

Abedeem Abdulkader Tyebally v Tyebally Akhtarhusein Hatim
[2009] SGHC 81

Case Number : OS 473/2008
Decision Date : 03 April 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Hri Kumar SC and Tham Feei Sy (Drew & Napier LLC) for the plaintiff; Mahmood Gaznavi s/o Bashir Muhammad (Mahmood Gaznavi & Partners) for the defendant
Parties : Abedeem Abdulkader Tyebally — Tyebally Akhtarhusein Hatim
Companies – Shares

3 April 2009

Choo Han Teck J:

1 The plaintiff, defendant and one Abdullah jointly-owned debentures in Reliance Industries Limited ("RIL"). Prior to the original redemption date of the debentures, RIL made an offer ("the Offer") to holders of the debentures to roll over their debentures and to extend the redemption date. In return, the debenture holders would, *inter alia*, be given 2 RIL warrants ("Warrant(s)") for every five debentures. Each Warrant entitled its holder to apply for one RIL share at Rs 150 each.

2 The debentures jointly-owned by the trio were rolled over pursuant to the Offer, and a number of Warrants were in turned issued to them. The plaintiff's version of events was as follows:

17 It is the Plaintiff's evidence that he was keen to apply for shares in Reliance, but Abdullah and the Defendant were not. Nevertheless, Abdullah and the Defendant informed the Plaintiff that they would not object if the Plaintiff applied and paid for the shares in Reliance out of his own pocket. In the circumstances, there was an understanding and/or agreement between the Parties that as the Reliance shares would be paid for by the Plaintiff solely, those shares would belong to the Plaintiff absolutely.

The defendant denied any such agreement with the plaintiff in relation to the warrants ("the Agreement"). His contention was that RIL communicated and corresponded only with the first-named person on the debenture, namely the plaintiff. He claimed that the plaintiff did not update him in respect of the debentures.

58 The Plaintiff did not copy me any correspondence that he received from Reliance and/or its agents. Neither did the Plaintiff update me about the debentures and/or shares of Reliance and its related companies.

59 Further, if the Plaintiff did send any correspondence to Reliance and/or its agents in respect of the debentures and/or shares, he did not at any time copy me the correspondence. In short, the Plaintiff did everything on his own and without consultation with me.

3 The plaintiff's case was that the defendant's position on the Agreement was irrelevant since it was undisputed that the total subscription price for RIL shares arising from the exercise of the Warrants was paid by the plaintiff. As such, the plaintiff averred that he is entitled to a declaration

that he is the owner of the RIL shares and shares arising from RIL's subsequent de-merger.

4 In my view, whether there was an Agreement between the plaintiff and the defendant, notwithstanding the defendant's concession on several occasions that the shares belonged to the plaintiff, is still an unanswered question for trial. Unless the defendant's concession amounted to a waiver or estoppel, it might be of little legal significance. It is also important to distinguish between a party's belief, possibly made without legal advice, and his rights under the law. I will elaborate on the latter. It is the defendant's case that RIL communicated only with the plaintiff, and that the plaintiff had left the defendant out of the loop on the on-goings with RIL. If the defendant's version of events were true, that would have meant that the plaintiff had secretly appropriated the Warrants for his own benefit. In that case, it may be arguable that the shares belonged to the defendant and that the plaintiff would only be entitled to the return of the subscription monies.

5 Alternatively, and again assuming that there had in fact been no Agreement between the parties, it is important to emphasise that the fact that the exercise price of the Warrants (*i.e.* Rs 150 each) was paid by the plaintiff does not mean that consideration had flowed only from him and that he is entitled to full ownership of the RIL shares. Equity warrants "give the investor the ability to purchase the issuing company's equity at a given strike price within a prescribed time frame." See, Prof Alastair Hudson, *The Law on Financial Derivatives*, (Sweet & Maxwell, 4th ed, 2006) at p 43. In this case, Rs 150 + 1 warrant = 1 RIL share. By this formula, the value of the warrant could be easily calculated. In the Roll-Over Offer Document, there was a paragraph stating that "*The Company was recently able to place its Global Depository Shares for Rs 250 per Equity Share*". I am therefore inclined to believe that the Warrants were of some value, otherwise it would make no commercial sense for the holder to exercise his rights under them. *Prima facie*, the defendant's contribution to the RIL shares would be the value of the Warrants. Therefore, it cannot be said that the fact that the exercise price of Rs 150 was paid for by the plaintiff meant that the shares belonged solely to him, if the Warrants had some value as well. The Warrants' value ought to be taken into account in determining the ownership of the RIL shares. As such, it would be necessary to establish the ownership of the Warrants, and in order to do so, the court would have to determine whether the Agreement existed or not.

6 In the premises, as there is a substantial dispute of fact which I do not think can be resolved by affidavit evidence alone, I made no orders to the present application and directed that it be converted to a writ action. The plaintiff is, of course, entitled to prove at trial or persuade the trial judge that there was in fact an Agreement, or that the Warrants had no value at all.

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