

# Rachit Malhotra vs One97 Communications Limited on 25 February, 2019

**Author: Rajiv Sahai Endlaw**

**Bench: Rajiv Sahai Endlaw**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CS(OS) 183/2018, IA Nos.5579/2018(u/0.XXXIX R-1 & 2 CPC),  
7128/2018(u/S.151 CPC), 12139/2018(u/0.XXXIX R-4 CPC) &  
12140/2018(u/0.VII R-11 CPC)

RACHIT MALHOTRA . . . . . Plaintiff  
Through: Mr. Rachit Malhotra with Mr. Rakesh Kumar,  
Ms.Isha Khanna, Mr.Hetish Raj Singh &  
Mr. Aashish Khattar, Advs.

versus

ONE97 COMMUNICATIONS LIMITED . . . . . Defendant  
Through: Mr. Akhil Sibbal, Sr. Adv. with Mr. Nakul Mohta,  
Mr. Lalit Mohan & Mr. Gurtejpal Singh, Advs.

CORAM:  
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW  
ORDER

% 25.02.2019

1. The suit is listed for framing of issues and for hearing on the application of the plaintiff under Order XXXIX Rule 1 & 2 CPC.
2. The counsel for the plaintiff has handed over a list of as many as ten proposed issues. However the said issues do not disclose the controversy between the parties.
3. The plaintiff has instituted this suit for direction to the defendant to, in response to the Employees Stock Option under the Employees Stock Option Scheme, 2008, exercised by the plaintiff, issue 4178 equity shares of the defendant to the plaintiff and in the alternative for recovery of compensation in the sum of Rs.4,38,69,000/-.
4. I have enquired from the Senior Counsel for the defendant, the defence of the defendant to the suit.
5. The Senior Counsel for the defendant states that the plaintiff exercised the option after the termination by the defendant of the employment of the plaintiff and as per the Scheme, the option

could not have been exercised after termination of employment. It is informed that the termination is not under challenge in this suit and is a subject matter of a separate suit pending in the Saket District Courts. It is argued that in accordance with the Scheme, the option even otherwise had to be exercised from time to time and the plaintiff having not exercised the options from time to time, could not exercise the option for the entire lot of shares in one go only.

6. It appears from the aforesaid that the determination of this suit is dependent upon the interpretation of the Scheme and the Senior Counsel for the defendant agrees that no witnesses are required to be examined.

7. The counsel for the plaintiff also agrees that no verbal evidence is required.

8. On the defence aforesaid disclosed, the following issues are framed:-

(i) Whether the option available to the plaintiff under the aegis of Scheme, for shares other than 2324 shares, had lapsed by passage of time? OPPr.

(ii) Whether the plaintiff is not entitled to exercise the option for the 2324 shares after termination of his employment? OPD.

(iii) If the above issues are decided against the defendant, whether the defendant, by a decree of specific performance, can be directed to issue the shares to which the plaintiff is found entitled to and if not, to what compensation/damages is the plaintiff entitled to in lieu of the relief of specific performance? OPPr.

(iv) Relief.

9. No other issue arises or is pressed.

10. It is clarified that in hearing arguments on the aforesaid issues, the admitted documents including the documents on the basis of which the plaintiff claims to have exercised the option within time, shall also be considered and construed.

11. The counsels state that the issue no. (iii) aforesaid, insofar as qua the valuation of shares, may require leading of verbal evidence inasmuch as the shares of the defendant are not listed.

12. The recording of evidence, if any, on the said part is deferred awaiting the hearing of arguments on the issues which do not require any verbal evidence.

13. The counsel for the plaintiff states that he is not ready to address arguments and not even on his application under Order XXXIX Rule 1 & 2 CPC.

14. The Senior Counsel for the defendant expresses urgency, relying on the order dated 22nd August, 2013 in CS(OS)1524/2011 titled Rajeev Surana vs. OCM India Ltd. & Ors.

15. List for hearing on 26th April, 2019.

RAJIV SAHAI ENDLAW, J FEBRUARY 25, 2019/ak..