

Prashant Raj Vs. Arunabh Kumar and Others

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Court : Mumbai

Decided On : Aug-13-2015

Judge : The Honourable Mrs. Justice Roshan Dalvi

Appeal No. : Notice of Motion (L) No. 476 of 2015 In Suit (L) No. 104 of 2015

Appellant : Prashant Raj

Respondent : Arunabh Kumar and Others

Judgement :

1. The plaintiff and defendant No.1 were friends and became business associates initially in the sole proprietary concern of defendant No.1 who was later to incorporate and has incorporated defendant No.3 for the purpose of carrying on what is stated to be a technology startup?. The sole proprietor of defendant No.1 (defendant) is essentially the contesting party. The defendant creates media content in various platforms like Internet, You Tube, T.V., Radio, Films etc. The plaintiff claims to have been initially appointed to provide various services to the defendant for creation of media content and related activities for which the defendant was to compensate the plaintiff as per certain oral agreement which came to be accepted and incorporated in certain emails between the parties and in terms of which the plaintiff seeks to be paid/compensated.

2. The plaintiff sought declaration that the oral agreement between the parties dated 20.09.2012 is valid and subsisting, for specific performance of the

agreement, for damages for non-performance of the agreement and for other incidental reliefs.

3. In the Notice of Motion the plaintiff has sought injunction restraining the defendant from transferring, encumbering, alienating or creating any third party rights in the assets of defendant No.1 including its brand name TVF or incorporating or carrying on a competing business. The plaintiff has also prayed for the mandatory injunction against the defendant to reinsert the credits given to the plaintiff in certain broadcasts on the defendant's channel and to grant access to the plaintiff's work email ID.

4. To be entitled to the reliefs sought the plaintiff must first substantiate the agreement dated 12.09.2000 and show that it subsists until the filing of the suit. The plaintiff has set out the oral agreement in para 4(c) of the plaint. The agreement was well after the defendant sought the plaintiff's advice on certain matters as an advisor which the plaintiff claims to have given and for which certain payments were promised. The defendant was to obtain financial assistance from an investor. The investment was delayed and withdrawn. The defendant was on the verge of closure. It was then that the defendant agreed to offer a bigger role to the plaintiff as a Partner and Director “ Operations, and Strategy and Business Development. The plaintiff claims that the terms of the agreement for the plaintiff in such capacity were to be allotted 4% equity in the proposed company of the defendant, producer's fee of 7.5% on projects and Rs.30,00,000/- p.a. as salary from October, 2012 with an option to convert the same into equity.

5. The plaintiff claims to have acted upon the said agreement. The plaintiff has shown several acts done by the plaintiff. The plaintiff has claimed that he held negotiations with Google acquiring a funding of 75,000/- USD for the defendant, produced 20 videos in most of which he is shown as the producer and in some of which in other capacity, negotiated profitable projects with P and G, Pizza Hut, ICICI Lombard. The plaintiff has annexed numerous emails between the parties to show the plaintiff's contribution to the defendant's business as also the agreement between the parties for payment to the plaintiff thereunder.

6. The various acts of the plaintiff would show some agreement between the parties. The acts of the plaintiff on behalf of defendant would not show precisely the aforesaid three terms of the precise allotment of 4% shares, the precise producer's fee of 7.5% on the projects as also the precise salary of Rs.30,00,000/- p.a. from October, 2012 despite the plaintiff's case that he worked full time from September/October, 2012 and has shown certain specific diverse works done by the plaintiff which are enumerated in para 4(f)(i) to (iv) of the plaint.

7. The plaintiff has made a grievance about the working in terms and the professional conduct of defendant No.1 and has alleged that the oral agreement dated 20.09.2012 containing the aforesaid three terms was breached by the defendant. The plaintiff has, therefore, essentially sought declaration as to validity of the oral agreement and specific performance of the oral agreement in the suit.

8. The plaintiff has shown further negotiations between the parties under which on 06.05.2014 a settlement meeting was held by defendant No.2 on behalf of defendant No.1 in which defendant No.1 agreed to pay Rs.40,00,000/- to the plaintiff which the plaintiff has rejected. The plaintiff has further claimed that there was still other negotiations between the parties under which defendant No.1 offered to pay the plaintiff Rs.18,00,000/- calculated at Rs.1,00,000/- p.m. from October, 2012 to April, 2014 with 1% stake (equity holding) in the defendant's company. The plaintiff has further claimed that on 04.09.2014 the defendant proposed to pay the plaintiff Rs.36,00,000/- and 1% equity which the plaintiff rejected and after some discussion the parties agreed to a mutually agreeable figure of Rs.36,00,000/- and 2% equity? in the defendant's company which was yet to be incorporated. The plaintiff has further claimed that on 01.10.2014 an upfront settlement was offered by the defendant for Rs.26,00,000/- payable in installment and the balance Rs.10,00,000/- to be considered the loan since his business was undergoing financial crisis/cash crunch. The plaintiff has further claimed that the plaintiff rejected keeping the balance of Rs.10,00,000/- as loan and conveyed to the defendant that the previously agreed settlement? would be final without negotiations.

9. The plaintiff accepted Rs.3,00,000/- under such settlement on 27.10.2014.

10. The plaintiff has later claimed that on 15.11.2014 the parties mutually agreed to a figure of Rs.29.65 lacs to be paid in 4 installments?, 3 of which are enumerated in para 4(bb) of the plaint.

11. It is after such water has flown that the plaintiff has sought specific performance of the earliest agreement dated 20.09.2012.

12. A reading of the plaint clearly shows that the plaintiff had rendered certain services, be it advisory or creative. The plaintiff would certainly have to be paid for such services, be it by way a monthly payments or annually as salary or as an equity stake in the company yet not incorporated. However the precise amount payable to the plaintiff has been constantly varied. Consequently from the reading of the plaint itself it is seen that there have been a number of novations of the agreement dated 20.09.2012. The agreement dated 20.9.2012 would, therefore, not be required to be performed under Section 62 of the Indian Contract Act, 1872 which runs thus:

Contracts which need not be performed

62. Effect of novation, rescission, and alteration of contract.- If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

13. It would be worth reciting the further agreements set out by the plaintiff himself thus:

Sr.No.	Date	Amount of the Agreement	Paras of thePlaint
1.	12.09.2012	(i) 40% equity(ii) 7.5% producer's fee(iii) Rs.30 lacs p.a. Salary from October, 2012 with an option to convert the equity.	4(c)

2.	06.05.2014	Rs.40 lacs	4(n)
3.	27.08.2014	(i) Rs.18 lacs(ii) 1% equity	4(t)
4.	04.09.2014	(i) Rs.36 lacs(ii) 1% equity Counter offer of the plaintiff: (i) Rs.36 lacs (ii) 2% equity	4(u)
5.	01.10.2014	(i) Rs.26 lacs(ii) Rs.10 lacs as loan	4(y)
6.	21.10.2014	Rs.10 lacs as loan rejected previously agreed settlement? demanded	4(z)
7.	27.10.2014	Part payment of Rs.3 lacs accepted	4(z)
8.	15.11.2014	Rs.29.65 lacs payable in 4 installments from November, 2013 to March, 2014.Final closure deal.	4(bb)

14. It is inconceivable how the original agreement dated 20.09.2012 can be enforced after the parties negotiated and mutually agreed to various deals till the final amount of Rs.29.65 lacs payable in 4 installments. It would be at best such last agreement that the plaintiff can enforce.

15. It is an accepted fact that the plaintiff has ceased to work for the defendant in any capacity. The plaintiff does not offer to work for the defendant in future in any capacity. The plaintiff's claim is, therefore, crystallized for any payments to be received for services rendered until about November, 2014 at the latest. The plaintiff yet demands and insists upon his equity stake in the company

incorporated by defendant No.1 which is defendant No.3. The last of the agreement between the parties as reflected in para 4(bb) is called a final closure of the deal for which the terms of payments are specific in liquidated amount payable in 4 installments, without more. The plaintiff's claim in the equity is, therefore, long novated and has long ceased to be performable and specifically enforceable. The plaintiff's claim for the liquidated amount of Rs.29.65 lacs would certainly remain. That is a money claim payable on and from 15.11.2014 in installments from November, 2014 to March, 2015.

16. The defendant has denied of the agreements but not the work put in by the plaintiff for the defendant's proprietary concern. There is, therefore, no doubt or anomaly in the services rendered by the plaintiff initially as an advisor and later as managing partner or otherwise.

17. Indeed the plaintiff would require to be paid for the services rendered even on the basis of quantum meruit under Section 70 of the Indian Contract Act since it was services rendered by the plaintiff to the defendant not intending to do so gratuitously which was availed by the defendant in the name of his company. Section 70 runs thus:

70. Obligation of person enjoying benefit of non-gratuitous act.- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

18. If the plaintiff's contentions are accepted, it would be seen that the parties in this case have themselves computed the amount of compensation that the defendant must make to the plaintiff and accordingly crystallized the net worth of the services as aforesaid. This is reflected in the aforesaid agreement between the parties from time to time, the last of which has been on 15.11.2014.

19. The defendant claims that he gave an opportunity to the plaintiff to work and acquire experience with him in his concern and also an opportunity to work full time but only for online entertainment net work? division of the defendant. The

defendant claims in para 16 of the affidavit-in-reply to have prepared the proposal which was subject to the plaintiff bringing work of Rs.3 Cr in the aforesaid division communicated to the plaintiff on 31.05.2013 which was refused by the plaintiff. The defendant has also claimed in para 17 of the affidavit-in-reply to have offered the plaintiff to work on a salary of Rs.50,000/- p.m. In fact, Rs.50,000/- are shown to be paid from time to time to the plaintiff in August, 2013 and from November, 2013 to March, 2014. The plaintiff has accepted part payment of Rs.3 lacs and was asked to make a voucher of Rs.2.70 lacs which would show the TDS deducted but which is not admitted by the plaintiff.

20. In para 20 of the affidavit-in-reply the defendant has claimed that the plaintiff broke all relationships on 11.03.2014 which came to be accepted by the defendant on 18.03.2014. In para 22 of the affidavit-in-reply the defendant has accepted that he appointed defendant No.2 as the mediator. This would be for the final closure settlement.

21. All the agreements from time to time including the final closure settlement have been merely stated by the plaintiff by way of absolute figures as shown above and which are denied by the defendant.

22. Yet the fact that the plaintiff did put in his effort and talent for the benefit of the proprietary concern of the defendant is, in fact, not received by the defendant though it is so stated. In para 33 of the affidavit-in-reply the defendant has admitted that he had offered the plaintiff to come and join me in the formation of the company? and had offered Rs.2.5 lacs p.m. and share allocation of 4% of the company to be incorporated which the plaintiff did not agree to.

23. It is argued on behalf of the plaintiff that that offer of the defendant has to be specifically enforced. Indeed it is an admission of the defendant of the offer made by the defendant to the plaintiff. The defendant would claim that the offer was made as shown in the defendant's email dated 31.05.2013 which was not accepted by the plaintiff.

24. Consequently the emails with regard to such offers made by the defendant and/or agreement entered into by the parties must be seen.

(a) Email dated 31.05.2013, Exhibit E to the plaint does mention about the 4% stake, projected salary of Rs.30,00,000/- p.a. (Rs.2.5 lacs p.m.) and certain commission. It is a long email. The plaintiff has given para by para reply thereto. The offer is not accepted. The justifications are made with which the Court is not concerned. In fact, the plaintiff wanted a month off?. He considered that the discussion after such length of time would be much more balanced and rational?. Hence the offer of the defendant dated 31.05.2013 was postponed and not accepted by the plaintiff.

(b) A further offer is shown in the email dated 09.01.2014, Exhibit H to the plaint. The defendant has offered to allocate 10% stake instead of the earlier 4% + equivalent Rs.30,00,000/- p.a. to the plaintiff. The company of the defendant was yet to be incorporated then. The offer was to remain locked till the investment was made.

(c) This email was followed by an email dated 10.03.2014 by the defendant to the plaintiff. It showed that the parties agreed that the plaintiff would be involved as an advisor and not in day to day operations of the defendant and hence even the second offer remained at that.

(d) The next email of the plaintiff is dated 11.03.2014 to the defendant.

The plaintiff gave himself to sleep offer? the issue. He rejected the defendant's offer thus:

I definitely do not want any stake in TVF? (defendant's sole proprietary concern). The plaintiff further treated whatever he had received till that date as full and final settlement for the work he had done for the defendant and declared that the defendant was not liable for any payment/compensation/share allocation. The plaintiff has sought to explain the email as an emotional outburst by which he is not bound. Indeed despite the emotional outburst the plaintiff would certainly be entitled to be made payment/compensation for the work he has done. That would be at specified rate if it can be evaluated or at a reasonable rate on the basis of quantum meruit. That offer cannot allow the plaintiff to seek specific performance of the defendant's earlier offers. In fact the earlier offers are three separate and

distinct offers made chronologically as stated above and out of which the plaintiff would want to enforce the first of the offers despite the defendant having made two further offers later.

(e) The defendant however under his email dated 18.03.2014 respected and accepted and abided by the plaintiff calling off of their relationship as a peaceful end for the parties to part amicably.

25. Thereafter defendant No.1 appointed defendant No.2 as the mediator. Defendant No.2 made his offer for a financial closure agreement between the plaintiff and TVF, the sole proprietary concern of the defendant. The offer was for Rs.40,00,000/- to be paid in installments as per the conditions mentioned in the email of defendant No.2 dated 18.05.2014, part of Exhibit L to the plaint. Defendant No.2 sought the approval of acceptance of the plaintiff. Rs.2.70 lacs are shown to have been paid pursuant to the settlement as accepted in the plaintiff's email dated 21.12.2014, Exhibit Q to the plaint.

26. The plaintiff specifically rejected that offer under his email dated 21.05.2014, also part of Exhibit L to the plaint. Under a further email of the plaintiff dated 22.05.2014 the plaintiff implored for the equity share alone which he claimed could be a consideration for working for two years for the defendant without a penny?. The plaintiff called upon defendant No.2 to be reasonable in the settlement talk.

27. There appears to be no further correspondence between the parties though the plaintiff has claimed that after the initial agreement of Rs.40 lacs the parties did settle the closure agreement for Rs.29.65 lacs.

28. Upon these facts it is impossible to specifically get performed the agreement dated 20.09.2012 for which the suit is filed. It is also not possible to get specifically performed the closure agreement since the initial offer is rejected by the plaintiff upon his adherence to the stake that he claimed in the company in which he never served and which was probably not even incorporated then and in which the plaintiff has chosen not to work in future. The only entitlement of the plaintiff would, therefore, be for compensation for the work done for the defendant in whichever capacity for about two years and for which the plaintiff has not been paid except

for the paltry amount of Rs.3 lacs in installments of Rs.50,000/- each which may be like giving a dog a bone.

29. For such payment only a money claim lies in that behalf. The aforesaid emails of the defendant would show the extent of the work done by the plaintiff and the monetary worth of the plaintiff which is in the region of Rs.30,00,000/- to 40,00,000/-. Hence the plaintiff would be entitled to be compensated on the principle of quantum meruit to the extent as the parties have quantified.

30. In the case of **Craven-Ellis Vs. Canons, Limited 1936 2 K.B. 403** considered in the case of **Ian Rawlinson Vs. Neil Gowanloch in the Court of Appeal dated 8th December, 1994** the principles of quantum meruit under the common law came to be applied when a director who was required to take qualification shares failed to take those shares and yet worked on behalf of the company resulting in benefit to the company despite the contention of the other directors that the acts of the director as the agent of the company were vitiated for want of obtaining qualification shares. It was held that the defence was purely technical defence and that even the nullity of the contract presented no obstacles to the implied promise to pay on a quantum meruit basis which arises from the performance of the services and the implied acceptance of the same by the company. It is observed at page 412 thus:

In my judgment, the obligation to pay reasonable remuneration for the work done when there is no binding contract between the parties is imposed by a rule of law, and not by an inference of fact arising from the acceptance of services or goods. It is one of the cases referred to in books on contracts as obligations arising quasi ex contractu, of which a well known instance is a claim based on money had and received. I accordingly think that the defendants must pay on the basis of a quantum meruit not only for the services rendered after December 31, 1930, and before the date of the invalid agreement, but also for the services after that date.

31. The Bombay High Court considered the question of compensation in the case of **Tangya Fala Vs. Trimbak Daga 1916 ILR 646** in which it has been specifically laid down that the 3 aspects of the section must be fulfilled. In that case the plaintiff having paid off the market amount behind the back of defendant No.2

claimed to be repaid. It was held that defendant No.2 himself would not have repaid it and defendant No.2 was in fact deprived of an option allowed to him under the law. The Courts saw that the plaintiff had not made the payment for the second defendant. The payment had to be made for the benefit of the other person for allowing the plaintiff to be subrogated in the position of the mortgagee. In this case the plaintiff had devoted himself to the work of the proprietary concern of the defendant. The proprietary concern prima facie received benefit over a period of years that the plaintiff is shown to have done certain acts. The plaintiff, therefore, put in his services for the benefit of the defendant and it must be held that such services cannot go unpaid and uncompensated to a fair and reasonable extent.

32. In the case of **State of Punjab Vs. Hindustan Development Board Ltd AIR 1960 PUNJAB 585** the Punjab and Haryana High Court determined the question of fair and reasonable rate of the goods supplied. In that case the contract between the parties was for supply of grilled windows of particular description and rates. After a part of the contract was performed the design was revised. The plaintiff had to supply panel windows. The new rate was not settled but the rate of windows had increased. Considering the ambit of Section 70 of the Contract Act, which was based upon English Common Law but legislated in India, the Court held that the section admitted of liberal interpretation. The 3 conditions in the section had to be satisfied and once they were satisfied a fair and reasonable compensation was to be granted. The Court observed that there was a novation of the contract and the plaintiff had to be paid a fair and reasonable price for the work done or the goods supplied as is deserved or merited. Since the second contract is implied in law though not in fact [See. **Chinni Veeraiah Chetty Vs. Morisetti Lakshmikantamma AIR 1965 AP 322**].

33. Even the question of quantum of consideration comes within the purview of the principle of quantum meruit. In the case of **Powell Vs. Braun (1954) 1 WLR 401=(1954) 1 ALLER 484** the Court of Appeal considered whether the compensation payable is left entirely to the discretion of the defendant. In that case the plaintiff was the secretary of the defendant who earned a salary. She would get her usual increments. At a particular time her employer proposed to her

that she would get a bonus on the net trading profits of the previous financial year instead of a rise in salary. She agreed and accepted the offer. He paid her bonus for a couple of years. He refused to pay thereafter on the premise that the agreement was vague and not capable of enforcement because the extent of the bonus was not fixed. Upon an action in law the trial Judge dismissed the plaintiff's claim on the premise that the extent of bonus was in the discretion of the defendant who may pay some amount or who may pay nothing over and above her fixed salary which was payable and was paid. In appeal each of the three judges rejected the view.

It was held by Sir Raymond Evershed, M.R. that the nature of the engagement, the service rendered, the circumstances in which the offer was made, the desire in the business interest of the defendant for the plaintiff to assume more responsibility (as reflected in the evidence) meant an obligation to pay something in lieu of and in addition to salary. It was observed that the parties did not mean and intend the payment of bonus to be purely discretionary.

It was held by Denning, L.J. that the defendant agreed to pay the bonus on the net trading profit. The agreement contemplated that he should pay something. The defendant bound himself to pay something. That was not in his unfettered discretion. It would be an amount within his reasonable discretion. That is, it would be the amount which a fair and just man would pay in the exercise of reasonable discretion. It was held by Romer, L.J. that the defendant obtained an advantage for himself and for his business. The plaintiff undertook further responsibilities. Those responsibilities vested solely in the discretion of the defendant. It was a legal bargain giving rise to a legal right. The plaintiff was to get at all events something, provided there were profits. Hence the plaintiff was compensated by way of quantum meruit on a reasonable basis.

34. Consequently the reliefs of the aforesaid injunction restraining the defendant from alienating, encumbering or creating third party rights in the assets of defendant No.1 company including its brand name or in carrying on any competing business can never be granted. Similarly the mandatory injunction to reinsert the channel of the defendant showing the credits in the name of the plaintiff or to grant

access to the plaintiff to the work email cannot be granted.

35. The parties however would do well to put an end to the dispute by compensating the plaintiff for the work done by the plaintiff which is, in effect, admitted and accepted by the defendant and from which the defendant's proprietary concern has been benefited. With such observations the Notice of Motion is dismissed.

36. The defendants shall file their written statement within 30 days unless the parties see reason and settle their dispute.

37. The suit shall be on board for framing issues on 14.09.2015 if the parties fail to settle their dispute.

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