

OCD 7

ORDER SHEET
SCO/1/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

AL-AMIN GARMENTS HAAT PRIVATE LIMITED
VS
MR. JITENDRA JAIN & ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 1st July, 2024.

Appearance:
Mr. Rajeev Kr. Jain, Adv.
Mr. Sounak Sengupta, Adv.
Ms. Sreyasi Chatterjee, Adv.
...for the plaintiff

The Court: The present application under Section 340 of the Code of Criminal Procedure is directed against the alleged act of fraud committed by the respondents.

The respondent, namely, a partnership firm by the name of COSMIC MAPL JV, was represented all along by its partners, one Jitendra Jain and one Saleque Mehmood, in their individual capacities, as partners. The said fact is evident from the development agreement between the parties. Moreover, it was the consistent stand taken by COSMIC MAPL JV previously in an application under Section 9 of the Arbitration and Conciliation Act, 1996 taken out before the concerned District Judge, in a challenge against the same under Section 37 of the said Act and a connected stay application where affidavits were affirmed by

the partners in their individual capacities to represent the said COSMIC MAPL JV, as well as in an application under Section 11 of the 1996 Act filed by the respondents, along with the application under the same provision filed by the present petitioner.

Such consistent stand, however, was altered in a paradigm shift in the counter statement and the counter-claim filed by the respondent-firm before the learned Arbitrator. Learned counsel for the petitioner places particular reliance on paragraph no.7(i) of the said counter statement where in no uncertain terms, the respondent COSMIC MAPL JV stated that it carries on business as a partnership firm “through its partners, Cosmic Dealers Pvt. Ltd. and Mahmood Associates Pvt. Ltd. represented by its respective Directors namely, Mr. Jitendra Jain and Mr. Saleque Mehmood.”

It is, thus, argued that in the said counter statement and in the subsequent stand taken by the respondent, it has been sought to be projected before the learned Arbitrator that the said COSMIC Dealers was represented by two persons in their capacities as Directors of other juristic entities whereas all alone till then, it was the common refrain in all the pleadings and the affidavits affirmed on behalf of the said firm that it was represented by individuals as its partners.

It is vociferously argued by learned counsel for the petitioner that the same amounts to fraud being committed not only upon the present petitioner but also before this Court, the learned District Judge as well as the learned Arbitrator at the relevant points of time.

It is argued that such blatant fraud ought to be struck down and steps taken immediately for initiating enquiry under the appropriate provisions of the

Indian Penal Code under the power conferred on this Court by Section 340 of the Code of Criminal Procedure.

Learned counsel places reliance on the judgment of *Dalip Singh Vs. State of Uttar Pradesh and Others* reported at (2010) 2 SCC 114. By quoting certain paragraphs therefrom it is pointed out that the Supreme Court highlighted that for many centuries Indian society cherished two basic values of life, that is, “satya” (truth) and “ahimsa” (non-violence). However, post-Independence, a particular creed of litigants has cropped up who shamelessly resort to falsehood and unethical means for achieving their goals. The Supreme Court held that in order to meet the challenge posed by this new creed, the Court shall, from time to time, evolve new rules and it is now well-established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final. On such premise, the Hon’ble Supreme Court proceeded to dismiss the challenge preferred by such unscrupulous litigant in the perception of the Supreme Court in the said case.

Upon a thorough scrutiny of the materials on record in the case at hand, I find that at two particular periods of time, pre-counter claim and post-counter claim, the respondent-firm has taken a diametrically opposite stands insofar as the composition of the said firm is concerned.

Whereas the previous stand was that the individuals concerned, that is, the said Jitendra jain and Saleque Mehmood had acted as partners in their individual capacities, which is also apparently reflected from the development agreement, subsequently, they have taken a stand that they were acting merely in the capacity of Directors of other juristic entities which in turn were the

partners of COSMIC Dealers Pvt. Ltd., thus creating a further layer of jural relationships between themselves and the respondent firm.

Such attempt on the part of the respondents may very well be intended to mislead the Court insofar as the capacity of its partners are concerned.

However, the cardinal fact remains even as per the allegations made today by the respondent that the respondent is a partnership firm of the same name as initially pleaded. The sub-layers of jural relationship beneath have now differ as per the averment of the respondents which may have a repercussion in the outcome of the litigation, of which there cannot be any doubt. However, the high case of impersonation has not been made out insofar as what has been changed now by the respondent is the capacity of the signatories to the partnership agreement, whereas they were described as individuals previously they are now sought to be labelled as Directors of further juristic entities which were in turn the partners.

The legal and factual complications thus created by such contradictory stands shall definitely be dealt with in appropriate fashion by the learned Arbitral Tribunal and if the matter comes to this Court on any future occasion. However, such legal wrangle now sought to be created by the respondents can at best be termed as incorrect statements in either of the versions.

However, in the opinion of this Court, the said attempt on the part of the respondents cannot be elevated to the claim of an attempt to corrupt and pollute the pure stream of justice and/or have a direct bearing on the administration of justice which has far-reaching effects.

Thus, in my opinion, the petitioner has failed to make out any case of directing an enquiry under the provision of Section 340 of the Code of Criminal

Procedure, although it is wide open for the petitioner to point out to the learned Arbitral Tribunal as well as this Court if the occasion so arises and/or any other forum, the patently contradictory stands taken insofar as the composition of the respondent-firm is concerned.

It will also be open to such forum/Courts to pass appropriate orders in such regard. Even in the cited judgment, the Supreme Court was not considering a case of issuance of directions under Section 340 of the Code of Criminal Procedure but passing appropriate directions in the appeal due to the incorrect and false stand taken by one of the parties by dismissing their challenge. Thus, similar remedy is always open to be resorted to by the petitioner also in the present case.

In such view of the matter, SCO/1/2023 is dismissed without any order as to costs.

It is reiterated that this Court has not entered into the merits of the allegations of the petitioner at all and all questions are left open to be agitated before all possible forums/Tribunals/Courts.

(SABYASACHI BHATTACHARYYA, J.)