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

**Present:**
**The Hon'ble Justice Sugato Majumdar**

CS/475/1990
IA NO: GA/2/2002(Old No:GA/4107/2002)

LAKTARIA LTD
VS
LAKTARIA (INDIA) P. LTD & ORS.

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| For the Plaintiff | : | Mr. Sarathi Dasgupta, Adv.<br>Mr. Pratik Ghose, Adv.<br>Mr. Avishek Roy Chowdhury, Adv. |
| For the Defendant | : | Mr. Reetobrota Mitra, Adv.<br>Mr. Kuldip Mallik, Adv.<br>Ms. Suchishmita Dutta, Adv.<br>Ms. Atasi Sarkar, Adv. |
| Hearing concluded on | : | 06/09/2024 |
| **Judgment on** | **:** | **11/09/2024** |

**Sugato Majumdar, J.:**

This is a suit for declaration and injunction.

The plaint case may be summarized as follow:

a) The Plaintiff is a company incorporated in the United Kingdom under provisions of the English Companies Act, 1948. The principal place of business of the Plaintiff in India was at premises number 21, R.N. Mukherjee Road, Calcutta – 700001. The Plaintiff also owned and is still owner of the tea estate named "Gayabari and Millikthong Tea Estate", situated in the district of Darjeeling. The Plaintiff carried on business of planting and manufacturing tea.

b) By a power of attorney dated 15/12/1975, the Plaintiff appointed one Indian national Hemendra Kumar Bhagwanji, since deceased, to carry on, manage, conduct and supervise the business of tea estate on behalf of the Plaintiff, in India.

c) By and under the provisions of the Foreign Exchange Regulation Act, 1973, the Reserve Bank of India, the Defendant No.10, granted permission to the Plaintiff to carry on the existing business on terms and conditions contained in the letter dated 21/06/1976. One of the terms and conditions was that the Indian business should be taken over by an Indian company, to be formed for this purpose with a non-resident interest in equity capital not exceeding 74%, within a period of 2 years from the date of receiving the said letter. In view of this letter, the deceased Hemendra Kumar Bhagwanji suggested the Plaintiff to form an Indian company. This occasioned formation of the Defendant No.1, M/S Laktaria (India) Pvt. Ltd. having registered office at 21, R.N. Mukherjee Road, Kolkata – 700001, within jurisdiction of this Court. This private limited company was incorporated on 25/11/1976 under the provisions of the Companies' Act, 1956 with authorized share capital of Rs.10,00,000/- divided into 1000 equity shares of Rs.1000/- each.

d) On 23/11/1977 an application was made on behalf of the Plaintiff and the Defendant No.1 in this Court under sections 391(1) and 399 of the Companies Act, 1956 which was registered as C.A. 399 of 1977. The said application was made by the deceased as constituted attorney of the Plaintiff. A scheme was framed by this Court directing that the Defendant No.1 would issue at par shares face value of Rs.10,52,000/- divided into 1052 equity shares of Rs.1000/- each in the capital of the Defendant No.1 credited fully paid , to be allotted to the shareholders of the Plaintiff or their nominees; the Defendant No.1 would retain in its books of accounts Rs.20,37,662/- or such other amount as may be directed by the Central Government or the Reserve Bank of India, as unsecured loan, free from interest, from the Plaintiff , payable by the Defendant No.1 to the former in equal installments of Rs.2,00,000/- after deducting therefrom liabilities; such installments would be payable within the time frame, as was fixed.

e) The deceased assured the Plaintiff that steps would be taken to implement the aforesaid scheme. The Plaintiff reposed trust on the deceased.

f) It came to the knowledge of the Plaintiff that the Defendant No.1 made certain representations to the Defendant No.10, the Reserve Bank of India, that M/S Darman Ltd. a British company held shares of the Plaintiff and further that the said M/S Darman Ltd. or the Plaintiff did not wish to get its capital repatriated out of India but would like to keep the same invested in India; that shares of the Defendant No.1 should be allotted to the Indian residents only to the extent that the deceased would get 50% shares, the Defendant No.2 would get 41% share and the Defendant No.3 would get 9% shares; that the total value of consideration would be reduced to Rs.15,00,000/- from Rs.30,00,000/-; that the Plaintiff would accept the revised total consideration of Rs.15,00,000/- apportioned between equity and loan in the ratio of Rs.5,00,000/- and Rs.10,00,000/- and repayment of the loan in five equal installments. Representation of the deceased came to the knowledge of the Plaintiff much later in terms of a letter dated 18/12/1978.

g) On the basis of representation and because of faith reposed on the deceased, the Plaintiff, in terms of the letter dated 09/12/1979 purported to accept the proposal of the deceased of transfer of the entire undertaking and business of the Plaintiff in India to the Defendant No.1 for a total consideration of Rs.15,00,000/- on various terms and conditions. Purported to act on behalf of the Plaintiff and the Defendant No.1, the deceased made an application to the Company Court of this Court for modification of the Scheme of Arrangement. Necessary orders were passed.

h) The deceased expired in the month of July, 1981 leaving behind the Defendant No.2, 3 & 4 as legal heirs and representatives.

i) It is alleged in the plaint that the deceased and the Defendant No.2 & 3, in collusion and conspiracy with each other, transferred the entire business undertaking of the Plaintiff along with assets and the tea estate to the Defendant No.1 details of which are set out in the plaint. The plaint also set out particulars of shareholdings of the Defendant No.1.

Now the present suit has been filed by the Plaintiff praying for declaratory decrees, decrees for permanent injunctions, mandatory injunction along with other reliefs, in the context of allegations, as set out in the plaint.

The Defendant No.1 – 7 and 9 contested the suit by filling written statement refuting all the allegations contained in the plaint. The answering defendants also challenged the maintainability of the suit on various grounds. The answering defendants also alleged suppression of facts in the plaint. The answering defendants also controverted the factual matrix of the plaint on different factual aspects and legal propositions.

On the basis of rival pleadings followings issues were framed:

1. *Whether the defendant nos. 1 to 9 and/or their predecessors-in-interest and each of them have perpetrated fraud upon the plaintiff, as pleaded at, inter alia, paragraph 18 of the plaint?*

2. *Whether the defendant nos. 1 to 9 and/or their predecessors-in-interest and each of them have made false and fraudulent representations to the defendant no.10, as pleaded at, inter alia, at paragraph 12 and 13 of the plaint?*

3. *Whether the defendant no.10 was induced to issue the letter dated 9th February 1979 and/or the permission granted therein pursuant to the false and fraudulent representation being made to the defendant no.10?*

4. *Whether the Defendant nos.1 to 9 and/or their predecessors-in-interest and each of them are liable for gross material suppression qua the institution and carriage of the Company application No.271 of 1997 before this Hon'ble Court?*

5. *Whether the plaintiff is liable for any suppression as alleged in the written statement filed by the defendant nos.1-9?*

6. *Whether the order dated 6th December 1979 passed by this Hon'ble Court in Company Application being C.A No. 279 of 1979 is illegal, null and void and of no effect and the said order has been acted upon?*

7. *Whether the plaintiff came to know of the acts and omissions impugned in the suit only in March, 1989?*

8. *Whether the transactions challenged in the instant suit are barred by the laws of limitation?*

9. *Whether the suit is maintainable in law?*

10. *Whether cause of action, if any, has arisen within jurisdiction of this Hon'ble court?*

Although opportunities were given, Plaintiff did not adduce any evidence whether oral or documentary.

The Defendant also did not adduce any evidence.

All the issues are taken up together.

Issue No. 1 is whether Defendant no. 1 to 9 or their predecessors-in-interest, in particular, by late Hemendra Kumar Bhagwanji perpetrated fraud upon the Plaintiff. Issue no. 2 and 3 also invite this Court to consider the question of false, falsity, fraudulent and misrepresentation as well as perpetration of fraud on the Plaintiff. Issue no. 4 and 5 demands the adjudication on gross material suppression, *qua* the institution and carriage of company application no. 271 of 1997 before this Hon'ble Court.

There was no admission of the allegations of fraud, false representation, fraudulent representation or gross material suppression of fact in the written statement. It is not denied by the answering Defendant that Company Application no. 271 of 1997 was filed and proceeded with as well as reached finality in this Court. Transfer of shares is also not denied by the uncertain Defendants. What are challenged are the allegations of falsity, false representation, practice of fraud and material suppression of facts. These are not only question of law but the questions of facts. Adducing all documentary evidence was needed; unless documents in question are adduced before the Court, this Court cannot consider and adjudicate upon the documents. This Court cannot consider these documents, unless adduced as evidence, for the purpose of adjudication on the nature, effect or relief in respect of these documents. Similarly oral evidence along with documentary evidence is also necessary to consider whether any fraud had been practiced or not, as alleged. Factual arrays must be proved with evidence. In absence of any evidence or admission allegations cannot be considered, adjudicated upon. Burden of proof is not discharged by the Plaintiff.

A question of law comes up, in this context, as argued by Mr. Mitra, the Learned Counsel for the Defendant, when this Court disposed of the Company Application no. 271 of 1997. The said order cannot be challenged by filing a suit.

I agree with this submission and contention. The Plaintiff cannot seek for a declaration that order dated 6th December, 1979 passed in Company Application being CA no. 279 of 1979 as null and void after lapse of 11 years. A declaratory decree is clearly barred.

The Plaintiff has also sought for declaration in respect of certain documents none of these documents are adduced in evidence. In fact, not a single piece of document was adduced in evidence enabling this Court to consider these documents for the purpose of the prayers made in the plaint.

In nutshell, in absence of documentary and oral evidence and for reasons stated above, the Plaintiff failed to discharge the burden of proof and the Plaintiff's case is not proved and is liable to be dismissed.

In view of the fact the suit is finally disposed of without any relief granted, the interlocutory applications are also disposed of.

It is ordered, therefore, that the instant suit should be dismissed on merit along with the pending applications.

The instant suit is disposed of accordingly.

Let the decree be drawn up.

**(Sugato Majumdar, J.)**