

MHAH070000242022



ORDER BELOW EXH. 62 IN COMMERCIAL DISPUT SUIT NO. 01 OF 2022

Al Quresh Exports & others
Versus
Al Fateha Globle Food Stuff & others

1. The Plaintiff has filed the above suit against the defendant for the recovery of the amount of Rs.17,45,05,457/-, as more particularly stated in the plaint. The defendants had a lease agreement dated 7 November 2014 with the Municipal Council at Sangamner (Lease Deed), pursuant to which it was permitted to run / conduct activities of Slaughter House at Survey No. 214 situated at Nasik Pune Road, Sangamner (Lease). Initially, even before the lease was granted to the defendant by the Municipal Council, Sangamner, the defendant represented to the plaintiff that if the plaintiff were to borne the expenses for the allotment of said lease, the plaintiff will be made partner to the defendant Firm. Relying on the representation and assurances of the defendant, the plaintiff incurred substantial expenses towards allotment of lease. However, once the lease was allotted by the Lease Deed the defendant reneged on its promise and did not make the plaintiff as the partner to the defendant Firm.

2. Since the plaintiff had expended huge amount towards allotment of Lease as stated above, plaintiff interested in investing in the said slaughter house along with the defendant. Plaintiff entered into

Memorandum of Understanding with the Defendant on 15th December 2014. The defendant represented that it was an occupier of the slaughter house. As per the terms of the MoU, plaintiff agreed to provide men, skilled and unskilled labour, for slaughtering work. It was also agreed that the plaintiff will provide technical manpower and machineries to the slaughter house which was essential to run/operate the said slaughter house. The MoU was entered into for a period of 10 years. Plaintiff fulfilled this promise. Plaintiff also provided various machinery in the slaughter house.

3. As more particularly stated in the plaint, till September 2020, plaintiff had deposited/invested an amount of Rs.11,45,90,852/- with the defendant as well as invested huge amount of Rs.5,99,14,605/- to the Vendors/Suppliers towards installation of the aforesaid machineries in the project and other expenses to run the said project/ slaughter house. It was agreed between the plaintiff and the Defendant that the lease rent of the Municipal Council, Samgamner will be paid by the Defendant timely and punctually so that there would be no difficulty and/or problem from the Municipal Council, Samgamner to run/conduct the activities of the slaughter house. However, in breach and violation of the agreement/understanding between the Plaintiff, the Defendant did not make timely payment of the lease rent to the Municipal Council, Sangamner. So, the Municipal Council, Sangamner demanded arrears of Rs.68,00,000/- from the Defendant. The Defendant requested Plaintiff to pay the amount so that the activities of the slaughter house would not be affected. Accordingly, the Plaintiff agreed to pay amount of Rs.68,00,000/- in two / three installments but it was agreed that the said amount will be deducted by the Plaintiff at

the rate of Rs.8,00,000/- from the fixed monthly bills raised by the Defendant. Accordingly, another MOU dated 29th August 2020 was entered into between the Plaintiff and the Defendant. The Plaintiff has performed its part of obligation of the MoU and paid the amount towards lease rent. However, the Defendant did not clear the lease rent due to the Municipal Council, Sangamner. Due to such non- payment of lease rent, Municipal Council, Sangamner sealed the slaughter house in the month of March 2020, and since then the activities of the slaughter house has been stopped.

4. Subsequently, the Plaintiff has reliably learnt that the Defendant has come to an understanding with a third party Al Momin Exports on 20th October 2020 whereby the Defendant is now permitting the said firm to conduct the slaughter house. Defendant has been consistently committing breach of the agreement. In spite of representing and assuring that the Plaintiff will be made as partner in Defendant's firm, the Defendant reneged from its promise to make the Plaintiff as partner of the Defendant firm. Because of defendant's such representation and assurances, plaintiff incurred substantial and huge expenses towards the allotment of lease by the Municipal Council, Sangamner to the defendant. Said Lease was obtained from the Plaintiff's expenses.

5. Plaintiff has invested huge amount of money as stated above i.e. Rs.11,45,90,852/- and Rs.5,99,14,605/- total Rs.17,45,05,852/-. Due to misrepresentation and breach of agreement by the Defendant, the Plaintiff has suffered the loss of aforesaid amount of Rs.17,45,05,852/-. So, the plaintiff is entitled to recover this amount

from the defendant. The defendant deliberately not paid lease rent to the Municipal Council, Sangamner so as to create loss to the Plaintiff firm. By such act, the Defendant wanted the Plaintiff to remove itself from the slaughter house so that it can now illegally conduct the slaughter house with Al Momin.

6. Defendant has used and utilized the amounts invested by the Plaintiff without any demur or protest. The machines bought by the Plaintiff in the Slaughter House will now be used by the Defendant to the exclusion of the Plaintiff and cause the Plaintiff huge loss. The Plaintiff seriously apprehends that the Defendant may not be able to pay the suit claim amount. Hence, plaintiff is entitled to get the reliefs under Order XXXVIII of the Code of Civil Procedure. Court may direct the Defendant to furnish security to the extent of claim amount. In the event of failure to give security by the defendants, movable and immovable properties of the defendant be attached before judgment under Order XXXVIII of CPC.

7. As per the case of the defendant :- Defendants are in business of buffalo meat processing and selling since many years, therefore, the defendants decided to take the up-to-date "Slaughter House" situated in Survey No. 214 on lease from Sangamner Nagar Parishad. Accordingly, since 01/11/2014 Sangamner Nagar Parishad leased out the slaughter house to defendants for three years and one agreement dated 01/11/014 took place between the defendants and Sangamner Nagar Parishad. As per the agreement, it was in the discretion of the Nagar Parishad to renew the lease after lapse of three years. The rights to refuse renewal of the lease after three years were

reserved by the Nagar Parishad with it.

8. The plaintiffs came to know about the lease rights acquired by the defendants in the slaughter house. So the plaintiffs approached the defendants and made a proposal that plaintiffs would install latest meat processing unit in the slaughter house and thereby, work as service provider for the plaintiffs. That time, defendants made the plaintiffs aware about the period of lease (i.e. three years) and the discretion vested with the Nagar Parishad for renewal of the lease after three years. Accordingly, the agreement took place between plaintiffs and defendants and the former agreed to act as service provider in the slaughter house. It was also agreed that the plaintiffs would purchase all the cattle to be slaughtered in the slaughter house, the plaintiffs would process upon the meat of the cattle and thereafter export the same. It was agreed that the plaintiffs would enjoy all the profit of the export of the meat and defendants would entitled only for the charges which were applied for each cattle to be slaughtered in the slaughter house. The defendants contemplated about the huge profit to be received in the future from acting as a service provider and therefore, the plaintiffs entered in to the agreement with the defendants.

9. The lease agreement between the defendants and Nagar Parishad was from 01/11/2017 to 31/10/2020, the defendants expended huge amount from time to time so as to ensure that the slaughter house would run smoothly without any obstruction. There was second M.O.U. dated 10/08/2017 between the plaintiffs and defendants, but the same has been suppressed by the plaintiffs. The plaintiffs were honouring all the terms and conditions of the lease, but

the opposite party of the defendants started pursuing with the Government to cancel the lease of the slaughter house which was granted in favour of the defendants. Because of this, the District Collector, Ahmednagar without giving any opportunity and any reason to the defendants, made a order on 01/01/2019 and thereby decided to issue new tender for the lease of the slaughter house. In fact, a huge deposit amount of the defendants was laying with the Nagar Parishad, still the Nagar Parishad started to make illegal demand in the form of tax and penalties from the defendants. The Nagar Parishad started to demand the lease rent from the defendants for the period during which the slaughter house was not in function. The period of lease was up to 31/10/2020, still the Nagar Parishad sealed the slaughter house on 14/03/2020. That time a deposit amount of Rs. 88 lakhs of the defendants was laying with the Nagar Parishad, still the slaughter house was closed by giving reason that the small rent amount was outstanding against the defendants. Accordingly, the defendants were ready to pay all the reasonable dues amount to the Nagar Parishad, still the slaughter house was sealed. There was no fault of the defendants. So the defendants never committed any breach of contract that took place between itself and plaintiffs.

10. In fact, huge amount of defendant was due towards the plaintiffs, in that respect, there was meeting and discussion between the parties and lastly M.O.U. dated 29/08/2020 came into existence. It is clear from the plaint that the slaughter house was in function for the period of five years since 2017 in its full capacity. It means plaintiffs earned huge profit by running the slaughter house for five years. Still the plaintiffs avoided to give details about the profits earned by it. The

plaintiffs were aware that renewal of the lease agreement in favour of the defendants by the Nagar Parishad was fully at the will of the Nagar Parishad, and knowing this, the defendants agreed to act as service provider. There was no clause in any of the M.O.U that the invested amount of the plaintiffs in the slaughter house would be refunded to it by the defendants. The alleged amount of Rs. 7 Crore is never outstanding against the defendants. Whatever amount invested by the plaintiffs was on account of being service provider and it was for earning profit from the slaughter house. Though the plaintiffs invested in the machines which were installed in the slaughter house, it can not seek full costs of those machines, since those have been used in full capacity and therefore, costs of the machines has become zero. There is no default clause in any of the M.O.U. stipulating that the defendants would refund the amount invested by the plaintiffs in the slaughter house being service provider.

11. Upon considering averments made in the application and the say filed by the defendants, following points arise for my determination. I have given my findings against those points for the reasons stated thereunder :

	<i>Points</i>	<i>Findings</i>
1	Do plaintiffs prima facie prove that the defendants owe an amount of Rs. 17,45,05,457/- towards plaintiffs ?	..No.
2	Do plaintiffs entitled for the relief of attachment of properties of defendants under Order 38 Rule 5 of C. P.C. ?	..No.
3	What order ?	...As per final order.

Reasons

12. The plaintiffs are primarily relying upon two MOU dated

15/12/2014 and 29/08/2020, one report of C.A./ C.A. certificate dated 3/7/2021 and various bills. All these documents have been produced by the plaintiffs along with list Exh. 57. On the other hand, defendants are relying upon agreement dated 10/08/2017 and dated 01/08/2019 in support of their contentions.

As to points No. 1 and 2 : -

13. Plaintiffs are seeking relief of attachment before judgment qua the properties of the defendants in order to ensure that whatever decree the plaintiffs will get after the trial, will execute smoothly. It is the fear of the plaintiff that, in order to defeat the decree, which will be passed in favour of the plaintiffs, defendants are trying to sell out their entire properties. In this case, the plaintiffs have not give description of any of the properties owned by the defendants which are to be attached by this Court before judgment. Rule 5 of Order 38 of C.P.C. clearly speaks about furnishing list of specific properties by the plaintiffs which are required to be attached along with estimated value thereof. But the advocate for the plaintiffs Shri S. D. Kotkar has cited one judgment i.e. Marine Container Services Vs. Rajesh Dhirajlal Vohra to submit that this Court has power to direct the defendants to disclose their entire properties on affidavit so as to enable this Court to pass the order of attachment before judgment.

14. Learned advocate for the plaintiffs Shri S.D. Kotkar has argued the following points before me in support of his contentions that the order of attachment before judgment is utmost necessary in this case for ensuring execution of the decree.

(a) Both agreements/ memorandum of understanding dated 15/12/2014 and 29/08/2021 that took place between the plaintiffs

and defendants regarding business of slaughter house have been admitted by the defendants.

(b) The defendants have nowhere denied in entire written-statement about accepting of Rs. 11,45,90,000/- from the plaintiffs during the course of business transactions.

(c) The defendants have also not denied in entire written-statement that the plaintiffs have installed various machineries in the slaughter house having costs of Rs. 05,99,14,000/-

(d) The defendants have also admitted having received Rs. 68,00,000/- from the plaintiffs, which were paid to the defendants in order to pay the tax to the Municipal council.

(e) The plaintiffs have produced two different Index II from the Office of Sub-Registrar, Sangamner and it reveals that, on 23/07/2022 defendants have alienated two different parcels of lands admesasuring 34 Aar and 33 Aar out of Survey No. 203/86 and 203/88. These copies of Index II reveals that the defendants are intending to dispose of their entire property in order to defeat the decree which can be passed in favour of the plaintiff in this suit.

15. On the other hand, learned advocate appearing on behalf of the defendants Shri S. H. Gonge has strongly opposed this application by raising following points during his argument:

(a) Though it has been admitted that there were contractual relations between plaintiffs and defendants, the pleading of the plaintiffs itself reveals that there was no breach of the contract committed by the defendants, because the slaughter house where the plaintiffs acted as service provider came to be sealed by the Nagar Prishad. The act of Nagar Parishad never in control of defendants.

Nagar Parishad was seeking exorbitant taxes from the defendants. No act of the defendants was responsible for the closer of the slaughter house.

(b) Nowhere in the written-statement defendants have admitted that it owes total Rs. 17,45,05,000/- to the plaintiffs. On the contrary it has been pleaded by the defendants that a huge amount of defendants is outstanding against the plaintiffs. This aspect has become clear from clause 9 of the MOU dated 29/08/2020 wherein it has been specifically mentioned that an amount of Rs. 4,13,577/- is outstanding against the plaintiffs.

(c) There is no reference in the MOU dated 29/08/2020 that the defendants owes any amount to the plaintiff. Had there been an amount of Rs. 17,45,05,000/- outstanding against the defendants, the reference of the same would have been made in MOU dated 29/08/2020.

(d) Neither in the MOU dated 15/12/2014 nor in the MOU dated 29/08/2020 there is clause stipulating that defendants would require to refund particular sum as a damages to the plaintiff in case the slaughter house becomes non-functional for any of the reasons. This absence of default clause in the MOU makes the plaintiffs dis-entitled to seek any amount from the defendants as damages for the closer of the slaughter house.

(e) Whatever amount paid to the defendants by the plaintiff during five years was towards service charges of the use of slaughter house as stipulated in clause 14 of the MOU dated 15/12/2014. This clause provides that the plaintiffs should pay Rs. 400/- per animal to the defendants towards the charges of the slaughter house. So the payment was made to the defendants in compliance with clause 14 of

the MOU dated 15/12/2014. The plaintiffs used the slaughter house during five years and earns huge profits. Now they can not seek the service charges to be paid back to them from defendants.

16. I have considered the above arguments. In order to see entitlement of plaintiffs, for the relief of attachment before judgment, it is necessary to see whether plaintiffs prima facie prove that the defendants owe an amount of Rs. 17,45,05,457/- towards plaintiffs ? I have taken into the account the MOUs dated 15/12/2014, 20/02/2015 and 20/03/2020 entered into by the plaintiffs and defendants. These three MOUs between the parties clearly brings out that the plaintiffs never got themselves mentioned as partner along with the defendants in the above activities of slaughtering. A grievance has been put forth in the plaint that the defendants agreed with the plaintiffs to start the slaughter house in partnership. There is no document or any other evidence to show that the defendants agreed for the business to be run in partnership. Had the plaintiffs intended to become partner with the defendants, the plaintiffs would have insisted to refer themselves as partner, instead of service provider, in the above said 03 MOUs. But this has not been happened. So, the first allegations of the plaintiff's firm has turned out to be baseless.

17. Admittedly, the slaughter house was given to the defendants on lease by Municipal Council, Sangamner, and by virtue of 3 MOUs, the plaintiffs agreed to act as service provider in the slaughter house. The question would be - what defendants were going to get by appointing the plaintiffs as service provider in the slaughter house ? For this purpose, clause 14 and 15 of MOU dated 15/12/2014 are helpful

which are reproduced as under :

14. The slaughter charges will be Rs. 400/- per animal for 100 / 200 / 300 animals. Depending on the capacity sanctioned by Maharashtra Pollution Control Board, as per their consent to operate the plant. Payment will be based on the capacity sanctioned and not on the actual slaughtering taking place. This payment will be made by 7th day of every calendar month. Delay in payment will not be acceptable to M/s AL FATAH GLOBAL FOOD STUFF.

15. Should the facilities be increased to 400 - 500 animals per day, charges will be increased proportionately in consultation among both the parties or on same basis.

18. Then, there is one agreement dated 01/08/2019 filed by defendants (and admitted by plaintiffs). Clause 10 of that agreement is that "the slaughter charges will be Rs. 400 per animal as mutually agreed by first and second party (i.e. plaintiffs and defendants).

19. So, the above two clauses of the two separate MOUs reveals that the gain that was to be enjoyed by the defendants was in the form of "slaughtering charges" per animal. If all the three MOUs are read together, it can be seen that there were 200 to 300 animals (may be of buffalo types) daily slaughtered in the slaughter house by the plaintiffs being service provider. On this point, there is no specific averment in the plaint as to how much amount actually paid to the defendants by the plaintiffs towards slaughter charges till the date of its closing. On and average, it may be assumed that, the billing amount of the slaughter charges would be Rs. 25 lakh to Rs. 30 lakh per month (by assuming cutting of 200 to 250 animals per day). In fact, it was incumbent upon the plaintiffs to specify the slaughter charges paid by it to the defendants during 15/12/2014 to March 2020 (i.e. the month in which the slaughter house came to be closed).

20. Since the plaintiffs have not given the exact figure of the slaughter charges paid to the defendants during the period of 4 to 5 years, there arise serious doubts regarding the claim of the plaintiffs in respect of the suit amount of Rs. 11,45,90,852/-. This figure is part of the total suit amount of Rs. 17,45,05,457/-. In paragraph 06 of the plaint, it has been averred that, till the end of September 2020, plaintiff deposited Rs. 11,45,90,852/- with the defendants. There is no clarification made in the plaint or in Exh. 62 why and for what reason such a huge amount was paid to the defendants by the plaintiffs. In absence of this clarification, only one assumption arise that the amount (Rs. 11,45,90,852/-) was nothing but the slaughtering charges paid by the plaintiffs at the rate of Rs. 400 per animal to the defendants, as contemplated in the two MOUs. Obviously, it was not an investment or any advance payments made to the defendants by the plaintiffs. It were the charges for slaughtering per animal in the slaughter house.

21. Both the parties are business entities. It is apparent that the slaughter charges at the rate of Rs. 400/- per animal were not paid to the defendants by the plaintiff, unless there was profit in multiple times earned by the plaintiffs from the slaughter house. To put it in other words, the slaughter charges of Rs. 400/- per animal were to be paid after the animals were slaughtered, and that was not an advance payment or deposit made to the defendants.

22. The second important lacuna left by the plaintiffs is that there is no reference of amount of profit earned by it from the slaughter house, during the period the slaughter house was actually in function. This was also incumbent for the plaintiffs to spell out few words on the

point of the amount of profit earned by it in order to justify its claim qua Rs. 11,45,90,852/-. Because this sum claimed is huge one. Unless the plaintiffs gives specification about the exact amount invested, the profit earned, amount paid to the defendants etc. it can not be said that it has a prima-facie case for recovery of the above amount.

23. There is second figure out of the total claim of Rs. 17,45,05,457/-. This second figure pertains to machinery and equipments supplied and installed in the slaughter house by the plaintiffs. This figure is Rs. 5,99,14,605/-. It is alleged by the plaintiffs that the machines of above amount were installed in the slaughter house by it as a service provider. It is not alleged by the plaintiffs that the defendants or its men have misappropriated or caused serious damage to the machines and equipments of the above amount installed in it. No doubt, certain bills/invoices qua the machines and equipments have been attached along with the plaint by the plaintiffs. Obviously, as alleged by the defendants, value of the machines gets diminishes after use for 4-5 years. There is no valuation report of the machines as on date of closing of the slaughter house. Mainly, there is no explanation in the plaint as to what prevented the plaintiffs² from carrying away the machines and equipments from the slaughter house. So, the claim for the costs of machines also sans merit.

24. Before closing this order against the plaintiffs, it is necessary to quote clause 2, 8 and 9 of the MOUs dated 20/03/2020. These three clauses are as under :

2. Al Fatah Global Foods needs an advance of 68 lakhs to clear all past dues to Sangamner Municipal Council. This payment of Rs. 68 lakhs will be paid in 2 to 3 parts. This

advance will be deducted at a rate of Rs. 8 lakhs per month from the fixed monthly bills raised by Al Fatah.

8. Al Fatah agreement with Nagarparishad is due for renewal on 1st November 2020. If the same is not renewed due to any unforeseen circumstances then Al Fatah will refund the balance amount of Rs. 48 lakhs or 58 lakhs or 68 lakhs whatever is due after adjustment, back to Al Quresh. The said amount of 68 lakhs being paid now as deposit to Al Fatah by Al Quresh ref. point no. 2.

9. The outstanding balance of Rs. 4,13,575 (as per accounts confirmed with Mr. Irfan on 22.06.2020) that Al Quresh owes Al Fatah, until March 2020, will be paid to Al Fatah within 2 weeks of restarting production at the plant.

25. The date of MOU is very material. Both parties entered into this MOU on 20/3/2020. Plaintiffs itself agreed that in case the Municipal Council does not proceed to renew the lease agreement with the defendants, then in that case, defendants would be liable to refund to the plaintiffs maximum Rs. 68 lakh, that too after adjustment. Clause 09 supports to the contentions of the defendants, which says, as on March 2020, Rs. 4,13,575/- was outstanding against the plaintiffs. Here, material question arises why the plaintiffs did not insist upon including the figure of Rs. 11,45,90,852/- and Rs. 5,99,14,605/- in the MOU, when it (plaintiff) were fully aware that this much amount would be due towards the defendants, in case the slaughter house will be closed due to non renewal of lease by the Municipal Council. On the contrary, plaintiffs opted for quantify the sum of Rs. 68 lakhs that was to be refunded to it by the defendants, if the lease was not renewed by the Municipal Council.

26. In nutshell, the clause of 3 MOUs prima-facie shows that whatever payment made to the defendants by the plaintiff was towards

slaughtering charges and such charges were made after slaughtering animals and earning profit there from by the plaintiffs. This amount can not be called as investment or depositing of amount. There is no prima-facie case with the plaintiffs to claim that the properties of defendants be attached. Hence, following order.

Order

Application stands rejected.

Sangamner
Date : 02/02/2023

(Y. P. MANATHKAR)
District Judge 2,
SANGAMNER