IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.915 of 2006

1. Gayathri Holdings Pvt. Ltd.
2. K.L. Swamy ... Plaintiffs

-Vs-

1. GV Films Ltd.
2. Sujatha Estates (P) Ltd.,
3. Sujatha Films Ltd.,
4. Sujatha Productions (P) Ltd.,
5. Aruna International Pvt. Ltd.,
6. Holders of shares in M/s.GV Films Ltd., sued in a representative capacity
7. Central Bank of India Asset Recovery Cell, represented by its Manager, Chennai. *

* 7th defendant impleaded as per order dated 23.07.2007 in A. No.2472 of 2007 ...Defendants

PRAYER : PLAINT FILED UNDER VII RULE 1 OF THE C.P.C. READ WITH ORDER 4 RULE OF THE O.S. RULES prays for a judgment and decree against the defendants :-

A) For a Preliminary Decree, directing that an ACCOUNT be taken by the Court of the sums misapplied by the defendants 1 to 5 as from 30.11.87 and that the monies so found due may be realised and that defendants 1 to 5 may be ordered to pay into Court, the sums so found due and payable by them.

CONSEQUENTIALLY :-

(i) For a decree, directing the sale of the suit shares, in such manner as this Court deems appropriate, paying over the sale proceeds thereof to the 1st plaintiff and for a personal decree for MONEY against the defendants 1 to 5, for any balance that may be found due after appropriation of such sale proceeds by the 1st plaintiff;

OR ALTERNATIVELY :

(ii) In the event that such sale of the suit shares cannot be ordered or effected for any reason, for a decree for MONEY for the sums found to be due after such account is taken against the defendants 1 to 5.

B) Directing the defendants 1 to 5 to bear the costs of this suit.

For Plaintiffs	: Mr.S.R. Raghunathan
For Defendants	: Set ex-parte

JUDGMENT

The suit has been filed for rendition of accounts as prayed for in paragraph No.20(A) of the plaint. The plaintiffs have also sought for a consequential decree i) directing for the sale of the suit shares and deems appropriate for paying over the sale proceeds to the 1st plaintiff and for a personal decree for money against the defendants 1 to 5 for the dues payable by the defendants 1 to 5 or in the alternative, ii) the plaintiffs have sought that in case, the sale of the suit shares is not possible for any reason, a decree of money for the sums due and payable by the defendants 1 to 5.

2. The defendants have already been set ex-parte by this Court and the ex-parte evidence has already been recorded by the plaintiffs.

3. At the outset, the learned counsel for the plaintiffs would submit that on instructions the plaintiffs are not pressing for the prayer (A) i.e. Seeking for rendition of accounts and the plaintiffs will be satisfied, if a money decree is passed as sought for in the alternate prayer No.(ii) in the plaint of the suit.

4. The plaintiffs have entered into an agreement, dated 09.11.97 with the defendants 1 to 5. According to the plaintiffs, as per the said agreement, the defendants have agreed to sell 7,80,000/- equity shares held by the respective defendants in M/s.Shaw Wallace & Company Limited, to them and for which the plaintiffs have also paid a sum of Rs.3,80,00,000/- to the defendants and the said amount is paid to the Income Tax Department on the instructions of the defendants as the defendants owed the said amount to the Income Tax Department. According to the plaintiffs, despite having paid the sale consideration as

per the Agreement dated 09.11.1987, the defendants did not transfer the shares as per the agreement in M/s.Shaw Wallace & Company Limited in favour of the plaintiffs. According to the plaintiffs, even the 1,74,399 shares which they actually held in M/s.Shaw Wallace & Company Ltd. was not transferred to the plaintiffs as per the agreement. According to the plaintiffs, the defendants have misrepresented their actual holding of shares in M/s.Shaw Wallace & Company Limited. After misrepresenting to the plaintiffs, the defendants agreed to hand over the shares-cum-bonus and dividends at Rs.85/- per share and also agreed to purchase the shares of Shaw Wallace & Company Limited from the market and decided to fulfil their obligations under the original agreement dated 09.11.1987 (Ex.P.1) by entering into an agreement dated 16.09.1989 (Ex.P3). Under the agreement dated 16.09.1989, the defendants agreed to pay liquidated damages for the breach of contract committed by them as per the original agreement, dated 09.11.1987. Thus the amount due and payable by the defendants to the plaintiffs was crystallized under the agreement dated 16.09.1989 (Ex.P3) at Rs.18,00,00,000/-. The defendants have also promised the plaintiffs that they shall make alternate arrangements to release the shares from the

Income Tax Department and offer security for the balance amount. However according to the plaintiffs, despite several assurances given by the defendants, they failed to release the shares from the Income Tax Department. On 14.02.1990 and on 26.02.1990 (Exs.P5 and P6), the suit shares held by M/s.Coconut Groves P Ltd. and M/s.Sujatha Estates P. Ltd., which were held by the 1st defendant were offered as security to the plaintiffs, thereby authorising the plaintiffs to utilize the same at the time of exercising the right of sale in accordance with pledge. By an Affidavit of Undertaking dated 15.12.1990, Mr.G.Venkateshwaran, the Promoter of the defendants had also assured the plaintiffs that the outstanding amount due and payable to the plaintiffs will be settled and he has also acknowledged his mistakes including his misrepresentation earlier.

5. The suit shares were pledged with M/s.ING Vysya Bank for the dues of M/s.Khoday India Ltd. and therefore, the plaintiffs claim that they could not enforce the security until the release of the pledge. Mr.G.Venkateshwaran, the Promoter of the 1st defendant passed away in 2003 and the loan due to M/s.ING Vysya Bank was repaid by the plaintiffs and the suit shares were handed over to plaintiffs by M/s.ING

Vysya Bank on 25.08.2006 under Ex.P.10. Since a fraud has been played on the plaintiffs, the present suit has been filed.

6. The learned counsel for the plaintiffs would submit that though the plaintiffs have paid court fees based on a claim of Rs.21,46,26,150/-, the plaintiffs are not insisting for the entire suit claim and will be satisfied, if a decree is passed for a sum of Rs.18,00,00,000/- as crystalised under the agreement, dated 16.09.1989 (Ex.P3). The plaintiffs have also claimed that the suit is well within the period of limitation since their shares pledged with M/s.ING Vysya Bank were released only on 25.08.2006 and the suit has been filed immediately thereafter on 27.11.2006, within the period of limitation.

7. Before the learned Additional Master-IV, the plaintiffs Authorised representative Mr.K.S. Giridhar, who is the Director of the 1st plaintiff Company was examined as a witness (PW1). He has also filed a proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as Exhibits on the side of the plaintiffs.

Ex.P1 is the photocopy of the Agreement of sale of shares dated 09.11.1987.

Ex.P2 is the photocopy of the statement of account of Bank of Baroda for the month of November and December 1987.
Ex.P3 is the photocopy of the agreement, dated 16.09.1989.
Ex.P4 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 24.01.1990.
Ex.P5 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 14.02.1990.
Ex.P6 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 26.02.1990.
Ex.P7 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 28.07.1990.
Ex.P8 is the original affidavit of Mr.G.Venkateshwaran dated 15.12.1990
Ex.P9 is the original letter of deposit of shares with Ing Vysya Bank, dated 30.01.1995
Ex.P10 is the original letter of Ing Vysya Bank to the plaintiff, dated 25.08.2006.

8. As seen from the Exhibits, the 1st plaintiff had entered into an Agreement for sale of shares dated 09.11.1987 (Ex.P1) with the defendants 1 to 5. Under the said agreement (Ex.P1), the defendants have agreed to sell 7,80,000/- shares held by them with M/s.Shaw Wallace & Company Ltd., to the plaintiffs for the sale consideration of Rs.3,80,00,000/-. The plaintiffs have also paid a sum of Rs.3,80,00,000/- vide bankers cheque in favour of the Income Tax department and the bank statement of the plaintiffs for having paid the said amount has been marked as Ex.P2. The plaintiffs categorically contends in the plaint that

the defendants had misrepresented that they were holding shares in M/s.Shaw Wallace & Company Limited i.e., 7,80,000/- shares. Thereafter after coming to know that the defendants have misrepresented and entered into another agreement, dated 16.09.1989 with the defendants (Ex.P3). Under the agreement, dated 16.09.1989, the defendants have agreed to pay the liquidated damages for the breach of contract committed by them in not delivering the shares to the plaintiffs as per the agreement dated 09.11.1987 (Ex.P1). The defendants have agreed to pay a total sum of Rs.18,00,00,000/- to the plaintiffs under the agreement, dated 16.09.1989 (Ex.P3), jointly and severally. Through Ex.P4, letter dated 24.01.1990, Ex.P7, letter dated 28.07.1990, Mr.G.Venkateshwaran, the Promoter of the defendants had also promised to the plaintiffs to make alternate arrangement to release the shares from the Income Tax Department and an offer security for payment of the balance amount was also made. Through Ex.P5, letter dated 14.02.1990 and through Ex.P6, letter dated 26.02.1990, the suit shares held by the M/s.Coconut Groves P. Ltd., and M/s.Sujatha Estates P. Ltd.(2nd defendant), were offered as security authorising the plaintiffs to utilise the same at the time of exercising right of sale in accordance with pledge. Mr.G.Venkateshwaran, the Promoter of the defendants through his affidavit, dated 15.12.1990(Ex.P8) has owned up his mistakes including the misrepresentation and assured the plaintiffs that the amount so outstanding would be settled to them. The suit shares were pledged with M/s.ING Vysya Bank for the dues of M/s.Khoday India Ltd., through the letter of the plaintiffs dated 30.01.1995 (Ex.P9). The defendants have requested M/s.ING Vysya Bank to release the pledged shares to the 1st plaintiff. But however, despite the said request, M/s.ING Vysya Bank released the shares to the plaintiffs only on 25.08.2006 under Ex.P10. Immediately thereafter the plaintiffs have filed the suit on 27.11.2006. The plaintiffs have also given proper explanation in the plaint that the suit is filed within the period of limitation as the pledged shares were returned to the plaintiffs by M/s.ING Vysya Bank only on 25.08.2006. The amount due to the plaintiffs has been crystallised as seen from Ex.P3, dated 16.09.1989 and the crystalised amount is Rs.18,00,00,000/- The learned counsel for the plaintiffs at the outset had also submitted that the plaintiffs are also not insisting for a sum of Rs.21,46,26,150/- as claimed in the plaint and will be satisfied, if the crystalised amount of Rs.18,00,00,000/- as found in the agreement, dated 16.09.1989 (Ex.P3) is directed to be paid by the defendants jointly and severally to the plaintiffs.

9. This Court after giving due consideration to the pleadings and the oral and documentary evidence placed on record by the plaintiffs is of the considered view that the suit claim for a sum of Rs.18,00,00,000/- together with interest from the date of decree has been proved by the plaintiffs.

10. Accordingly, the suit is partly decreed in favour of the 1st plaintiff against the defendants 1 to 5 jointly and severally by directing them to pay the said sum together with interest at 6% p.a. from this date till the date of realisation in full. The defendants 1 to 5 are directed to pay the costs of the suit to the 1st plaintiff.

19.03.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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APPENDIX

<u>List of Witness Examined on the side of the Plaintiff:</u>

P.W.1 – Mr.*K.S.Giridhar*

S. No.	Exhibits	Description of documents
1.	P1	Ex.P1 is the photocopy of the Agreement of sale of shares dated 09.11.1987.
2.	P2	Ex.P2 is the photocopy of the statement of account of Bank of Baroda for the month of November and December 1987.
3.	P3	Ex.P3 is the photocopy of the agreement, dated 16.09.1989.
4.	P4	Ex.P4 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 24.01.1990.
5.	P5	Ex.P5 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 14.02.1990.
6.	P6	Ex.P6 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 26.02.1990.
7.	P7	Ex.P7 is the photocopy of the letter from Mr.G.Venkateshwaran to the plaintiff dated 28.07.1990.
8.	P8	Ex.P8 is the original affidavit of Mr.G.Venkateshwaran dated 15.12.1990
9.	P9	Ex.P9 is the original letter of deposit of shares with Ing Vysya Bank, dated 30.01.1995
10.	P10	Ex.P10 is the original letter of Ing Vysya Bank to the plaintiff, dated 25.08.2006.

ABDUL QUDDHOSE, J.

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