

Texem Engineering Vs. Texcomash Exports

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Court : Delhi

Decided On : Aug-13-2009

Reported in : 162(2009)DLT444

Judge : S. Muralidhar, J.

Acts : [Foreign Exchange Regulation Act, 1973](#); Evidence Act - Sections 115; [Indian Contract Act, 1872](#) - Sections 23, 24 and 28; Customs Act; Indian Penal Code (IPC) - Sections 420, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 340; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11

Appeal No. : CS (OS) 407/1997

Appellant : Texem Engineering

Respondent : Texcomash Exports

Advocate for Def. : C. Mukund, ; Ashok Jain, ; Pankaj Jain, ;

Advocate for Pet/Ap. : D.S. Narula,; A.S. Narula,; Rajesh Kumar and;

Disposition : Application allowed

Judgement :

S. Muralidhar, J.

1. This is an application filed by the Defendant under Order VII Rule 11 of the Code of Civil Procedure 1908 ('CPC') seeking rejection of the plaint.

2. The suit is for recovery of sum of Rs. 1,00,17,972/- together with future interest at the rate of 25% per annum from the date of the institution of the suit till realization.

3. According to the Plaintiff it is a proprietary concern through its sole proprietor Mr. Gurbachan Singh Saluja ('GS Saluja'). The Defendant is a proprietary concern and Mr. Narendra Kumar Rajgarhia is its sole proprietor. The Plaintiff claims to have introduced the Defendant to M/s. Peico Electronics and Electricals Limited ('PEEL') and as a result thereof the Defendant signed a Memorandum of Understanding ('MOU') dated 2nd November 1992 and thereafter an agreement dated 17th November 1992 with PEEL for the purchase of tea for export to Russia. According to the Plaintiff, the Defendant had in consideration of the services rendered by the Plaintiff agreed to pay to the Plaintiff commission at the rate of Rs. 15/- per kg of tea purchased by the Defendant from PEEL. The Plaintiff also claims to have arranged for the purchase of tea by the Defendant directly from M/s. Mahavir Plantations Cochin subject to payment by the Defendant commission at the rate of Indian rupee equivalent of US Dollar 0.05 for each kg of tea purchased by the Defendant from M/s. Mahavir Plantations. It is stated that the Defendant purchased in all 11,75,100 kg of tea from Mahavir Plantations directly and/or/through PEEL. Consequently the Defendant became liable to pay to the Plaintiff commission in the sum of Rs. 1,76,26,500/- (calculated at the rate of Rs. 15/- per kg for tea purchased). It is stated that the Defendant had till the filing of the suit paid a total sum of Rs. 13 lakhs on various dates leaving a balance of Rs. 1,63,26,500/-.

4. The Plaintiff based its claim on two documents, the originals of which have been placed in a sealed cover in these proceedings. The first is an agreement dated 1st September 1995 whereby the Defendant confirmed that it would pay commission at the aforementioned rate of Rs. 15/- per kg for the total quantity of tea purchased by defendant to the Plaintiff. The second document is a purported settlement deed dated 26th March 1996. The Plaintiff has in the plaint sought to explain the

circumstances under which the said two documents came to be executed.

5. It is claimed by the Plaintiff that a post-dated cheque No. 536809 dated 6th March 1996 for a sum of Rs. 1.15 crores was drawn by the Defendant in its favour on UCO Bank towards the balance commission and that the said cheque was handed over personally by Mr. Narendra Kumar Rajgarhia to Mr. GS Saluja and that the said payment was duly received by the Plaintiff. According to the Plaintiff there were certain proceedings instituted against the Defendant by the Department of Revenue Intelligence ('DRI') under the Foreign Exchange Regulation Act 1973 ('FERA') in the month of December 1995. According to the Plaintiff in order to escape liability the Defendant Mr. Narendra Kumar Rajgarhia tried to implicate Ms. Puneet Saluja the sister of Mr. GS Saluja, who was working with Mr. Rajgarhia. In the plaint it is stated that the Defendant lodged an FIR with the police that the said sum of Rs. 1,15,00,000/- had been received by the Plaintiff fraudulently in conspiracy with Ms. Puneet Saluja. Mr. GS Saluja was arrested and remained in custody for 22 days. During this period there were numerous meetings between Mr. Santokh Singh Saluja, ('SS Saluja) father of Mr. GS Saluja and Mr. Narendra Kumar Rajgarhia. It is claimed that Mr. Narendra Kumar Rajgarhia informed Mr. SS Saluja that he was willing to a settlement if the sum of Rs. 1.15 crores was immediately returned. Further it was agreed that the commission would be reduced from Rs. 15/- per kg to Rs. 9/- per kg. A settlement dated 26th March 1996 in the aforementioned terms was signed by Mr. SS Saluja and Mr. Narendra Kumar Rajgarhia. It may be mentioned here that while the signatures of Mr. Rajgarhia in both documents, i.e the agreement dated 1st September 1995 and the settlement dated 26th March 1996 have been denied their contents have been denied by the Defendant.

6. The case of the Defendant is that Ms. Puneet Saluja who was working with Mr. Rajgarhia had in her possession several blank papers as well as cheques signed by him. These were misused and this led to the filing of the FIR. After setting out some of the terms of the purported settlement, the plaint in para 10 states that the aforesaid agreement 'was reached under most stressful conditions inasmuch as Shri Gurbachan Saluja had remained arrested for 22 days.' It is stated in para 11 that pursuant to the settlement, 'the sum of Rs. 1,15,00,000.00 was returned by

the Plaintiff to the defendant and Shri Gurbachan Singh Saluja was released on bail and the sister of Shri Gurbachan Singh Saluja was also admitted to anticipatory bail.' It is further stated that pursuant to the settlement, the Plaintiff also started corresponding with M/s. Mahavir Plantations for release of the excess amount, if any, paid by the Defendant. The Plaintiff also was corresponding with the Defendant seeking payment of commission. After failing to recover the amount claimed, the present suit was filed.

7. In the written statement, the Defendant raised a preliminary issue that the suit was based on forged and fabricated documents. Inter alia both the agreement dated 1st September 1995 and 26th March 1996 have been assailed by the Defendant as being forged and fabricated. It is claimed that some of the blank stamp papers signed by the Defendant and issued on 1st September 1995 were discovered from the residence-cum-office of the Plaintiff during search and seizure by the police at his residence on 12th March 1996. Importantly it is stated that at no point of time during the pendency of the criminal proceedings, particularly at the stage of grant of bail, either of these documents surfaced. Bail was granted to Mr. GS Saluja on 2nd April 1996 and anticipatory bail granted to Ms. Puneet Saluja on 3rd April 1996. The terms on which bail granted have been recorded in the respective orders by the Additional Sessions Judge (ASJ). Neither order made any mention of either the agreement dated 1st September 1995 or the settlement dated 26th March 1996. A statement was made to the police and an affidavit submitted to the court on the same terms by Ms. Puneet Saluja stating that she was not having any blank signed papers/documents/cheques in her possession which Mr. N.R. Rajgarhia might have given to him and that she had also given no objection if the sum of Rs. 16 lakhs as reverted back in the account of M/s. Texcomash Exports directly or through the account of M/s. Texim Engineering as she had no claim to either of these firms on the above amount. She had also given such instructions to the Bank. In para No. 8 of the written statement the complete details of the criminal cases against Mr. GS Saluja and Ms. Puneet Saluja have been set out. It is stated that while Mr. GS Saluja was arrested, Ms. Puneet Saluja had absconded. Mr. GS Saluja twice applied for grant of bail but those applications were rejected. The anticipatory bail of Ms. Puneet Saluja was also initially rejected. Ultimately on 2nd April 1996 Mr. GS Saluja was granted bail. The learned

Additional Sessions Judge ('ASJ') who granted the bail noted that sum of Rs. 1.15 crores was transferred to the account of Ms. Puneet Saluja and from there a sum of Rs. 60 lakhs was transferred in the account of Mr. GS Saluja. Learned Counsel for the Plaintiff informed the learned ASJ that 'settlement has since been arrived between the parties and money has been paid back in terms of the settlement.' In those circumstances Mr. GS Saluja was admitted to bail. The conditions on which Ms. Puneet Saluja was also granted bail have been set out in para 8 of the written statement. It is submitted that the fact that neither of these orders mention either an agreement dated 1st September 1995 or settlement dated 26th March 1996. It appears that these documents have been created thereafter and forged and fabricated only to enable the Plaintiff to make a false claim by way of a suit.

8. In the reply filed to the written statement, the Plaintiff denied the contents of para 8 thereof. It was denied that the Plaintiff had committed any offence. It was submitted that father of Mr. GS Saluja had agreed to the refund of Rs. 1.15 crores and that there was no question of the Defendant having any claim of the said amount. It is stated that the Defendant 'was able to motivate the Police to give colour of an offence to a 'No dispute' or at best 'Civil dispute'.

9. In the present application (IA No. 11940 of 2001) under Order VII Rule 11 CPC the Defendant seeks rejection of the plaint essentially on the ground that there is no cause of action for filing of the civil suit. In the criminal proceedings the Plaintiff had agreed to refund the sum of Rs. 1.15 crores after admitting that it had been wrongly misappropriated to the account of Ms. Puneet Saluja and thereafter a sum of Rs. 60 lakhs to the account of the Plaintiff Mr. GS Saluja. By giving up all the claims arising out of those transactions a settlement was reported to the criminal court. Further, on affidavit it was stated that there were no signed papers of the Defendant left with Ms. Saluja. On that basis bail was granted to the Plaintiff and anticipatory bail to Ms. Puneet Saluja. Consequently, there was no claim outstanding as far as the Plaintiff was concerned. Rejection of the plaint is sought on the basis of the provisions of Order VII Rule 11 (d) inasmuch as the Plaintiff was estopped in the above circumstances from making any claim against the Defendant for payment of commission. On behalf of the Defendant it is contended by Mr. C.Mukund, learned Advocate, that having made statement before the

criminal court giving up claims against the Defendant, it is not open to the Plaintiff in terms of Section 115 of the Evidence Act to file the present suit against the Defendant for the recovery of any sum. Reliance is placed upon the judgment of the Supreme Court in B.L. Sreedhar v. K.M. Munireddy (Dead) : (2003) 2 SCC 355. In addition learned Counsel for the Defendant has placed reliance upon the judgment of the Supreme Court in T. Arivandandam v. T.V. Satyapal : (1977) 4 SCC 467 to contend that the suit itself was vexatious and it is in abuse process of law inasmuch as it is based on forged and fabricated documents.

10. Mr. D.S. Narula, learned Counsel for the Plaintiff first submits that another suit CS (OS) No. 2826 of 1996 titled M/s. Sunny International v. Texcomash Export was filed against the present Defendant for payment of agency commission in relation to certain purchase of textile for exports. In the said suit IA No. 4870 of 1997 was filed by the present Defendant under Order VII Rule 11 CPC seeking rejection of the plaint inter alia on the ground that the agency agreement dated 9th April 1993 on the basis of which the claim for commission was made by the Plaintiff there was a forged document. The said application was rejected by the learned Single Judge on 19th September 2002. It is accordingly submitted that the present application should also be rejected since in any event the question whether the two documents on the basis of which the claim has been made by the Plaintiff is forged can be determined only at the trial. Likewise a reference is made to the decision in Sarabjit Singh Anand v. Manjit Singh Anand 2008 IV AD (Delhi) 89 to contend that the issue raised in the present application cannot be decided without the matter going to the trial. It is submitted that since the suit is already pending since 1997 no purpose would be served in entertaining the application under Order VII Rule 11 CPC at this stage.

11. It is then submitted by Mr. Narula, learned Counsel for the Plaintiff that for the purpose of deciding the application under Order VII Rule 11 CPC the Court should examine only the plaint and the documents filed along with it. The court is not expected to examine the written statement and documents filed with it. It is submitted that when the plaint read as it whole it discloses a cause of action and as long as it does do that, it cannot be rejected. He refers to the decisions of this Court in Inspiration Clothes & U v. Colby International Limited 88 (2000) DLT 769

(DB) and Uday Kaushish v. Sanjay Kaushish : 77 (1999) DLT 509. Referring to the judgment in Poonam Gupta v. Anita v. Kumar 2008 II AD (Delhi) 81 it is submitted that even if the documents on the basis of which the claim is made opposed to public policy and therefore hit by Section 23 of the Contract Act 1872 such question cannot be decided at the stage of an application under Order VII Rule 11 CPC. The suit will in any event have to go to trial.

12. Having considered the submissions of learned Counsel for the parties it appears to this Court that the Defendant should succeed in this application under Order VII Rule 11 CPC. The Court has opened the sealed cover containing the aforementioned two documents and certain other letters in original. The Agreement dated 1st September 1995 and settlement dated 26th March 1996 have been examined. The purported settlement dated 26th March 1996 forms the basis of the claim of the Plaintiff in the present suit. Therefore even on the basis of the plaint and documents filed along with it, if this Court finds that the claim would be barred by law in terms of Order VII Rule 11 (d) CPC then this application ought to be allowed.

13. It may be recalled that according to the Plaintiff an FIR had been lodged against the Plaintiff by the Defendant stating that the Plaintiff had fraudulently and in conspiracy with Ms. Puneet Saluja taken away a sum of Rs. 1.15 crores. The Plaintiff has also stated that a sum of Rs. 1.15 crores was repaid to Mr. Rajgarhia pursuant to the settlement between the parties. It was also stated that bail was granted to the Plaintiff Mr. GS Saluja and anticipatory bail to Ms. Puneet Saluja on the basis of such settlement. According to the Plaintiff this settlement was signed on 26th March 1996. The said document requires to be reproduced as under:

Settlement

Settlement between Narendra Kumar Rajgarhia r/o D- 52, Defence Colony, New Delhi - 110 024 and Santokh Singh Saluja r/o 123-124, Satya Niketan, New Delhi - 110 021 father of Gurbachan Singh Saluja and Puneet Saluja.

1. Sh. Santokh Singh Saluja will make his son and daughter issue cheque for Rs. 1.15 crores in favour of Texcomash Export and if need be take the requisite

cheque books to court for the said purpose and ensure statements in the court for release of money to Narendra Kumar Rajgarhia at the earliest.

2. Narendra Kumar Rajgarhia shall be liable to pay commission to Gurbachan Singh Saluja at the rate Rs. 9.00 per kg instead of Rs. 15.00 per kg on tea purchases involving Mahavir Plantations and Philips India and all amounts already paid by cheque in the name of Texem Engineering shall be deducted. Narendra Kumar Rajgarhia will within six months draw complete amounts of the said purchases and calculate amount payable to Texem Engineering at the rate of Rs. 9.00 per kg.

3. Gurbachan Singh Saluja will in the meantime try and endeavour for refund of Rs. 40 lakhs which according to Narendra Kumar Rajgarhia has been paid in excess as advance to Mahavir Plantation by Texcomash Export.

4. Narendra Kumar Rajgarhia will make all possible statements in the court to ensure Bail to both son and daughter of Santokh Singh Saluja and also ultimately take steps for finishing the case against them.

5. Santokh Singh Saluja will ensure favourable evidence by his son and daughter in case against Narendra Kumar Rajgarhia.

6. All future misunderstandings, if any, will be resolved by the parties in consultation with each other and if need be through the good offices of Mr. Pramod Khaitan.

14. It is seen from the above settlement that in para 4 it has been recorded that Narendra Kumar Rajgarhia 'will make all possible statements in the Court to ensure bail to both son and daughter of Santokh Singh Saluja and also ultimately take steps for finishing the case against them.' The case referred to the criminal case against Mr. GS Saluja and Ms. Puneet Saluja. The complainant in the case is Mr. Narendra Kumar Rajgarhia. The FIR is for the offence including those cheating under Section 420 IPC for forging and fabricating documents under Sections 468/471 IPC. Clause 5 of the settlement states that Santokh Singh Saluja 'will ensure favourable evidence by his son and daughter in case against Narendra

Kumar Rajgarhia.' Mr. Narula clarifies such clause and has been referred to in which the case has been instituted by the DRI for violation of FERA and Customs Act by Mr. Narendra Kumar Rajgarhia.

15. Without examining whether the settlement is forged as alleged by the Defendant, and assuming that it is not as contended by the Plaintiff, the position that emerges is this. Both parties were facing criminal proceedings. The Plaintiff under the IPC and the Defendant under FERA. Both agreed to help each other to get out of their respective cases. Such an agreement between the complainant and the accused that the complainant 'will make all possible statements in the Court to ensure bail' and will 'also ultimately take steps for finishing the case against them' is opposed to public policy. Further, the undertaking by S.S.Saluja that he 'will ensure favourable evidence by his son and daughter' against the Defendant is an agreement to stifle a legitimate prosecution of the Defendant by the DRI. Both clauses constitute interference with the course of criminal justice. The contract containing these clauses is void in terms of Section 23 and Section 28 of the Indian Contract Act 1872. Such a contract cannot form the basis of a legitimate claim by the Plaintiff against the Defendant. In *Sudhindra Kumar Ray Chaudhuri v. Ganesh Chandra Ganguli* : AIR 1938 Cal 840, the Calcutta High Court explained that 'no court of law can countenance or give effect to an agreement which attempts to take the administration of law out of the hands of the judges and put it in the hands of private individuals.' It was explained in *Sita Ram v. Radha Bai* : AIR 1968 SC 534 that the courts will refuse to enforce an illegal agreement at the instance of a person, who is himself a party to the agreement or fraud. Entertaining the claim of the Plaintiff in this suit would tantamount to stifling the separate prosecutions of both the Plaintiff as well as the Defendant.

16. Mr. Narula tried to get out of the difficult situation by to contending that this Court should only look to Clause 2 of the settlement and ignore the other clauses. According to him the claim in the suit is based only on Clause 2 in terms of which the Plaintiff was entitled to receive commission at the rate of Rs. 9/- per kg instead of Rs. 15/- per kg for tea purchased by Defendant from PEEL and M/s. Mahavir Plantation. This Court is unable to accept the submission of Mr. Narula. Section 24 of the Contract Act specifies when and in what circumstances a contract can be

held to be divisible. Here the part of the consideration for the so-called settlement is clearly illegal. Clause 2 of the settlement cannot be severed; the entire agreement will have to be read as a whole. The composite terms of the settlement have to be understood for ascertaining the intention of the parties. Thus the unlawful part cannot be severed from the 'legal. part of the agreement.

17. What also is unexplained is that the plaint does not set out fully the background and the circumstances under which the aforementioned documents emerged. The complete details of the criminal proceedings in which bail was obtained by the Plaintiff and anticipatory bail by his sister have not been set out. These were material facts having a bearing on the claim made in the suit. Nevertheless, the essential ground on which the plaint invites rejection is that the claim is based on a contract which is on the face of it void.

18. In the circumstances, this Court is left in no doubt that when the plaint and the documents filed along with it are read as a whole it is apparent that the suit is barred by law.

19. In view of the above conclusion this Court is not called upon to deal with the contentions of learned Counsel for the Defendant that in view of the statement made by the Plaintiff before the criminal court on the basis of which the bail was granted, and which statements are contrary to what is stated in the settlement dated 26th March 1996, the rule of estoppel would apply to preclude the Plaintiff from making a claim for money against the Defendant. The contention that the two documents on which the claim is based are fabricated is also not being examined. The decision of the learned Single Judge of this Court rejecting the Order VII Rule 11 application in CS (OS) 2826 of 1996 (M/s. Sunny International v. Texcomash Export) has been perused by this Court. That case did not involve the settlement deed dated 26th March 1996 on the basis of which the present suit has been filed. In the considered view of this Court the said order does not preclude this Court from considering the present application on its own merits.

20. For the aforementioned reasons, this application is allowed. The plaint is rejected.

IA No. 3018/2001 (Under Section 340 Cr PC)

21. Learned Counsel for the applicant/Defendant states that in view of order passed in the application under Order VII Rule 11 CPC, he is not pressing this application. It is disposed of as such.

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22. In view of the order passed in I.A. No. 11940 of 2001, this suit does not survive.

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