

Govind Goverdhandas Daga vs M/S Field Mining And Ispat Ltd on 31 July, 2009

**Equivalent citations: AIR 2010 (NOC) 37 (BOM.)(NAGPUR BENCH), 2009 (5)
AIR BOM R 819 2010 A I H C 471, 2010 A I H C 471, 2010 A I H C 471 2009 (5)
AIR BOM R 819, 2009 (5) AIR BOM R 819**

Author: C. L. Pangarkar

Bench: C. L. Pangarkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR
BENCH NAGPUR.

FIRST APPEAL NO. 99 OF 2009

1. Govind Goverdhandas Daga

aged 54 yrs. Occu. Business,
R/o Daga House, Temple Road,
Civil Lines, Nagpur.

2. Mohan Brindavan Agrawal
aged 54 yrs,. Occu. Business,
R/o 300 Chitnavis Layout,
Civil Lines, Nagpur.

APPELLANTS.

VERSUS

1. M/s Field Mining And Ispat Ltd.
A company incorporated under the
Provisions of the Companies Act
1956 haing its registered office at

120, Mount Road, Sadar Nagpur,
through its allegedly appointed
Managing Director Smt. Kavita
Anil Taneja, aged 45 yrs. R/o Nelson
Square, Vijay nagar, Nagpur.

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2. Shri Anil Jaydayal Taneja
aged 50 yrs. Occu. Business,

R/o Nelson Square, Vijay Nagar
Nagpur.

RESPONDENT.

Shri. H. D. Dangre, Counsel for the appellants.

Shri. Shyam Dewani, Counsel for the respondent No.1.
Shri D. V. Chavan Counsel for respondent No. 2.

CORAM: C. L. PANGARKAR J.
Date: 31st JULY 2009.

ORAL JUDGMENT:

Rule. Returnable forthwith.

2. Heard finally with consent of parties.

3. This is an appeal against the order passed by the Civil Judge Senior Division whereby he allowed an application under Order 7 Rule 11 Civil Procedure Code and rejected the plaint. The appellants-plaintiffs instituted a suit for specific performance of contract and permanent injunction. Plaintiff No.1 is the businessman of Nagpur and mainly deals in coal mining. He has therefore an experience in the field of mining while plaintiff No.2 is also a successful businessman and has an experience in the field of sponge iron and steel. Defendant No.1 is a public limited company and No.2 is its director. The said Company was incorporated in the year 2001. When the company was incorporated authorised capital of the said company was Rs. 10 lac while the paid up capital was Rs.

5 lac. It is a public limited company. It is alleged that since inception the said company was being only managed by defendant No.2 Anil. After the company was incorporated the said company had applied to the Ministry of Coal for allotment of coal block on 30.03.2001. Since the defendants 1 and 2 did not have any experience in the field they approached the plaintiff. It was agreed that there should be a joint venture of three families consisting of Daga, Agrawal and Taneja. It was also agreed that each family would hold equal shares in the company and would also invest money. Accordingly Memorandum of Understanding was entered into between the parties on 03.05.2003. It was decided as per that Memorandum that each of the family would hold 33.33% of shares either directly or through family members. In pursuance to the said Memorandum of Understanding the plaintiffs 1 and 2 paid Rs. 3 lac each as share application money. Some shares were transferred in the name of one Suvarna Daga daughter of plaintiff No.1. Those shares were initially held by Taneja family. Even Agrawal family also paid sum of Rs. 3 lac but shares were not transferred in the name of Agrawal family. Plaintiff No.2 was in fact to be allotted 30,000 shares so as to hold 33.33% of shares. Since the company did not have any money all expenses were being incurred from the money paid by the plaintiff. It is the contention of the plaintiffs that since thereafter it was decided that the plaintiff No.1 would take care of the company law matters and accordingly he was taking care of the company related matters. It is further the contention of plaintiffs that defendant No.2's wife Kavita who is one of the director sought to examine the Minute Books and the Statutory Registers of the company. Those books were made available to her but instead of inspecting them she took away the books. It is further the contention of the plaintiffs that since then no meeting of the company has been called by defendant No.2 or any of the Director of the company. The plaintiffs submit that they had appointed a Company Secretary to conduct searches of the records of the company and during the said search it was found that Ankit Taneja was appointed as Director in an Extra Ordinary General meeting held on 15.01.04. The authorised capital of company was increased

from Rs. 10 lacs to Rs. 20 lacs and special Resolution of allotment of preferential shares was passed. Those shares were allotted to defendants 2 and 3 and their family members. It was further shown that Swapnil Agrawal had automatically retired. The plaintiffs therefore submit that it is apparent that the defendant does not want to abide by the Memorandum of Understanding and hence this suit.

4. The defendants filed application purporting to be application under Order 7 Rule 11 Civil Procedure Code wherein they contended that the Memorandum of Understanding was never acted upon by the parties. There was no agreement in between the plaintiffs and defendant no.1 as said agreement was between three individuals and not with the company. The defendant No.2 was never authorised to enter into such Memorandum of Understanding by the said company. By virtue of provisions contained in the Companies Act, it was not permissible to allot the shares to outsiders in the absence of resolution by general body.

The terms of the memorandum of understanding violated the provisions of Coal Mines (Nationalisation) Act 1973 and the said understanding between the parties seeks to convert the public limited company into a private limited company. It is also contended that the said memorandum of understanding is contrary to the provisions of Section 31 of the Companies Act. Further it is the contention that the plaint does not disclose any cause of action and the said Memorandum of Understanding is against the provisions of law and cannot be enforced.

5. The said application was opposed by plaintiff. Learned Civil Judge found that the plaint was liable to be rejected and he accordingly rejected the plaint.

6. I have heard the learned counsel for the appellants and the respondents.

7. The contentions raised in the application under Order 7 Rule 11 are that Memorandum of Understanding was between the plaintiff No.1 and 2 and defendant No.2. Defendant No.1 has nothing to do with it. It is the contention that the defendant No.2 had entered into a Memorandum of Understanding in individual capacity . If para 3 of application Ex. 21 is seen it is clearly alleged that Memorandum of Understanding between plaintiffs and defendant No.2 is void and illegal, for reasons stated in para 2. In para 7 of the application it is alleged that plaint does not disclose the cause of action and suit is hit by the provisions of Companies Act and Coal Mines Act.

8. Now to my mind the appeal has to be allowed with simple four lines reasons, yet I would deal with each submission made on behalf of the defendants-respondents.

9. The title of the application is one under Order 7 Rule 11(d). Order 7 Rule 11 reads as follows:

11.Rejection of plaint- The plaint shall be rejected in the following cases:-

(a)where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Rule 11(d) speaks of suits being barred by law. Phrase "barred by law", as I understand, means, it prohibits the civil Court from taking cognizance of the dispute all together. The bar therefore must apply at the threshold itself. The civil Court is entitled to take cognizance of every dispute of a civil nature unless the law prohibits it either expressly or impliedly from entertaining it. So, when a party alleges that the plaint should be rejected under Order 7 Rule 11 it must show a provision in a particular legislation prohibiting civil Court from entertaining the dispute or it must show from the scheme of the Act that an alternate forum and remedy is provided., No provision is brought to my notice to that effect nor there is such a pleading. That is why I said that the appeal has to be allowed with a few lines reasons.

10. It is alleged that Memorandum of Understanding is void and illegal and cannot be enforced and therefore suit is not maintainable. This submission has to be stated to be rejected. Even if we assume that the Memorandum of Understanding is void and illegal yet there is no law which prohibits institution of suits and taking of its cognizance. The Court will always have to consider the facts, evidence and the law to find out if the contract between the parties is enforceable or not. The Court may ultimately refuse its specific performance and may also hold the contract to be void but there is nothing which prohibits the civil Court from entertaining such a suit.

11. My attention was drawn to various sections of Contract Act including Sections 20, 23, 24, 25, 29 and 56. These Sections say which of the contracts are void. As said the Court has a right to decide which of the contract is void and that too upon consideration of the facts placed before it and evidence led before it. I have already observed that even if a contract may be void that does not prohibit the person to institute a suit in the Court nor could it be said that if the suit is instituted for fulfillment of such contract it does not disclose cause of action. In the context it would be necessary

to refer to Section 65 of the Contract Act. Section 65 reads as follows:

65. Obligation of person who has received advantage under void agreement, or contract that becomes void.

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Therefore, even if a suit is instituted on a void contract or a contract discovered to be void a party receiving advantage will have to restore it. In the circumstances a party to void contract is still entitled to institute a suit for enforcement of the contract and in the alternative to pray for refund of the money. In the circumstances it could not be said that plaint does not disclose cause of action or that a suit could not be entertained.

12. My attention was then drawn to Sections 10 and 20 of the Specific Relief Act. These Sections deal with discretion to be exercised by the Court while decreeing the specific performance. It necessarily means that the Court will have to consider the facts and evidence in each case and then decide about decreeing the specific performance. The sections do not in any way prohibit taking cognizance of suit by civil Court. They do not bar a suit.

13. The next argument of the learned counsel for respondent was that the Memorandum of Understanding relates to running of coal mines which is prohibited by Section 3 of the Coal Mines Act.

Section 3 of the said Act reads as follows:

3. Acquisition of Rights of owners in respect of coal mines.-(1) On the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all incumbrances.

[(2)] x x x [(3) On and from the commencement of section 3 of the Coal Mines (Nationalisation) Amendment Act, 1976-

(a) no person, other than

(i) the Central Government or a Government Company or a corporation owned managed or controlled by the Central Government or

(ii) a person to whom a sub lease, referred to in the proviso to clause (c) has been granted by any such Government, company or corporation, or

(iii) a company engaged in-

(1) the production of iron and steel, (2) generation of power, (3) washing of coal obtained from a mine, or (4) such other end use as the Central Government may, by notification, specify]

(b) excepting the mining leases granted before such commencement in favour of the Government, company or corporation, referred to in clause (a) and any sub-lease granted by any such Government, company or corporation, all other mining leases and sub leases in force immediately before such commencement, shall, in so far as they relate to the winning or mining of coal, stand terminated;

(c) no lease for winning or mining coal shall be granted in favour of any person other than the Government, company or corporation, referred to in clause (a):

Provided that the Government, company or corporation to whom a lease for winning or mining coal has been granted may grant a sub lease to any person in any area on such terms and conditions as may be specified in the instrument granting the sub lease, if the Government, company or corporation is satisfied that-

(i) the reserves of coal in the area are in isolated small pockets or are not sufficient for scientific and economical development in a co-ordinated and integrated manner and

(ii) the coal produced by the sub lessee will not be required to be transported by rail.

(4) Where a mining lease stands terminated under section (3) it shall be lawful for the Central Government or a Government Company or corporation owned or controlled by the Central Government to obtain, (xxx) a prospecting licence or a mining lease in respect of the whole or part of the land covered by the mining lease which stands so terminated] (5) If, after the appointed day, the Central Government is satisfied, whether from any information received by it or otherwise, that there has been any error, omission or misdescription in relation to the particulars of a coal mine included in the Schedule or the name and address of the owner of any such coal mine, it may, by notification, correct such error, omission or misdescription and on the issue of such notification, the relevant entries in the Schedule shall be, and shall be deemed always to have been, corrected accordingly.

Language of the Section may go to show that Memorandum of Understanding may be void. I do not express any opinion whether it is void or otherwise. Assuming it to be void that still does not prohibit plaintiffs from approaching the Court and deciding the question of its validity on merit. This argument therefore also has no substance.

14. Shri Dewani learned counsel for respondents then draws my attention to provisions of Sections 81, 108, 291 and 292 of the Companies Act. He submits that due to these sections the contract for transfer of shares cannot be enforced. He submits that if it cannot be enforced there is no reason why such suit should be entertained. Argument cannot be accepted. None of these sections prohibits a party from entering into a contract of transfer of shares.

Even otherwise it does not take away the jurisdiction of the civil Court to entertain suit for specific performance. At the most what can happen is that such transfer would depend upon approval by the Board of Directors or the authority competent under the Companies Act. Every person or owner of property is entitled to transfer his property. It is a different question whether Board of Directors may or may not approve such transfer. The person desirous of purchasing such shares may enter into a contract of purchase subject to the approval of the Board of Directors or the authority under the Companies Act.

15. Shri Dewani learned counsel had cited to me a decision reported in V. B. Rangaraj Vs. V. B. Gopalakrishnan and others A. I. R. 1992 Supreme Court 453. Their Lordships of Supreme Court have held that private agreement contrary to Articles of Association is not binding on shareholders or on Company.

It is nowhere held by Their Lordships that such a private agreement is absolutely void in every case. Enforceability may depend upon the Articles of Association.

16. Another decision in Nutan Kumar and others Vs. IInd Additional District Judge, Banda and others A. I. R. 1994 Allahabad 298 was placed before me. The said decision deals with the question as to which of the agreements are void. In our case the question is whether simply because the agreement is void it could be said that the plaint is barred by some provisions of law. In no case it could be said so.

Yet another decision reported in Dale & Carrington Invt.

(P) Ltd. And Another Vs. P. K. Prathapan And Others (2005)¹ Supreme Court Cases 212 was placed before me. This decision also deals with the provisions of Sections 81, 291 and 26 of the Companies Act. I have found that none of these sections in fact applies to the facts of the instant case and therefore this decision has no bearing in the case at hand. In the circumstances I find that learned Judge of the trial Court fell in error in rejecting the plaint.

Plaint is neither barred by any provisions of law nor can it be said that it does not disclose any cause of action. In the circumstances, the appeal is allowed. Order passed by the trial Court is set aside.

Trial Court is directed to decide the suit in accordance with the provisions of law. Costs on respondents.

JUDGE svk