

IN THE COURT OF SH. RAVINDER SINGH-1, DISTRICT JUDGE-03
EAST DISTRICT, KARKARDOOMA COURTS: DELHI.

Civil Suit No. 571/23

Ganga Kavery Construction Pvt. Ltd.Plaintiff

Vs.

SRC Realtors Pvt. Ltd. Defendant

ORDER

1. Vide this order, I shall dispose of the application of the defendant-1 & 2 under Order VII Rule 11 r/w Section 10 CPC.
2. During the course of arguments on aforesaid application, Ld. Counsel for the defendant-1 & 2 submitted that the aforesaid application be considered for Order VII Rule 11 CPC and not for Section 10 CPC. Hence, the aforesaid application is treated as an application under Order VII Rule 11 CPC only.
3. Defendant-1 & 2 stated that the suit is liable to be rejected in view of the recent judgment of Hon'ble Supreme Court passed in *Shailja Krishna Vs. Satori Global Limited and Others 2025 SCC OnLine SC1889 passed on 02.09.2025* wherein Hon'ble Supreme Court held that National Company Law Tribunal (NCLT) possesses wide jurisdiction to decide all matters incidental and integral to a complaint of oppression and mismanagement, including those involving allegations of fraud, manipulation, or coercion within a company. They further stated that in the present case the core issue pertains to the validity of alleged share holding

of plaintiff-2. The issue which is already sub-judice before Hon'ble NCLT, consequently, this suit identical and overlapping issues, is barred and deserves to be rejected. Further, defendant-1 & 2 alleged that suit is barred under Section 430 of The Companies Act which clearly states that no injunction shall be granted by any civil court in respect of any action taken or to be taken in pursuance of any power conferred on the Hon'ble NCLT by The Companies Act, as such, plaint is liable to be rejected.

4. Plaintiff contested the application by filing a detailed reply stating therein that the application is not maintainable as issue has already been dealt and decided by the Court vide order dated 20.02.2025 and 16.05.2025 as this court in order dated 20.02.2025 adjudicated the preliminary issue holding that the present suit is maintainable before this Court. Further, plaintiff stated that the ratio of *Shailja Krishna (supra)* is not applicable as in that case appellant claimed invalidation of gift deed being violative of the articles of Articles of Association (AoA) alongside board meeting irregularities. But in NCLT Petition 205/2021, the defendant challenged the plaintiffs shareholding without resolving their alleged fraudulent entries. Accordingly, the plaintiff prayed for dismissal of the application.

5. I have already heard the arguments of Ld. Counsels for the parties and have gone through the material placed on record.

6. For deciding an application under Order VII Rule 11 CPC, it is well settled law that the Court has to examine only the averments made in the plaint and not the defence of the defendant or the contents of the application under Order VII Rule 11 CPC. The power to reject the plaint on this ground should be exercised only if the Court comes to the

conclusion that even if all the allegations set out in the plaint are proved, despite that the plaintiff would not be entitled to any relief. Therefore, it is necessary to see what has been averred in the plaint by the plaintiffs.

7. Plaintiffs in their plaint stated as under:

(a). plaintiff-1 is a company registered under the Companies Act, and it has earlier two directors i.e. one Rakesh Kumar Sinha and another Mr. Kashi Nath Shukla resigned on 08.03.2021 from Directorship of the company on induction of Mr. Praveen Kumar and Mr. Paramjeet Singh, plaintiff no.2 & 3 respectively.

(b). plaintiff no. 2 & 3, shown their interest to take over the management of the plaintiff-1/company, accordingly, they approached to one Mr. Santosh Kumar Chaubey/defendant-3 who thereafter, introduced them to Pradeep Kumar Manglik- defendant no.5 the statutory auditor of the company for completing the necessary formalities for handing over the complete control, ownership and the management of the company. Plaintiff- 2 & 3 met with the defendant-5 on 02.03.2021 to discuss the modalities and proposal for taking over the management of Company as well as for transfer of the shares of plaintiff company.

(c). defendant- 3 claimed to be owner of 7,45,000 shares of the plaintiff company and 5000 shares held by his wife namely Ms. Ranjana Malviya/defendant-4. It is further stated that the total consideration for taking over the management of the plaintiff company was agreed between as Rs.171 lakhs out of which Rs. 75 lakhs was for purchase of equity shares of the defendant - 3 and 4 and balance Rs. 96 lakhs was to be introduced as unsecured loan to repay the unsecured loans of defendant no. 1 & 2 to

the tune of Rs. 107.22 lakhs and Rs.43.79 lakhs respectively aggregating to Rs. 151.01 lakhs.

(d). plaintiff-2 requested the defendant- 3 and 5 to share the relevant documents of the plaintiff company for verification purposes of his Chartered Accountant and Company Secretary to take final decision. Defendant-5, provided the copies of the company documents like Form DIR 12, Memorandum & Article of Association.

(e). defendant-5 informed that the annual returns of the company for the Financial Year 18-19 & Financial Year 19-20 have not been filed & confirmed that they would be filed shortly. Plaintiffs further stated that defendant-3 & 4 transferred their share in favour of plaintiff-2 and board of directors in its meeting held on 05.03.2021 took notice of the transfer of share and further board of director again met on 08.03.2021 wherein they unanimously approved, the transfer of shares of defendant no.3 & 4 in favour of plaintiff-2 & 3 and the transfer of shares was signed by the erstwhile Director Mr. Rakesh Kumar Sinha and Kashi Nath Shukla. They both have also signed the share transfer register.

(f). plaintiff-2 made the payment from his individual account to the tune of Rs.74,50,000/- to defendant no. 3 and Rs. 50,000/- to defendant no.4 for 5000 shares of the plaintiff-1 company. Further, plaintiff no.2 also transferred Rs. 96 lakhs on 22.04.2021 to the bank account of plaintiff-1 company for clearing the unsecured loan as agreed between the parties for onward settlement of alleged unsecured loans standing in favour of the defendant no. 1 & 2 in the books of accounts of the plaintiff no.1 company.

(g). plaintiff-3 claimed that one Mr. Purshottam Kumar Chaubey-approached him saying that he had paid some unsecured loan to plaintiff-1

through the defendant companies and it should be paid back. Plaintiff-2 contacted defendant-3 and he informed that payment had been made by the defendant-1 & 2. Thereafter, he immediately transferred the statement of account of Bank of Maharashtra that payment has been transferred to defendant-2 & 3 and the statement was also shared with Purshotam Kumar Chaubey, to which he denied receiving any amount from the plaintiff-1 company. Thereafter, he contacted defendant-5 who revealed that money had gone to some unrelated entries and was managed and controlled by him and later on he informed that there was no amount due to be given to the claimant companies. He also admitted having created fictitious credit entries to the tune of Rs. 1.51 crore in the account of plaintiff/company on instruction of Purshotam Kumar Chaubey- who is director and promoter of defendant/company.

(h). defendant-2 & 3 took advantage of non filing of balance sheet of plaintiff-1 company for the FY 2018-19 and 2019-2020 and created back entries in the book of account of plaintiff-1 company in the name of defendant companies in order to cheat, to extort and defraud the defendant-4 to the tune of Rs. 1.5 Crore in the garb of unsecured loan.

(i). defendants has never provided any unsecured loan to the plaintiff-1 company, however, defendants company are claiming that they are the share holder of plaintiff-1 company, so to grab plaintiff-1 company, defendant companies on the behest of Purshotam Kumar Chaubey and in collusion of Pramod Kumar Chaubey, filed a company petition 205/2021 before NCLT for under Section 241/242 of companies for an alleged oppression, mismanagement in the plaintiff company before Hon'ble NCLT and Hon'ble NCLT has pleased to grant interim protection dated

03.02.2022 thereby restraining respondents therein not to shift registered office of plaintiff company, so plaintiff filed this suit for following relief:-

(a) Pass a decree of declaration thereby declaring that the entries in the books of accounts of plaintiff no.1 as filed by defendant no. 5 pertaining to defendant nos. 1 & 2 are false and fictitious, and do not bind the plaintiff-1 company.

(b) Further, pass a decree of declaration declaring that the defendant no. 1 & 2 have not paid any subscription money, received any share certificates and are not shareholders of the plaintiff no.1 company;

(c) pass a decree of permanent injunction thereby restraining the defendant no.1,2,3,4, and 5 and their associates / agents / representatives/employees etc. from in any manner disturbing the peaceful functioning of the plaintiff no.1 company.

(d) Pass a decree of damages thereby directing the defendants jointly and severally, to pay an amount of Rs. 10,00,000/- (Ten Lakhs) to the plaintiffs;

(e) Any other or further order which this Hon'ble Court deem fit and proper in the interest of justice.

8. It is pertinent to note that vide order dated 29.11.2024, Ld. Counsel for the defendants submitted that the defendant company filed a petition under Section 241 & 242 of Companies Act before Hon'ble NCLT, so civil court has no jurisdiction to entertain and try this suit in terms of Section 430 of Companies Act. In view of submission of Ld. Counsel for the defendant, the matter was adjourned for arguments on the maintainability of the suit and Ld. Predecessor vide order dated 20.02.2025 held that this suit is maintainable observing that :-

On perusal of the plaint, it is clear that the plaintiff has categorically mentioned the fraudulent act of the defendants in para no.5 (xvii) to 5 (xxxi) of the plaint. The plaintiffs have also prayed for other relief with regard to permanent injunction related to the disturbance created by defendant no.1 to 5 in the peaceful functioning of plaintiff no.1 company. Section 58 and 59 of The Companies Act 2013 deals with the refusal by company to transfer of share but in this case amount allegedly

given by the plaintiff no.2 & 3 to the plaintiff no.1 for clearing unsecured loan of defendant no.1 & 2 and the existence of entries in the name of defendant no. 1 & 2 in the books of plaintiff no.1 company without any subscription paid is under dispute, therefore, before transfer of management in favour of plaintiff no.2 & 3, it is to be declared that the recording of shares in the name of defendant no.1 & 2 have been made fraudulently. The specific case of the plaintiffs is of fraud and the said fraud is to be adjudicated upon adducing evidence by both the parties before the civil court. The present case is related to the issue which involves issuance of shares / creation of entries by the Auditor of the company in derogation of his fiduciary with the company and whether the said act of the auditor/ defendant no.5 is in contravention of the provisions of companies act 2013 or not is to be decided by the civil court. In view of the above, this court finds that the civil court is not barred to inquire into the allegation of fraud specifically when the plaintiff has prayed for declaration of recording the name of defendant no.1 & 2 as share holder in the books in the register of plaintiff no.1 company fraudulently. Accordingly, the suit filed by the plaintiff is maintainable.

9. It is clear that defendant-1 & 2 had not filed any formal application U/O VII rule 11 CPC that suit is barred u/s 430 of Company Act, however their submission in this regard was disposed of vide order dated 20.02.2025 which has not been challenged by the defendant-1 & 2. Hon'ble Supreme Court *in B.B Lalitha & ors V/s Bhuvanesh & ors (Neutral Citation) 2026 INSC 499* held that the second application U/O VII rule 11 CPC barred by res-judicata, if earlier plea decided and attains the finality. Hence, the only ground for rejection of the plaint in the aforesaid application is the ratio of judgement of Hon'ble Supreme Court passed in *Shailja Krishna (supra)*.

10. In *Shailja Krishna (supra)*, appellant Shailja has 5,000 equity shares of the respondent company. Her husband/second respondent transferred his 24,500 equity shares out of 25,000 shares. Later on, additional 10,000 shares were issued to her. The appellant executed a gift deed in Faizabad on 17.12.2010 thereby purportedly transferred her entire shareholding in

the company to fourth respondent- her mother in law and she is stated to resign from the company and her resignation was accepted. Appellant and the second respondent drifted apart due to strained marital relationship. She lodged a police complaint alleging that she had been coerced into signing some blank documents. She filed a company petition before Hon'ble NCLT and her petition was allowed vide judgment dated 04.09.2018 and thereby she was declared lawful owner of 39500 equity shares and the company was directed to reinstate her as director. Aggrieved by the order and the judgment, company and respondent-5 filed appeal before Hon'ble NCLAT set aside the judgment of Hon'ble NCLT on the ground that it did not have jurisdiction to decide the issue of fraud, manipulation and coercion in respect of gift deed. Appellant preferred appeal against order of NCLAT before Hon'ble Supreme Court and Hon'ble Supreme Court while allowing the appeal in para 30, held as under:

30. The aforesaid decisions confirm the view that the NCLT/CLB possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement. Such power is, however, subject to any other legislative enactment specifically debarring the NCLT/CLB from exercising its powers in this respect.

11. In the case in hand, plaintiffs claimed that defendant companies have never provided any unsecured loan to the plaintiff-1 company, however defendant-2 & 3 took advantage of non filing of balance sheet of plaintiff-1 company for the FY 2018-19 and 2019-2020, created back entries in the book of account of plaintiff-1 company in the name of defendant companies with the help of defendant-5 and Purshotam Kumar Chaubey in order to cheat, extort and defraud the plaintiff-1 company to the tune of Rs. 1.5 Crore in the garb of unsecured loan and submitted balance sheets with Registrar of Companies. So, plaintiffs sought the relief

of declaration thereby declaring the entries in the book of account of plaintiff-1 company are false and fictitious and do not bind plaintiff-1 company and for damages and injunction. Plaintiffs have not alleged any oppression and mismanagement in the suit, however their entire allegations are in respect of fraud against defendants. It is pertinent that company petition preferred by defendant-1 & 2 companies bearing no. 205/2021 before Hon'ble NCLT under Section 241/242 of Companies Act, for an alleged oppression, mismanagement is of plaintiff-1 company & others. But, in the *Shailja Krishna (supra)* the appellant filed the petition wherein she alleged the allegations of oppression and mismanagement and also of coerced gift deed regarding her equity shares by taking her signatures on some blank documents and on her resignation. So, Hon'ble Supreme Court opined that the issue of fraud qua coerced gift deed and her signature are incidental and/or integral to the complaint alleging oppression and mismanagement. It is pertinent that there is nothing in the order of Hon'ble Supreme Court that civil court has no jurisdiction to try the suit filed by the plaintiff company qua declaration. Hence, I am of the considered opinion that the ratio of *Shailja Krishna (supra)* is not applicable in the facts and circumstances of the present case.

12. In view of aforesaid discussion, the aforesaid application is dismissed and disposed of as such.

**Announced in the open court
on 26th Day of May, 2026**

**(RAVINDER SINGH-1)
District Judge-03, East District, KKD
Courts, Delhi.**