaintiff and jointly and severally against the two defendants, of recovery of Rs.2,39,50,000/- together with *pendente lite* and future interest @ 10% per annum. The plaintiff shall also be entitled to costs of the suit. Counsel's fee assessed at Rs.1,50,000/-.

Decree sheet be drawn up.

JANUARY 07, 2019

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RAJIV SAHAI ENDLAW, J.



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