IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 69 OF 2021
WITH
INTERIM APPLICATION NO. 2379 OF 2021
IN
COMMERCIAL SUMMARY SUIT NO. 95 OF 2021

Nelson Thomas D'Silva & anr. .. Applicants/ Plaintiffs.

Vs.

Ventura Securities Ltd & anr. .. Defendants

Mr Ankit Lohia, *with Yasmin Bhansali, Prach Singh & Tina Surela i/b. Yasmin Bhansali & Co.,for the Applicants/Plaintiffs.*

Mr Simil Purohit, *with Vishal Pattabiraman & AW Mukhri i/b Purohit & Co., for the Defendant No.1.*

CORAM : KAMAL KHATA, J.
RESERVED ON : 2ND AUGUST, 2023.
PRONOUNCED ON : 21ST SEPTEMBER,2023.

P.C. :

1. This is another unfortunate case of fraud committed by one Ameet Savant ("Savant" for short) (Defendant No.2) who had taken up a franchise of Ventura Securities Limited ("VSL" for short) (Defendant No.1) at Goa. The Court of Mr. Justice N.J.Jamadar had adjudicated a similar case of one

Carl Pinto[1] against VSL where he had granted unconditional leave to VSL.

2. In this case, the Plaintiffs Nos. 1 and 2 (“D’Silvas” for short) a couple from Goa have filed this summary suit seeking recovery of a sum of ₹ 2,25,06,985/- from VSL as per the particulars of claim at Exh. “VV” at page162 of the plaint.

3. Facts leading to filing of this summary suit are thus. Ameet Savant was a branch manager of HDFC Bank at Mapusa, North Goa. The D’Silvas’ and Savant co-incidentally were members of Lodge Haig Brown, a Charitable Association operating from Clube De Goa, at Porvorim, North Goa. Savant represented to the D’Silvas’ that he had left the bank and taken up the franchise of VSL a registered corporate member of the Bombay Stock Exchange, Limited and National Stock Exchange India Limited carrying on business of brokerage at Vikhroli, Mumbai and who had various branches across India.

4. Savant convinced the D’Silvas’ to invest in the “Index Option Fund/Derivatives” which had an in built stop loss feature at 4% of the amount invested and promised them

1 Carl Pinto De Andrade & Ors. vs Ventura Securities Ltd. (2021) 3 AIR Bom R 65

guaranteed returns on the capital invested. On these representations the D'Silvas' collectively invested a principal sum of ₹ 2,40,00,000/- i.e. ₹ 1,50,00,000/- in the name of Nelson and ₹ 90,00,000/- in the name of Catherine. The D'Silvas' received returns from time to time totalling to ₹ 23 lakhs on their investments which are set out in statement at Exhibit I at page 61 of the plaint.

5. The D'Silvas' decided to redeem their funds and thus raised a redemption request on 29th March 2019 which was not heeded to by Savant. They thus decided to directly contact VSL. Upon establishing the contact, they discovered that Savant was in the custody of Economic Offences Wing for indulging in a Ponzi Scheme. The D'Silvas' blame VSL for not having suspended the License of Savant and allowing him to lure unsuspecting clients in VSL's name to part with their hard earned funds. This summary suit is thus for the recovery of these investments done by the D'Silvas'.

6. Mr. Lohia for the D'Silvas' carefully led me through the documents which led the D'Silvas' to believe that their funds were invested with the VSL through Savant. He drew my attention to a copy of the statement dated 5th July 2018[2] at Exhibit 'E' and 17th August 2018[3] at Exhibit 'F', the acknowledgement dated 3rd April 2019 to the D'Silvas' bearing the rubber stamp of VSL and signature of Savant confirming the value of their balance investment in the Index Options as well as statements[4] showing their investments. Besides these, he also pointed out that the D'Silvas' had filled the KYC document and were issued a Welcome Letter and Client Master List with incorrect details[5] that were subsequently corrected[6].

7. Mr. Lohia fairly pointed out that the D'Silvas' have filed proceedings before SAT challenging the Order passed by SEBI and NSE on their complaint against VSL which are reserved for orders.

8. He urged that VSL ought to be asked to deposit the amount and disclose their assets at this stage as prayed in clauses (a) and (c) the IA.

9. Mr. Purohit however took pains to bring to my attention

2 Ex.E at Pg 57 of Plaint
3 Ex.F at Pg 58 of Plaint
4 Ex M & N at Pg 66 & 67 of the Plaint
5 Ex R at Pg 75 of the Plaint
6 Ex Z at Pg 88 of the Plaint

that the D'Silvas' have a deep knowledge of the financial sector as Catherine had retired from Sunlife Financial, Canada and the account with Savant was not the only one, they also had accounts with Karvy and LKP Securities[7]. The cheques were infact issued in the name of "Ventura" which is the account of Savant and not VSL. Not a penny was received by VSL. There was no contract between VSL and the D'Silvas' for their investments.

10. The D'Silvas' had earlier alleged that the money was invested with VSL but after receiving the reply turned around to allege that the money given to Savant eventually went to VSL. This alone according to him entitles VSL for unconditional leave.

11. He submitted that there are no scrips or funds in the National Stock Exchange or Bombay Stock Exchange by the name 'Index Option Funds'. He urged that if it was an investment in equity markets, there could not have been a guaranteed return as is common knowledge. On the other hand if it was a mutual fund then it had to be one listed and would have received a dividend thereon as per its

7 Ex Y at Pg 87 of the Plaint.

performance or assurance. However, it is pertinent to note that the D'Silvas' do not dispute the adhoc payments received from time to time and consequently had knowledge that they had invested in the "Stock Market" through Savant. Consequently the D'Silvas' would neither be entitled to its investments in its entirety nor would they be entitled to any interest on the principal sum invested.

12. He urged that though Catherine D'Silva had executed a Member Client Agreement with VSL, Nelson D'Silva had not. Thus two things that emerged were D'Silvas' being aware that executing a Member Client Agreement with VSL was a pre-requisite and that the name with which VSL operated was not "Ventura". He submitted that the Welcome Kit[8] along with KYC documents sent to Catherine clearly evinces the 'Dos' and 'Don'ts' while trading with VSL more particularly the cheques were to be issued only in the name of stock broker being VSL and not in the name of the sub-broker. He thus urged that D'Silvas' could not feign ignorance about not knowing the name in which cheques had to be issued and the fact that they did clearly evinces

8 Annexed at Ex 2 Pg 68 to 141 to Additional Affidavit in Support of SJ

that they invested with Savant consciously.

13. In view of the above, Mr. Purohit submitted that the contention of D'Silvas' that fund statements[9] evince acknowledgements by VSL is baseless in as much as the same are evidently forged and fabricated. Moreover the reliance on Authorized Person Agreement is negatived since the Agreement itself prohibits Savant from issuing any document on behalf of VSL.

14. According to him, if there was a claim the D'Silvas' had, then it would be against Savant and not them. Merely because Savant had taken their franchise did not make them liable for the money paid to him.

15. Mr. Purohit relied upon the following judgements in support of his contentions.

a. ***Carl Pinto De Andrade v. Ventura Securities Ltd.,***[10]

b. ***Asmi Jewellery India Ltd. v. Godrej Consumer Products Ltd.,***[11]

c. ***State Bank of Hyderabad v Rabo Bank***[12]

d. ***Sunil Enterprises v SBI Commercial & International***

9 Ex.E to H at Pg Nos. 57 to 60 of the Plaint

10 (2021) 3 AIR Bom R 65

11 (2015) SCC OnLine Bom 6299 & (2016) 1 Mah LJ 395

12 (2015) 10 SCC 521

Bank Ltd.[13]

16. Having duly considered the arguments of learned counsel, it would be profitable to compare the present case with that of ***Carl Pinto***. It is evident that Savant had used the same modus operandi and collected the money from the D'Silvas' for investing in Index Option Funds. Whilst in the case of ***Carl Pinto (supra)*** a fixed return of 2% per month was assured with a lock - in period of 6 months, the D'Silvas' lock - in period was only 30 days. Pinto received a 2% return on investment from August 2016 to January 2019 whilst D'Silvas' received adhoc returns from time to time. Whilst Savant's terminal was operational in 2016 when Pinto invested, Savant conducted his transaction through VSL as his terminal was shut since April 2017. In both cases VSL has contended that there was no privity of contract.

17. However, in the present case Catherine D'Silva did have a demat account with VSL. However, the money was received in the name of "Ventura" an account owned by Savant and not VSL. There is evidently no privity of contract between the D'Silvas' and VSL with regard to the investment of

13 (1998) 5 SCC 354

₹2,40,00,000/-. The holding of demat account with VSL cannot be linked with the investments made through Savant who held a franchise of VSL to establish privity of contract with VSL. The two are separate and distinct contracts. The documents relied upon by D'Silvas' to establish the privity are disputed by VSL and on careful examination I believe that they are fabricated by Savant.

18. I am satisfied that the present case clearly draws the same proposition of law as explained by the Apex Court in ***Santosh Kumar vs Bhai Mool Singh***[14]***, Milkhiram (India) (P) Ltd. vs Chamanlal Bros.***[15]***, Mechelec Engineers & Manufacturers v Basic Equipment Corporation.***[16] ***State Bank of Hyderabad v RABO Bank***[17] which may be summed up thus

a. If the Defendant satisfies the court that he has a good defence to the claim on merits, the Defendant is entitled to unconditional leave to defend.

b. If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not

14 AIR 1958 SC 321 : 1958 SCR 1211 : (1958) 1 MLJ (SC) 159

15 AIR 1965 SC 1698

16 AIR 1977 SC 577 (1976) 4 SCC 687

17 (2015) 10 SCC 521

a possibly good defence, the Defendant is entitled to unconditional leave to defend.

c. If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the Affidavit discloses that at the trial he may be able to establish a defence to the Plaintiff's claim, the Court may impose conditions at the time of granting leave to defend – the condition being as to time of trial or mode of trial but not as to payment into court or furnishing security.

d. If the Defendant has no defence, or if the defence is illusory or sham or practically moonshine, the Defendant is not entitled to leave to defend.

e. If the Defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the Defendant by enabling him to try to prove a defence but at the same time protect the Plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

19. The question that this case raises in my view is the same as that in ***Carl Pinto (supra)*** i.e. "Whether the acts of Ameet Savant (being the agent) were within the scope of the authority given by VSL."

20. With Mr. Lohia's articulated arguments, and at the first glance of the documents it would be difficult to disbelieve that the investments were not carried out through VSL. But with Mr. Purohit's nuanced arguments I am convinced that VSL has a good defence to the claim on merits. It has raised triable issues as elaborately urged by Mr. Purohit.

21. **Thus an unconditional leave to defend is granted to VSL (Defendant No.1.)**

22. Savant (Defendant No.2) has not entered an appearance and the Plaintiff would have been entitled to a decree as per the provisions of Order XXXVII Rule 2(3). However, as per Mr. Purohit's submissions as to the nature of investments made not being certain, Savant may have a say. It is rather clear that Savant had accepted the money for investments from D'Silvas' and had also issued statements dated 25th March 2019 showing their investments. These were sought to be redeemed through a request so placed with Savant.

23. **Thus I am inclined to grant a conditional order against Savant (Defendant No.2).** He shall be entitled to defend on deposit of a sum of ₹ 2,25,06,985 as per Particulars of claim at Exhibit "VV" (Page162 of the Plaint) within a period of four weeks of this order.

24. Summons for Judgement and IA is disposed of in the aforesaid terms.

25. All parties to act on the authenticated copy of the order.

26. List the matter on 16th October 2023 for 'directions'.

[KAMAL KHATA, J.]