

IN THE COURT OF THE SUBORDINATE JUDGE, KOTTARAKARA

Present : Sri. SANDEEP KRISHNA. V, Sub Judge.

On Thursday the 4th day of January, 2024/14th day of Pausha, 1945.

IA.No:4/2023

in

OS.No: 15/2022

Between

Petitioner/ Defendant:-

B. Venugopalan Potty, aged 67 years,
S/o. N. Balaraman Potty, residing
Nandanam, Kizhakkekkara, Kottarakkara.

By Advocate: Sri. C. Parameswaran.

And

Respondent/Plaintiff:-

Selvet Samuel, aged 61 years, S/o. Samuel,
Usha Mandiram, Chirattakonam, Palamukku,
Vettikkavala P.O, Kottarakkara Taluk.

By Advocate:Sri. John M. George

This Petition was filed by the petitioner for rejection of the plaint after hearing the maintainability. This petition was called on for hearing on 04.01.2024 and the court on the same day passed the following:-

ORDER

1. This is a petition filed by the defendant demanding rejection of the plaint stating that the dispute involved is a commercial dispute falling within the jurisdiction of the Commercial Court established as per the Commercial Courts Act, 2015.

2. Plaintiff filed the suit stating that he is a government contractor. He had entered into a contract with Kerala Land Development Corporation Ltd. To perform this contract, he sought the financial assistance of the defendant. He requested for a loan of ₹ 25,00,000/-. Defendant agreed to give the money in instalments. A contract was entered into by the plaintiff and defendant in this regard. In instalments, the defendant paid ₹ 25,75,000/- to the plaintiff as loan. Defendant also obtained the original sale deed No. 1364/2010, land tax receipts and four blank cheques from the plaintiff. According to the plaintiff, he made an excess repayment of ₹ 38,11,629/- to the defendant. Suit is filed to realise the said money with its interest amounting to ₹ 3,59,000/- and further for the return of the original sale deed No. 1364/210, its tax receipt, the four blank cheques and demand promissory note.

3. Defendant filed written statement stating that the suit is not maintainable. He also states that he has filed OS 21/2020 for rendition of accounts in the transaction between the plaintiff and the defendant. The capital for the work contract of Kerala Land Development Corporation Ltd amounting to ₹ 25,00,000/- was paid to the plaintiff at the initial stage of the work itself. A joint venture agreement dated 30/09/2015 was executed at the instance and instigation of the plaintiff owing to the acute paucity of funds in the hands of the plaintiff. The receipt of original sale deed, tax receipt and four blank cheques are denied. Plaintiff received ₹ 72,07,000/- from the defendant including the capital of the work amounting to ₹ 25,00,000/-. Plaintiff is duty bound to share the profits and to pay interest on the capital amount received from the defendant. The statement of account shown in the plaint includes transaction to the tune of ₹ 23,70,400/- which is part of an earlier transaction and not covered by the joint venture agreement. Plaintiff is not entitled to the plaint amount from the defendant.

4. On the pleadings, court framed issues. Issue No.1 pertained to the maintainability of the suit. Seven months after the written statement was filed and 6 months after the issues were framed, the present petition is filed. Along with this petition IA 5/2023 was also filed as per Section 10 Code of Civil Procedure, 1908. As per Order dated 27/05/2023 in IA 5/2023 the trial of suit is stayed.

5. Heard, both sides.

The following points arise for determination:-

- (1) Whether the dispute between the plaintiff and defendant is a commercial dispute as defined in the Commercial Court Act, 2015 ?
- (2) What is the Order?

6. **Point No.1:-** It is clear from the written statement (of the petitioner) that he had filed OS 21/2020 based on the same contract which he says is a joint venture agreement. There is no case that the said suit which is for rendition of accounts was filed as a Commercial Suit.

7. Now, the petitioner state that the relation between the plaintiff and defendant is governed by a joint venture agreement and that such dispute would be a commercial dispute in view of Section 2(c) (xi) of the Commercial Court Act, 2015. To explain what a joint venture is the petitioner also relies on the ratio decidendi in Faqir Chand Gulati v. Uppal Agencies Private Limited, (2008) 10 SCC 345. I find that at paragraph No. 17 of the said Judgement , the Honourable Supreme Court of India held as follows:-

“ 17. This Court had occasion to consider the nature of ‘joint venture’ in *New Horizons Ltd. v. Union of India*, (1995) 1 SCC 478. This Court held:

“ The expression” joint venture is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.

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Joint ventures are, in general, governed by the same rules as partnerships. The relationships of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership

and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships”.

8. I find that on going through the agreement between the plaintiff and defendant, there is agreement to give a loan for ₹ 25,00,000/- which is to be repaid with interest and with further share of profits. Defendant has no liability and he will not face any tortious liability if there is any defect in the construction financed by him. The relationship is only that of debtor and creditor. Defendant does not share the loss. There is no joint venture agreement as explained above. Therefore, the dispute is not a commercial dispute. Point No.1 is found against the petitioner.

Point No.2:- In the result, Petition is dismissed.

Pronounced by me in open court this the 04th day of January , 2024.

Sd/-
SANDEEP KRISHNA. V
Sub Judge.

APPENDIX :- NIL.

Sd/-
Sub Judge

Typed by : Binu.S
Compared by: Adya.G.S