



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CR-1531-2017(O&M)
Date of decision: 06.11.2025

Rajen Chandrakant

...Petitioner(s)

Vs.

Divya Investment Consultants & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjay Jain, Advocate
for the petitioner.

Mr. Ashok Gupta, Advocate
for the respondents.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the petitioner/defendant No.1 under Article 227 of the Constitution of India, against the order dated 18.02.2017 (Annexure P1) passed by the Civil Judge (Senior Division), Ambala whereby application filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint, has been dismissed.

2. It is inter alia submitted by learned counsel for the petitioner that the impugned order is prima facie unsustainable because as per the plaint/suit (Annexure P2), the total controversy is with regard to the sale and purchase of equity shares and money transaction between the investor/respondent-plaintiff and the Stock Broker/petitioner-defendant. It is submitted that as such, in terms of provisions of the Securities and



Exchange Board of India Act, 1992 (hereinafter referred to as “the SEBI Act”) jurisdiction of the Civil Suit is barred. Learned counsel argues that as per Section 11 of the said Act, the Board under the Act has the same powers as are vested in a Civil Court under CPC. The Board under Section 15-I of the Act, has powers to adjudicate the present controversy; and to deal with regard to penalty for default in case of Stockbrokers (Section 15-F of the Act). Learned counsel takes this Court extensively through the provisions of the Act to further substantiate his said arguments. It is contended that accordingly, the learned trial Court has wrongly interpreted the provisions of the Act resulting into passing of the illegal impugned order.

3. It is further argued that Order 7 Rule 11 CPC casts a duty on the Court to perform its obligation in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. Learned counsel submits that this is especially so in the present case as suit of the plaintiff was not maintainable; as respondent has filed suit only for mandatory injunction and not for declaration or recovery.

4. Furthermore, in passing the impugned order, the learned trial court has also ignored the fact that previously also, an application filed by the petitioner under Order 7 Rule 11 CPC had been dismissed by the learned trial Court; which had been challenged by the petitioner before this Court vide Civil Revision No.2154 of 2007; which had been allowed by this



Court vide order dated 13.11.2014 and the learned trial Court was directed to decide the issue afresh. It is submitted that despite that again an order has been passed by the learned trial Court rejecting the application of the petitioner. Learned counsel accordingly prays that Revision Petition be allowed and impugned order dated 18.02.2017 (Annexure P1) be set aside.

5. On the other hand, learned counsel for the plaintiff/respondent No.1 submits that the prayer sought by the plaintiff can only be granted through Civil Suit. Learned counsel accordingly prays for dismissal of the present Revision Petition.

6. No other argument is made on behalf of the parties.

7. I have heard learned counsel and perused the case file in detail.

8. Brief facts of the case are that the petitioner is a registered Stockbroker. It is the case of the plaintiff/respondent No.1 that he had invested through the petitioner; however, the petitioner had shortchanged the plaintiff. Accordingly, plaintiff filed the instant Civil Suit No.148 dated 11.03.1995 (Annexure P2) seeking a decree of mandatory injunction against the petitioner; inter alia praying that the petitioner be directed to: –

“(I) The defendant No.1 may please be directed to make deliver of the following shares and debentures: -

(a) 300 shares of the Apples Industries, vide the bill No. B-01-247 dated 17.4.1992.

(b) 200 shares of Usha Baltron, Contract Note No. C/13/50/037 dated 14.10.91.

(c) 100 share of Gobind Rubber.



(d) 100 shares of Indian Sewing, Bill No. B- 01-0218 dated 16.4.1991.

(e) 20 Deventure R.P. L. NO. B-05 of 7.7.92

(f) 24 shares of the Reliance Industries Ltd.

(g) Alongwith Right, dividends, bonus, preferential and bonous of various group of companies from time to time.

Amount of Rupees 50,000/- which has been wrongly debited in the account as the Plaintiff may please be declared as illegal, null and void."

9. A reading of the entire prayer clause in the Civil Suit shows that similar prayers as above, have been made therein.

10. The SEBI Act is: *"An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto."*

11. A perusal of the Act shows that the Board has been vested with comprehensive powers to protect the interest of the investors. Under Section 11-C of the Act, Board has the power to investigate matters and transactions in security which are being dealt with in a manner detrimental to the investors, or the Securities Market, and such like. Relevant Sections are as follows: –

"11. Functions of Board. — (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interest of investors in securities and to promote the development of, and



to regulate the securities market, by such measures as it thinks fit.

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(2)(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

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(2)(i) calling for information from, undertaking inspection, conducting inquiries and audits of the [stock exchanges, mutual funds, other persons associated with the securities market] intermediaries and self-regulatory organisations in the securities market;

[(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;]

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[(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under [clause (i) or clause (ia) of sub-section (2) or sub-section (2-A)], the Board shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—



- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;*
- (ii) summoning and enforcing the attendance of persons and examining them on oath;*
- (iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;]*
- [(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2-A);*
- (v) issuing commissions for the examination of witnesses or documents.]” (Emphasis added)*

12. As per Section 11(3) the Board is vested with the same powers as a Civil Court under the CPC.

13. Further Sections of the Act which are relevant to the present case are reproduced hereinbelow:-

“[15-C. Penalty for failure to redress investors' grievances. —
If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

Objects and Reasons- Clause 11.—*This clause seeks to substitute section 15-C by a new section in the Securities and Exchange Board of India Act, 1992 providing for imposition of penalty for failure to redress investors' grievances.*



Under the existing provisions, contained in the said section if any person, who is registered as an intermediary, after having been called upon by the Securities and Exchange Board in writing to redress the grievances of investors, fails to redress such grievances, he shall be liable to a penalty not exceeding ten thousand rupees for each such failure.

It is proposed to substitute section 15-C to provide that if any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

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15-F. Penalty for default in case of stock brokers.—*If any person, who is registered as a stock broker under this Act,—*

(a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker;

b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;]

c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to [a



penalty of one lakh rupees] or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Objects and Reasons-Clause 14.—*This clause seeks to amend section 15-F of the Securities and Exchange Board of India Act, 1992 providing for imposition of penalty for default in case of stock brokers.*

(a) Under the existing provisions, contained in clause (b) of the said section if any person, who is registered as a stock broker under the Act, fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues.

It is proposed to enhance the penalty to one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(b) Under the existing provisions, contained in clause (c) of the said section if any person, who is registered as a stock broker under the Act, charges an amount of brokerage Which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

It is proposed to enhance the amount of penalty from five thousand rupees to one lakh rupees. After the proposed amendment he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.



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15-I. Power to adjudicate.—(1) *For the purpose of adjudging under sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-F, 15-G [, 15-H, 15-HA and 15-HB], the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.*

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Objects and Reasons- Clause 18.—*This clause seeks to amend section 15-I of the Securities and Exchange Board of India Act, 1992 relating to power to adjudicate. Clause 17 proposes to insert new sections 15-HA and 15-HB in the Act. It is proposed to insert references of sections 15-HA and 15-HB in section 15-I. The proposed amendment is of consequential nature.*

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15-Y. Civil Court not to have jurisdiction.—*No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under*



this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

14. A bare reading of the above provisions shows that under the Act comprehensive mechanisms have been provided for safeguarding the interests of the investors. The Act is a complete Code in itself, that deals with each and every aspect in respect of investing in securities. It will not be far-fetched to state that the Board, established under the SEBI Act, is the watchdog of the Stockbrokers. In the instant case, as the plaintiff is seeking release of shares alleged to have been wrongfully withheld by the petitioner. As such, case of the plaintiff would fall under Section 15-F(b) which provides for imposition of penalty in case of default by the stockbroker/petitioner. As per the Act, the Board would be required to issue notice to the petitioner under Section 15-C of the Act. Under Section 15-I of the Act, the Board has the power to appoint an adjudicating officer who would adjudge upon issues/disputes falling under the mentioned sections including Sections 15 F and 15 C. Thus, the Board is competent to adjudicate the matter in controversy as per Sections 15-C, 15-F, 15-I of the SEBI Act, 1992. It is trite law that in face of the prevalence and availability of the Special Act, the plaintiff could not have taken resort to remedy under the General Act. Reference judgment of the Hon’ble Supreme Court in **Om Aggarwal v. Haryana Financial Corporation (SC) : Law Finder Doc ID # 652739**, wherein



it is held that provisions of the Special Act will prevail over the General Provisions. Thus, suit of the plaintiff was not maintainable.

15. Furthermore, suit of the plaintiff was not maintainable even as per the above-reproduced Section 15-Y of the Act, under which jurisdiction of the Civil Court is specifically barred. Reliance may be placed upon judgment of the Bombay High Court in **Kesha Appliances P. Ltd. v. Royal Holdings Services Ltd. (Bombay) : Law Finder Doc ID # 229676** wherein it is held as under:-

“A. Companies Act, 1956 Sections 81 and 111A Civil Procedure Code, 1908 Sections 9, 9A, Order 39 Rules 1 and 2 - Security Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, Regulations 12, 10 and 3(1) - Security Exchange Board of India Act, 1992, Sections 15Y and 20A - Jurisdiction of Civil Court in the matters altering to transfer of shares and securities on the grounds that in view of sections 15Y and 20A of SEBI Act, 1992, Civil Court has no jurisdiction to entertain the dispute - Held that, unless jurisdiction of Civil Courts is expressly barred by a statute, the civil courts will have the jurisdiction by virtue of section 9 of Civil Procedure Code - A decision is an authority for what it actually decides and what can be read into as assumes intention of Judges - The decisions reported in 2002 (Bom.) Vol. 109 and Division Bench decision in 2002(1) Bom.C.R. (O.S.) 419 cannot be said to have held that Section 15Y and 20A of SEBI Act create a bar for the Civil Courts to entertain this suits because this issue was not pressed in said cases - Plea that Section 111A of the Companies Act is a bar of jurisdiction



cannot be accepted - Both above decisions have held that section 111A is a summary remedy and if complicated questions of facts or fraud are arise, civil court will have jurisdiction under section 9 of Civil Procedure Code - However, the subject-matter not cover by those contingencies - Therefore, suits dismissed for want of Civil Court jurisdiction.

B. Companies Act, 1956 Section 111A Security Exchange Board of India Act, 1992, Sections 15Y and 20A - Civil Procedure Code, 1908, Order 39 Rules 1 and 2 - Grant of interim relief in the matter relating to transfer of shares and rectification of shareholders registers etc. - Sections 15Y and 20A of SEBI Act bar the Civil Court jurisdiction - Civil Court cannot grant interim reliefs - Held that, even if Civil Court has the jurisdiction, it is not obligatory that it must exercise discretionary power to grant rectification of registers relate to take over regulations - Once the said provisions are invoked the bar under sections 15Y and 20A of SEBI Act which gives these powers to SEBI authorities comes into play - Therefore, the suits are liable to be dismissed as the Civil Court has no jurisdiction to decide the subject-matter - Applications for interim relief as well as the suits also dismissed.

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26. In the light of the aforesaid view I have taken it is now necessary for me to consider as to whether the provisions of Section 15Y and 20A on the facts of the case bars the jurisdiction of this court to entertain the present suit which has been filed before me. Before I do so it is necessary to consider the settled position of law as to the interpretation of section 9 of the Civil Procedure Code. The law as to the jurisdiction of this



*court and its exclusion thereof has been the subject matter of diverse judgments of the apex court commencing from the judgment of the 7 judges bench in the case of **Kamala Mills Ltd v. State of Bombay, reported in AIR 1965 Supreme Court page 1942** the apex court has held as under:*

"The normal rule prescribed by section 9 of the Code of Civil Procedure is that the courts shall (subject to the provisions contained in the Code) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizances is either expressly or impliedly barred. A claim by the dealers for the refund of sales tax which is alleged to have been paid by them through mistake is a claim of a civil nature. It should normally be triable by the ordinary courts of competent jurisdiction as provided by Section 9. But the jurisdiction of the civil courts to try suits of a civil nature can be excluded either expressly or impliedly. This is laid down in this section itself. The question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered, in every case, in the light of the words used in the statutory provision on which the plea is rested the scheme of the relevant provisions, their object and their purpose.

Whenever a plea is raised before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally afforded by an alternative provision prescribed by a special statute is sufficient or adequate. Where the exclusion of the civil courts jurisdiction is expressly



provided for the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, it cannot, however be decisive. But when exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with the tribunals specially constituted in that behalf and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it is pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed."

16. Even further, the respondent/plaintiff had filed a Civil Suit only for mandatory injunction and not for recovery or declaration. The suit for mandatory injunction filed by the plaintiff was even not maintainable in view of the provisions of the Specific Relief Act. This Court in **Spectrum Life Medical Device Private Limited v. EMC Super Speciality Hospital Private Limited, (Punjab And Haryana) : Law Finder Doc ID # 1489248**; has held that when efficacious remedy in the form of suit for recovery is available to the plaintiff filing suit for mandatory injunction would be hit by section 41(h) of the Specific Relief Act, as follows: –



“Specific Relief Act, 1963 Section 41(h) Civil Procedure Code, 1908, Order 7, Rule 11 - Recovery of money - Mandatory injunction - Maintainability of suit - Substantive prayer made by the plaintiff for recovery of amount of Rs. 9 lakhs which was wrongly credited in the account of the petitioner - When efficacious remedy in the form of suit for recovery is available to the plaintiff, the filing of suit for mandatory injunction would be hit by section 41(h) of the Specific Relief Act.”

17. The Co-ordinate Bench of this Court further observed that it appeared that in order to avoid payment of Court fees, suit for mandatory injunction had been filed. In the present circumstances, only suit for recovery was maintainable and the plaintiff ought to affix ad valorem Court fee in order to maintain such suit. Same view has been taken by a Division Bench of the Allahabad High Court in **State of U.P. v. Tara Singh Jaiswal (Allahabad) (DB) : Law Finder Doc ID # 400545.**

18. Last but not the least, the impugned order deserves to be set aside also on the ground that the petitioner had previously also sought rejection of the plaint by way of an application under Order 7 Rule 11 CPC inter alia on the ground that the suit was barred by the provisions of the Act. This said application of the petitioner was dismissed vide order dated 07.04.2007 by the learned trial Court on the ground that written statement was yet to be brought on file; and when issues were framed, same would be treated as preliminary issues. The petitioner had challenged the said order dated 7.4.2007 before this Court by way of Civil Revision No.2154 of



2007. Vide order dated 13.11.2014 this Court had set aside the order dated 7.4.2007 and remanded the matter back to the trial Court to decide the said issue afresh. However, now again vide impugned order dated 18.02.2017 (P-1), the learned trial Court has again dismissed the Order 7 Rule 11 CPC application of the petitioner. Thus, the impugned order is unsustainable.

19. Therefore, present petition is **allowed**; and the impugned order dated 18.02.2017 is set aside; and suit of the respondent/plaintiff stands rejected.

20. Pending application(s) if any also stand(s) disposed of.

06.11.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No