

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

AP 851 of 2022

IA NO. GA 1 of 2023

OMKAR TRADECOMM LLP AND ORS.

VS.

MAYANK AGARWAL AND ORS.

For the Petitioners : Mr. Dhruba Ghosh, Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. Rahul Poddar, Adv.
Ms. Oindrila Ghosal, Adv.
Ms. Shrayasi Dhang, Adv.

For the Respondent Nos. 1 and 2 : Mr. Krishnaraj Thaker, Adv.
/Applicants Ms. Suchismita Ghosh Chatterjee, Adv.
Mr. Shivam Bhimsaria, Adv.
Mr. Tanay Agarwal, Adv.
Mr. Nayantara Bhattacharya, Adv.

Last Heard on: May 11, 2023

Judgement on: June 15, 2023

Shekhar B. Saraf, J.:

1. Omkar Tradecomm LLP being the petitioner no. 1 is a Limited Liability Partnership Firm having its registered office at 34, Chittaranjan Avenue, Kolkata, West Bengal-700 012. The petitioner nos. 2, 3, 4 and 5, the respondent no. 3 and the proforma respondent are purportedly the partners of Omkar Tradecomm LLP, the petitioner no. 1 herein. The respondent nos. 4 and 5 are founding partners who have retired from the partnership of the petitioner no. 1.
2. By way of an *ex-parte* order dated January 30, 2023, this Court in an application under Section 9 of the Arbitration and Conciliation Act, 1996 had granted relief in terms of prayer (b) of the Notice of Motion directing the respondent nos. 1, 2 and 3 to maintain status quo in respect of the assets of Omkar Tradecomm LLP as well as the composition of the partners in view of the provisions contained in the LLP agreement dated March 19, 2021 read in conjunction with the first and second LLP agreements thereto.
3. Aggrieved by the impugned order, the applicants that is respondent nos. 1 and 2 have approached this Court with an interlocutory application being G.A. No. 1 of 2023 containing the following prayers :-
 - i) Order dated January 30, 2023 passed by this Hon'ble Court in A.P. No. 851 of 2022 be vacated and/or recalled;

- ii) The Section 9 application being A.P. No. 851 of 2022 be dismissed with exemplary costs;
- iii) Ad-interim orders in terms of prayers (a) and (b) above;
- iv) Costs of and incidental to this be borne by the petitioner nos. 2 to 5;
- v) Any other relief this Hon'ble Court may deem fit and proper to meet the ends of justice.

Contentions

4. Mr. Krishnaraj Thaker, learned counsel on behalf of respondent nos. 1 and 2 (hereinafter also referred to as the 'applicants') has put forth the following arguments :-

- i) The counsel submitted that the petitioner no. 1 partnership firm was incorporated on March 18, 2021 under LLP Act, 2008 with two designated partners being respondent nos. 4 and 5. The main business pursued is as consultants in all fields, as financial advisors, management consultants and disposing of movable and immovable properties. He argued that in August 2021, respondent nos. 4 and 5 approached the petitioners by representing themselves as the only partners in petitioner no. 1, and that the partnership firm had acquired a land at Sreerampore, Hooghly District but due to onset of Covid 19 pandemic, the business expansion plan failed. Further, due to paucity of funds,

respondent nos. 4 and 5 were unable to repay the creditors of the partnership firm. Therefore, they offered to resign from the partnership firm and transfer the said firm to petitioner nos. 2 to 5, respondent no. 3 and proforma respondent no. 6 on receipt of their respective capital contributions and settlement of dues to existing creditors of the said partnership firm.

- ii) The counsel added that undated supplementary agreements were prepared to include the incoming partners being petitioner nos. 2 to 5, respondent 3 and proforma respondent no. 6 as the partners in place of outgoing partners being respondent nos. 4 and 5. All the parties signed the said documents but the same was not signed by proforma respondent 6. As no arrangement could be made to relinquish the existing debts of petitioner no. 1 firm, therefore, the counsel submitted, original copy of the said undated documents were retained by the respondent nos. 4 and 5.
- iii) The counsel also attempted to draw the attention of this Court towards the fact that the aforesaid deal was called off by respondent nos. 4 and 5 on October 28, 2021 and that the letter of cancellation has been suppressed by the petitioners.
- iv) In March, 2022, the counsel submitted, the respondent nos. 1 and 2 approached the respondent nos. 4 and 5 for acquiring their stake in the said partnership firm. The latter agreed to arrange

funds for capital contribution as well as to liquidate the existing debt of the said partnership firm. Thereafter, the parties executed supplementary agreements dated March 12, 2022 and March 14, 2022 whereby the respondent nos. 5 and 4 retired and respondent nos. 2 and 1 got inducted as partners.

- v) The counsel submitted that on June 23, 2022 the petitioner nos. 2 to 5 forcibly entered the office of Mahesh Agarwal, the father of the applicants and took away valuable records, files and original title documents. A police complaint to this effect was also lodged with the Ballygunge Police Station, Kolkata being F.I.R. No. 52 of 2022 dated June 23, 2022. He contended the petitioner nos. 2 to 5 had illegally obtained the undated supplementary agreements prepared on the stamp papers that were purchased on August 26, 2021 and fraudulently executed the same on June 21, 2022 and June 23, 2022.

5. Mr. Dhruba Ghosh and Mr. Pranit Bag, learned counsels on behalf of the petitioners has put forth the following arguments :-

- i) The learned counsels have submitted that the supplementary agreements dated June 21, 2022 and June 23, 2022 were duly executed and validly signed by the incoming partners and outgoing partners.

- ii) The counsels contended that only when the petitioners tried to file the said supplementary agreements with the RoC, the petitioners realised that the respondent nos. 1 and 2 are the partners of the said partnership firm. Thereafter, a complaint dated August 12, 2022 was lodged with the Bowbazar Police Station, Kolkata against the respondents for forging and preparing false documents for the purpose of cheating, criminal intimidation and criminal conspiracy.
- iii) The counsels vehemently argued that the supplementary agreements dated March 12, 2022 and March 14, 2022 are manufactured documents and an afterthought on the part of the applicants. Further, the petitioners refused to acknowledge of having received any letter dated October 28, 2021 which allegedly terminated the undated supplementary agreements.

Analysis

- 6. I have heard the learned counsel appearing on behalf of the respective parties and have thoroughly perused the materials on record.
- 7. For the sake of clarity, I have enumerated below the parties involved in the present matter. The petitioners in the Section 9 application being A.P. No. 851 of 2022 are –

- a. Omkar Tradecomm LLP, being petitioner no. 1;
- b. Naveen Kumar Agarwal, being petitioner no. 2;
- c. Akarsh Agarwal, being petitioner no. 3;
- d. Chirag Agarwal, being petitioner no. 4;
- e. Sonika Agarwal, being petitioner no. 5;

The respondents in the said Section 9 application are as follows:-

- a. Mayank Agarwal, being respondent no. 1;
- b. Vaibhav Agarwal, being respondent no. 2;
- c. Chandrakanta Agarwal, being respondent no. 3;
- d. Biswarup Adhikary, being respondent no. 4;
- e. Mukesh Baheti, being respondent no. 5;
- f. Puja Agarwal, being proforma respondent no. 6.

The respondent nos. 1 and 2 are the applicants in this interlocutory application being G.A. No. 1 of 2023.

8. The impugned order dated January 30, 2023 was obtained by the petitioners by placing the LLP Agreement dated March 19, 2021, first supplementary agreement dated June 21, 2022 and second supplementary agreement dated June 23, 2022.
9. Originally, Omkar Tradecomm LLP was incorporated with two designated partners being respondent nos. 4 and 5 (hereinafter referred to as 'founding partners') who made an initial capital contribution of

Rupees 50,000/- each. Now, basis the first supplementary agreement, the counsel on behalf of the petitioners had submitted that the petitioner nos. 2, 3, 4 and 5 as well as respondents nos. 3 and 6 were inducted as partners in the said partnership firm and respondent no. 5 had retired from the said partnership firm.

10. Similarly, basis the second supplementary agreement, it was submitted by the counsel that the respondent no. 4 retired from the said partnership firm. Therefore, as per the counsel on behalf of the petitioners, the partnership firm being petitioner no. 1 now constituted of petitioner nos. 2, 3, 4 and 5 as well as respondent nos. 3 and 6 as partners (hereinafter also referred to as 'incoming partners') wherein the capital contribution and profit/loss share of each partner was mutually proportioned to approximately 16.67 percent.
11. Given the nature of urgency and the submission that all the petitioners are partners in the said partnership firm, an *ex-parte* interim relief dated January 30, 2023 was granted in their favour by this Court.
12. However, on careful perusal of the aforementioned supplementary agreements, it appears that the stamp papers on which the said agreements were executed were purchased way back on August 26, 2021. While this is not unlawful per se but at the same time it is undeniably odd that crucial documents such as supplementary agreements modifying the partnership composition itself were executed

on stamp papers which were bought more than nine months back from date.

13. The learned counsel on behalf of the applicants submitted that pursuant to negotiations between the parties, it was agreed that the petitioner no. 2 to 5, respondent no. 3 and the proforma respondent no. 6 would acquire the stake of the founding partners being respondent nos. 4 and 5 in the said partnership firm by returning the capital contribution made by the said partners.
14. It was also agreed between the parties that the incoming partners would arrange for funds towards meeting the liabilities of the existing creditors of the said partnership firm. Therefore, the said supplementary agreements dated June 21, 2022 and June 23, 2022, for admission of new partners and removal of existing partners, were executed 'undated' sometime in the month of August, 2021 by petitioner nos. 2 to 5 and the respondent no. 3 along with respondent nos. 4 and 5. The undated agreement was unsigned by proforma respondent no. 6.
15. On failure of the incoming partners to act as per the discussions amongst the parties, the designated partners intimated, by way of letter dated October 28, 2021, petitioner nos. 2 to 5 and respondent no. 3 and proforma respondent no. 6 that the undated agreement signed

between the parties stood cancelled for want of receipt of consideration from the incoming partners.

16. Therefore, the supplementary agreements dated June 21, 2022 and June 23, 2022 could not have been executed by the parties as the same stood terminated way back in October, 2021 by the founding partners themselves. Shockingly, such a significant letter was suppressed by the counsel on behalf of the petitioners while obtaining *ex-parte* interim relief dated January 30, 2023.
17. It becomes further clear to me that the said supplementary agreements relied upon by the petitioners were 'undated' in the first place as the second supplementary agreement dated June 23, 2022 shows blank date against the 'first supplementary to the principal agreement' in Recital B. In addition to this, absence of any proof evidencing proportionate capital contribution by the incoming partners directly contravened not only Clause 2 of the said agreements but also Section 33 of the Limited Liability Partnership Act, 2008. That being the case, the argument put forth by the applicants that the said agreements were indeed prepared 'undated' stands sufficiently corroborated.
18. In any event, the petitioners in their affidavit-in-opposition to this interlocutory application have admitted that the said supplementary agreements were undated and were acted upon by the parties at a later

stage. The relevant portion from the said affidavit-in-opposition has been extracted below :-

8.I say that the respondent nos. 1 and 2 are trying to take advantage of an omission in dating the 1st and the 2nd supplementary agreement which were duly executed by and between the parties.....I deny and dispute that the undated documents were not acted upon by petitioner nos. 2 to 5 or the respondent no. 5, as alleged at all.....”

19. Moving on, the counsel on behalf of the applicants submitted that in March, 2022, the founding partners approached the applicants, being respondent nos. 1 and 2 to arrange funds for the said partnership firm. Thereafter, fresh supplementary agreements were entered into between the applicants and the founding partners that is respondent nos. 4 and 5. By way of first supplementary agreement dated March 12, 2022, resignation of respondent no. 5 was recorded and respondent no. 2 was introduced as a designated partner, and by way of second supplementary agreement dated March 14, 2022, resignation of respondent no. 4 was recorded and respondent no. 1 was introduced as a designated partner.

20. The above submission is evidenced by the fact that the applicants provided Form 9 (consent to act as designated partner) to the petitioner firm on March 11, 2023. Similarly, Form 13 (notice of cessation by erstwhile designated partner to the other designated partner) was

issued to the other designated partners on March 12, 2022 and March 14, 2022 by respondent nos. 5 and 4 respectively.

21. Further, Forms 3 (information with regard to LLP agreement and changes, if any) and 4 (notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner) were filed by the petitioner firm with the RoC on May 12, 2022 and June 30, 2022 respectively for respondent nos. 2 and 1 (hereinafter referred to as the 'new partners').
22. Moreover, by way of letter dated March 14, 2022, the outgoing partner being respondent no. 4 handed over all the documents of the said partnership firm to the new partners being respondent nos. 2 and 1. It is to be noted here that the original copy of the non-executed undated first and second supplementary agreements which were retained by respondent nos. 4 and 5 were also handed over to the new partners.
23. Therefore, it becomes abundantly clear that the purported supplementary agreements dated June 21, 2022 and June 23, 2022 which were annexed with the Section 9 application and basis which the impugned interim order was obtained could never have been executed between the parties as the original copy was retained by the founding partners and was transferred along with other miscellaneous documents to the new partners in March, 2022.

24. The counsel on behalf of the applicants submitted that the Rupees 50,000/- was credited to the partnership firm on March 15, 2022 by each of the applicants as their initial capital contribution and the same was remitted to the founding partners being respondent nos. 5 and 4 on June 7, 2022 and June 8, 2022 respectively. Further, bank records show that funds to an extent of Rupees 6,29,41,310/- were arranged from Ganapati Advisory Private Limited at the instance of the new partners in a period of ten days starting from June 21, 2022 to June 29, 2022 and the same was utilised to clear debts due to Futuristic Steel Private Limited. Infact, basis the request letters issued by the partnership firm on April 15, 2022 and May 10, 2022, the firm was intimated by Ganapati Advisory Private Limited regarding the confirmation to provide financial assistance upto an amount of Rupees 8,00,00,000/- as per terms and conditions mentioned in their letter dated June 06, 2022.
25. I am of the firm opinion that had the supplementary agreements dated June 21, 2022 and June 23, 2022 been actually executed as claimed and submitted by learned counsels on behalf of the petitioners, there would have no dearth of evidence such as RoC filings, bank statements, letters, among others to substantiate and corroborate the genuineness of the said supplementary agreements. Accordingly, it is to no surprise that the MCA master data reflects respondent nos. 1 and 2 as the partners of the petitioner no.1 partnership firm beginning March 14,

2023 and March 12, 2023 respectively. Quite logically, the founding partners could not have signed the said supplementary agreements in June, 2022 as they had already tendered their resignations in March, 2022, and the RoC was intimated about the changes in partnership composition.

26. Lastly, another aspect which I would like to opine is on the police complaint dated August 12, 2022 which Mr. Bag, learned counsel appearing on behalf of the petitioners claimed to have submitted to Bowbazar Police Station, Kolkata accusing respondent nos. 1 to 5 of having committed forgery, cheating, criminal intimidation, among others by executing supplementary documents dated March 12, 2022 and March 14, 2022. It is to be noted here that the said complaint bears no stamp of the concerned police station having ever received the said complaint from the petitioners which raises question on the authenticity of such complaint being ever made to the police authorities. Even then, the four months delay, after learning about the March 2022 supplementary agreements, in approaching this Court is inexplicable.

27. It is axiomatic that any petitioner has to approach the Court with 'clean hands' based on good faith and has to produce before the Court all material facts that are relevant for adjudication of the said matter. The principle of *uberrima fides* – abundant good faith – as stated in ***The King -v- The General Commissioners for the purpose of the Income***

Tax Acts for the District of Kensington reported in **(1917) 1 KB 486** applies in the present case. A litigant, who does not bring on record the relevant true facts before the Court, does not deserve to get any relief from the Court.

28. As authored by Ruma Pal, J. in ***S.J.S. Business Enterprises (P) Ltd.- v- State of Bihar and others*** reported in **(2004) 7 SCC 166**, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The relevant portion has been extracted below:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken.....”

29. In ***Oswal Fats & Oils Ltd. -v- Additional Commissioner (Administration), Bareilly Division, Bareilly and others*** reported in **(2010) 4 SCC 728**, the Hon’ble Apex Court held that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the Court to bring out all the facts and

refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.

30. In a well-known Calcutta High Court case in **Chittaranjan Das -v- Durgapore Project Ltd. & Ors.** reported in **(1994) 99 CWN 897** [Coram: Satya Brata Sinha and Basudeva Panigrahi, JJ.], the Court observed:

"64. Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation. It is now well known that a fraud vitiates all solemn acts."

31. In **Sciemed Overseas Inc. -v- Boc India Limited and others** reported in **(2016) 3 SCC 70**, the Hon'ble Apex Court referred referring to the judgment of **Muthu Karuppan -v- Parithi Ilamvazhuthi** reported in **2011 5 SCC 496** in which it was held that the filing of a false affidavit should be curbed effectively with a strong hand. The Supreme Court noted that though the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of the judicial proceedings. The relevant paragraph has been extracted below :-

"Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the

interest of justice to punish the delinquent, but there must be a prima facie case of “deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.”

32. From the materials on record and discussions above, there remains absolutely no doubt that the dates were minted on the supplementary agreements at a later stage and therefore, the said agreements annexed by the petitioners are forged. By concealing the cancellation letter dated October 28, 2021, the petitioners have suppressed the material facts in obtaining the impugned interim order dated January 30, 2023. As petitioner no. 1 is a business entity represented by its partners and cannot plead on its own, I am constrained to observe that the petitioner nos. 2 to 5 did not approach this Court with clean hands, mind or heart and have engaged in abuse of the process of Court by forging partnership documents to obtain the interim relief dated January 30, 2022. I have no hesitation in saying that the doors of justice would be closed for litigants whose case is based on falsehood, fraudulent concealment or suppression of material facts. Anyone who approaches the Court must give full and fair disclosure of all the materials which clearly in this case was contravened with impunity by the petitioners.

33. The petitioner nos. 2 to 5 have not only made an unsuccessful attempt to establish that they are the partners in the petitioner no.1 firm but have also failed to show that any joint property as claimed by them was

transferred to the said partnership firm which would have otherwise entitled them to seek relief against the said partnership firm and its partners. The petitioner nos. 2 to 5 have no *locus standi* to file any application on behalf of petitioner no. 1 firm as they never enjoyed any relationship whatsoever with the said firm which disentitled them, in the first place itself, to obtain any favourable relief, and to continue enjoying any such relief.

34. In the light of above facts, this interlocutory application being G.A. No. 1 of 2023 is allowed and the impugned order dated January 30, 2023 in A.P. No. 851 of 2022 is recalled.
35. Given the fact that the petitioner nos. 2 to 5 have filed false affidavits, forged documents and suppressed materials facts, this Court deems it fit to take necessary steps to preserve the sanctity of justice dispensation and judicial administration.
36. Accordingly, the main application being A.P. No. 851 of 2022 along with interlocutory application being G.A. No. 1 of 2023 is disposed of imposing cost of Rs. 50,000/- (Rupees Fifty Thousand Only) on each of the petitioner nos. 2 to 5 for abusing the process of the Court.

Out of the said cost amount, Rs. 20,000/- (Rupees Twenty Thousand only) shall be paid to respondent nos. 1 and 2 each. The remaining cost amount of Rs. 10,000/- (Rupees Ten Thousand only) shall be deposited

by each of petitioner nos. 2 to 5 with the West Bengal State Legal Services Authority, Kolkata.

37. The costs imposed shall be paid within four weeks from the date of this order failing which the Registrar Original Side of this Court shall proceed to initiate the proceedings to recover the entire cost amount, as arrears of land revenue, in accordance with law. Let a copy of this order be served to the Registrar Original Side for necessary compliance.
38. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J)

Later

Counsel on behalf of the petitioners prayed for stay of the order passed by this court. Prayer considered. I see no reason to stay the order passed by me. Accordingly, the prayer for stay is rejected.

(Shekhar B. Saraf, J)