

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No.36711 OF 2014

Calcutta Stock Exchange ... Petitioner

Versus

BLB Limited ... Respondent

J U D G M E N T

Chelameswar, J.

1. This special leave petition is filed by the unsuccessful petitioner aggrieved by an order dated 03.11.2014 of the High Court of Delhi passed in OA No.11 of 2013 in CS (OS) No.272 of 2004.

2. Both the parties, the petitioner and the respondent, are companies registered under the Companies Act, 1956. The petitioner company is a “Stock Exchange” within the meaning of the expression “stock exchange” defined under Section 2(j)¹

¹ Section 2(j). “stock exchange” means –

- (a) anybody of individuals, whether incorporated or not, constituted before corporatisation and demutualization under sections 4A and 4B, or
- (b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956), whether under a scheme of corporatisation and demutualization or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in

of the Securities Contracts (Regulation) Act, 1956.

3. The respondent instituted Original Suit being C.S. (O.S.) No.272 of 2004 on the file of the High Court of Delhi praying for a decree for the recovery of an amount of Rs.11,89,86,525/- along with interest etc. In the said suit, the petitioner herein filed an Interlocutory Application No.6903 of 2012 under Order XVI Rule 1 CPC seeking to summon the record of business transactions of the respondent company (hereinafter referred to as “the plaintiff”). The said application was dismissed by the Joint Registrar of the Delhi High Court in exercise of his powers under the Delhi High Court (Original Side) Rules, 1967 by an order dated 06.12.2012.

4. Aggrieved by the order dated 06.12.2012, the petitioner herein carried the matter by way of Chamber Appeal (O.A. No.11 of 2013) under Rule 4 read with Chapter II of the Delhi High Court (Original Side) Rules, 1967 unsuccessfully. The appeal was dismissed by the impugned order dated 03.11.2014.

5. It appears, in the month of March 2001, the Stock Market all over the country had crashed and as a consequence

securities.

certain members of the defendant who were required to make payment to the defendant (petitioner) were failing to discharge their obligation to the defendant from Settlement No.2001148 onwards. The defendant as a clearing house was not in a position to make payments which it is liable to take under the System to many members including the plaintiff.²

6. According to the averments in the plaint, it appears, the petitioner fell short of Rs.28 crores approximately. Initially, the petitioner tried to collect the shortfall from all the members proportionately but realized that it was not possible, therefore, according to the plaintiff, the petitioner called a meeting of a few financially sound members of the Exchange including the plaintiff. The relevant part of the plaint reads as follows:

“Thereafter Defendant called a meeting of a few financial sound members of the Exchange including the Plaintiff wherein various options to deal with the crisis were discussed out of which one option reposed by the deponent was to reverse the transactions of Himachal Futuristic Communication Ltd. and DSQ Software of all those members, who had a net delivery position in Settlement No.2001148 of more than 1,00,000 shares. The Defendant then showed a draft letter dated 22.03.2001 to the Plaintiff and others present at separate meetings and arbitrarily accused the members including the Plaintiff of collusive transactions and informed the members present in the basis of reversal of transaction, with a draft reply from the Plaintiff to the Defendant. The Plaintiff did not acceded to this mode/option of dealing with the crisis.³”

7. Eventually, an amount of Rs.8,76,89,708/- was paid by the plaintiff which according to averments in the plaint, the plaintiff is under no legal obligation to pay. According to the

² Para 17 of the Plaint

³ Para 23 of the Plaint

plaintiff, the said amount was paid under protest. The relevant part of the plaint reads as follows:

“While issuing the second cheque of Rs.1,89,708/- dated 23.03.2001 it was made clear to the Defendant in the covering letter to the cheque that the Plaintiff is making the payment of Rs.8.76 crores under protest and subject to the conditions that the same shall be refunded to the Plaintiff, as the Plaintiff has entered into all bonafide transactions and acted within the Rules and Bye-laws of the defendant.⁴

The above payment was therefore made by the Plaintiff to tide over the payment crisis and under protest with a request to Defendant to refund the same as and when the same is recovered from the defaulting members and or out of the funds being collected in the Settlement Guarantee Fund or through any other mode.⁵”

8. It is further the case of the plaintiff that thereafter repeated requests, both oral and in writing, were made to the petitioner for refund of the said amount. Since the petitioner did not make the payment, civil suit (No.272 of 2004) came to be filed.

9. In the said suit, the petitioner herein filed Interlocutory Application No.6903 of 2012 praying as follows:

“It is, therefore, most respectfully prayed that this Hon’ble Court is prayed to:

- (a) allow the application for summoning record of the business transaction of the plaintiff company mentioned in para no.2;
- (b) pass any order and/or orders as this Hon’ble Court may deem fit and proper of the facts of the case.”

⁴ Para 27 of the Plaint

⁵ Para 28 of the Plaint

In para no.2 of the said application, list of documents⁶ is given. The said application was dismissed by the Joint Registrar by his order dated 06.12.2012.

10. Before we deal with the merits of the instant petition, it is necessary to take note of few more facts.

The petitioner herein had earlier filed two Interlocutory

⁶ Para 2. The concerned official from the BLB Ltd. (Plaintiff's company) 4764/23A, Ansari Road, Darya Ganj, New Delhi to produce the following records regarding the business transaction at Calcutta Stock Exchange, Kolkata for the period from 01.04.2000 to 30.04.2001:

- I. General Ledger, Party Ledger and Member's Ledge from 01.04.2000 to 31.04.2001.
- II. Settlement wise Daily Transaction Report, C Form, Balance Sheet, Delivery Statement, Auction Report from 01.09.2000 to 31.04.2001.
- III. Sauda Books, Documents Register (should include particulars of shares and securities received and delivered) from 01.09.2000 to 31.04.2001.
- IV. Difference Bills issued to clients, Badla Accounts from 01.09.2000 to 31.04.2001.
- V. (a) Bank Book and Bank Statements (with reconciliation) from 01.04.2000 to 31.04.2001.
(b) D/P statements (pool & beneficiary a/c) from 01.09.2000 to 31.04.2001.
(c) Settlement Account/s with reconciliation from 01.09.2000 to 31.04.2001.
(d) Details of bank account/s from 01.04.2000 to 31.04.2001.
- VI. Counter foils & duplicate copies of Contract Notes issued to clients from 01.09.2000 to 31.04.2001.
- VII. Written consent of clients in case of transactions done on principal to principal basis from 01.04.2000 to 31.05.2001.
- VIII. Documents/Delivery Register, settlement wise delivery statement, indicating clearly the following whether shares having mark to market loss, against which temporary reprieve has been claimed by members in a settlement, from payment of MTM margin money shortfall, have been actually delivered at the end of the settlement from 01.09.2000 to 31.04.2001.
- IX. Margin Report (date wise) together with full particulars of payment of Margins as per the given format from 01.09.2000 to 31.04.2001.
- X. Produce the following:

Business Volume handled by you in the following format:

- (a) Dealings in top 20 securities in descending order of volume.
- (b) Dealings with top 20 brokers so far as off market deals are concerned in descending order of volume from 01.09.2000 to 30.04.2001.
- (c) List of top 20 clients separately in terms of number of transactions and the value of transactions from 01.09.2000 to 30.04.2001.
- (d) List of top 20 clients separately in terms of number of transactions and the value of transactions as far as off market transactions are concerned from 01.09.2000 to 30.04.2001.
- (e) Details of defaults in payment/delivery in 2 years 1999-2001.
- (f) Fund borrowed if any on short term or long term basis during the 2 years 1991-2001.

Applications Nos.5120 of 2007 and 15164 of 2007 in C.S. (OS) No.272 of 2004. Both the applications were dismissed with costs by the learned Single Judge by order dated 19.01.2009.

11. It appears from the order dated 19.01.2009, I.A. No.5120 of 2007 was filed calling upon the plaintiff to “disclose” a certain documents mentioned in certain letters⁷.

12. The learned Single Judge of the High Court while dismissing the said I.A. held that the letters dated 14.08.2003, 26.09.2003 and 03.11.2003 are not the subject matter of the suit but were subject matter of another suit filed by the plaintiff before the High Court of Calcutta bearing Suit No.219 of 2007. After recording the abovementioned finding, the learned Single Judge held as follows:

“Para 8. The suit filed by the plaintiff is merely for recovery of the amount, no issue in this regard has been framed. The application by the defendant under Section 151 of the CPC is otherwise belated which has been filed when the part cross-examination of plaintiff is already recorded. In case the defendant wishes to prove his case on the basis of these documents, the defendant is at liberty to summon the same in accordance with law. Therefore, the application being I.A. No.5120 of 2007 is totally misconceived and is not maintainable and it appears to have been filed to delay progress of the suit.”

13. It appears from the order of the Joint Registrar dated

⁷ Para No.2. In IA No.5120/2007, a prayer is made that the direction be issued to the plaintiff to disclose all the documents mentioned in the letters dated 14th August, 2003, 26th September, 2003 and 3rd November, 2003 and in failure to comply with the said requirements, the suit shall be dismissed and in the meanwhile, further proceedings in the suit shall be stayed.

06.12.2012 (supra) that the order dated 19.01.2009 (supra) of the learned Single Judge was confirmed by a Division Bench by its order dated 03.03.2009. The Joint Registrar in his order dated 06.12.2012 rightly framed the question, “What is to be seen is as to whether the documents sought to be summoned would be relevant for effective disposal of the present suit and if so, the defendant deserves to be granted relief as sought” and recorded a conclusion, “Once the Hon’ble Single Judge came to the conclusion that the documents sought to be produced were not relevant for the adjudication of the suit and the order was also upheld by the Hon’ble Division Bench, the issue of relevance cannot be reopened by the Joint Registrar.”

14. In the appeal against the order dated 06.12.2012 passed by the Joint Registrar, the learned Single Judge of the Delhi High Court by impugned order recorded various reasons for not interfering with the order of the Joint Registrar⁸.

15. It is rather unfortunate that the categoric finding by the

⁸ Para 10. (a) Firstly, it appears that the present suit is a simple suit for recovery of the amount which was paid by the plaintiff to the defendant. It also appears from the averments made in the application as well as the grounds raised in the appeal that the defendant seeks production of the documents for investigation which is pending against various parties in collateral proceedings. The power of investigation, if any, under Section 11C of the Securities and Exchange Board of India Act, 1992 is with Securities Exchange Board of India.

(b) The operation of the letters issued by the defendant has already been stayed by the Calcutta High Court.

(c) It is also a matter of fact that under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, the impugned order is not an appealable order. Order XLIII CPC does not contemplate an appeal against the order passed in application under Order XVI Rule 1 CPC.

(d) It also appears from the record that the defendant has attempted on many dates to delay the completion of the trial on one pretext or the other. The suit filed by the plaintiff is merely a suit for recovery of the amount. The said fact has not been denied. The said documents cannot be summoned from the plaintiff at the time of cross examination of the defendant’s witnesses. It is evident that those documents are actually required by the defendant for pending investigation for the purposes of collateral proceedings.

Joint Registrar that the documents sought to be summoned are not relevant for the disposal of the suit has not been adverted to by the learned Single Judge in the impugned order. Interestingly, the abovementioned conclusion of the Joint Registrar is based on an observation made earlier by the very same learned Judge in his order dated 19.01.2009.

16. The learned counsel for the petitioner strenuously argued that the various reasons assigned by the learned Single Judge in the impugned order for dismissing the appeal are untenable.

17. We do not wish to examine the elaborate submissions made by the learned counsel in this case for the reason that the jurisdiction under Article 136 of the Constitution of India is discretionary. If this Court is convinced that the impugned order could be sustained by proper and valid reasons, the fact that the reasons recorded by the High Court for its conclusion are untenable need not necessarily call for exercise of the discretion of this Court under Article 136.

18. In the instant case, the order of the Joint Registrar which was confirmed by the learned Single Judge in the impugned

order correctly identified the question whether the documents sought to be summoned by the petitioner are relevant having regard to the nature of the suit and recorded conclusion that the documents are not relevant. Such a conclusion of the Joint Registrar is itself based on an earlier finding recorded by the High Court in its order dated 19.01.2009 which became final. Even otherwise, to satisfy ourselves that there is no miscarriage of justice in the instant case, we have meticulously examined the written statement. We are satisfied that the matter does not call for interference in exercise of our jurisdiction under Article 136. Any further elaboration of the reasons for our satisfaction could have adverse impact on the case. Therefore, we desist. Special Leave Petition is dismissed.

JUDGMENT

.....J.
(J. Chelameswar)

.....J.
(Abhay Manohar Sapre)

New Delhi;
December 11, 2015