

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.2409 OF 2007

Om Prakash NavaniPlaintiff

V/s.

Dr. Ajit Baburao Kerkar & Ors.Defendants

Mr. Aelia Merchant i/b. Law Charter for the plaintiff.

Mr. Rompal Singh Kohli for the defendant no.1.

Mr. Rajesh Mirchandani for the defendant nos.2 to 4.

Ms. Sanjuna Sudhakaran i/b. Mr. Ajay K. Panicker for the defendant nos.6 & 9.

Mr. Siddharth Bafna i/b. Kartikeya and Associates for the defendant nos.7 and 8.

Mr. Anil D'souza for the defendant nos.10 to 12.

CORAM : K.R.SHRIRAM,J

DATE : 17th OCTOBER,2016

P.C.:-

1 The following issues arise in the matter :-

I S S U E S

“1) Whether the plaintiff proves that defendant no.1 was authorized by defendant nos.2,4,5 and 6 to 8 to enter into any agreement?

2) Whether the plaintiff proves that the suit contract was entered into and is valid and binding on defendant nos.2,4,5 and 6 to 8 and entitled to specific performance?

3) Whether the plaintiff proves that defendants were aware of the suit contract and had accepted and acquiesced thereto and have derived and accepted benefits therefrom?

4) Whether the plaintiff proves that the suit contract was acted upon and implemented and partly performed by the parties?

5) Whether the plaintiff proves that in part performance of alleged agreement 14,02,500 shares of defendant no.4 held by defendant no.5 were transferred to plaintiff?

6) Whether the plaintiff proves that he caused private limited companies (as referred to in paragraphs 19(c), 19(f) and 19(g) of the plaint) to advance loans to defendant no.5 in furtherance of alleged suit contract between the plaintiff and defendant no.1?

7) Whether the plaintiff proves that he has always been and is still ready and willing to perform and comply with all his obligations under the suit contract?

8) Whether the defendant no.5 proves that the shareholding of the defendant nos.1 and 6 to 8 in defendant no.5 was only 4.0413% and that therefore the alleged suit contract, which allegedly requires that 25% shareholding in defendant no.5 be transferred to the plaintiff is false and fictitious?

9) Whether any of the defendants prove that no cause of action whatsoever exists in favour of the plaintiff against them?

10) Whether defendant no.5 proves that plaintiff has attempted to play fraud on the Hon'ble Court?

11) Whether the defendant no.5 proves that the plaintiff is guilty of suppression of material facts and documents?

12) Whether the plaintiff proves that the agreement was modified as alleged in paragraph 29 of the plaint?

13) Whether the plaintiff proves that the plaintiff is entitled to :

(a) a permanent order and injunction restraining the defendant nos.1 to 8 from selling, transferring, alienating, encumbering, parting with possession of or creating any third party rights in respect of the shares held by defendant nos.1 and 6 to 8 by themselves or directly or indirectly or through intermediaries in the share capital of defendant nos.2 to 5 and 9 in any

manner whatsoever.

(b) an order and direction requiring defendant nos.2 to 5 and 9 to 11 to accept and give effect to the respective transfer of shares and pending the same be restrained by an order of injunction from and in any manner affecting or permitting any change in its shareholding.

(c) an order and injunction restraining defendant nos.1 to 9 from selling, transferring, alienating, encumbering, parting with possession of or creating any third party rights in respect of the assets and properties of defendant nos.2 to 5 and 9 and 11.

(d) in the event of failure of defendant nos.1 to 8 or any one or more of them to comply with the decree passed by this Hon'ble Court, appoint an officer of this Hon'ble Court to execute the requisite documents in favour of the plaintiff to give effect to the reliefs granted.

(e) if answer to issue no.2 is in the negative, then in the alternative, whether the plaintiff proves that the plaintiff is entitled to order and decree against defendant nos.1 to 8 to pay to the plaintiff an amount of Rs.108,00,00,000/- as per particulars of claim annexed at Exhibit 'Z' to the plaint alongwith interest thereon @ 15% p.a. from the date hereof till payment and/or realisation?

14) What decree? What order?

2 On or before 19th November, 2016 parties to file and serve their respective affidavits of documents and also give inspection of documents relied upon by them to each other. On or before 26th November, 2016 parties to file and exchange their statement of admission and denial with reasons for denial.

3 On or before 10th December, 2016 the plaintiff also to file their list of witnesses and affidavit in lieu of examination in chief of the first witness together with compilation of documents and serve a copy thereof upon the defendants.

4 Stand over to 16th December, 2016 for marking of documents on which date the plaintiff's first witness shall remain present in court.

5 It is made clear that if the parties do not comply with the directions given above, they will be put to terms and also will not be permitted to rely on any document copy whereof is not annexed to the plaint or the written statement and/or mentioned in the list of documents annexed to the plaint or the written statement.

(K.R.SHRIRAM,J)