IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 1 of 2021

In CS 169 of 2021

Kunal Dalmia
Versus
Nelson Sebastian & Anr.

Mr. Jishnu Saha, Sr. Adv.
Mr. Sakya Sen
Mr. Sukrit Mukherjee
Mr. S.R. Kakrania
Mr. T. Kakrania
Mr. K. Sharma

… For the plaintiffs.

Mr. Souradipta Banerjee
Mr. Asif Sohail Tarafdar
Mrs. Fatima Hassan

… For the defendants.

Hearing Concluded On : 03.05.2023

Judgment on : 05.07.2023

Krishna Rao, J.:

1. The plaintiff has filed the present application praying for an injunction restraining the defendants, their men, their agents, assigns and representatives from publishing and circulating any letter, material, correspondence and articles containing the statements as mentioned in paragraph 34 of the present application.

2. The plaintiff is the Director of the business under the name and style of KAHM Industries Private Limited (formerly known as Lindsey Towers Private Limited) (hereinafter referred to as KAHM) having its registered office at 13, Nellie Sengupta Sarani, Kolkata -700087.

3. The defendant no.1 is the Director and defendant no. 2 is the Managing Director of the Company namely Punalur Paper Mills Ltd. (Hereinafter referred to as Punalur).

4. There are several litigations pending before the learned 10th Bench of the City Civil Court, Kolkata as well as before this Court between KAHM and Punalur.

5. To adjudicate the present application filed by the plaintiff, the facts of the several litigations are pending before the Courts for adjudication is required to be narrated, which are as follows:

6. On May 15, 2010, an agreement was entered between Punalur and KAHM which not only acknowledges that the third parties became the majority shareholder of Punalur but also reaffirms and reiterates that

KAHM would have the right to prosecute and defend all litigations and proceedings concerning the acquisition proceedings and would have the exclusive right to receive and recover the compensation amount in respect of portion of the suit property which were the subject-matter of litigation in the name of Punalur but at its cost and for such purposes, KAHM would be entitled to operate a separate Bank account being No. 0015-608737-060 (previous Account No. 200001818875) with IndusInd Bank situated at 3A, Upper Wood Street Branch, Kolkata in the name of Punalur for the purpose of depositing, realising and encashing the amount of such compensation and any other amount as may be received in respect of the portion of the suit property. The agreement also provided that Punalur would execute an irrevocable Power of Attorney in favour of KAHM or its nominee authorising them to represent Punalur in all ITS litigations. The said agreement was signed by the majority shareholders of Punalur including Mr. T.K. Sundaresan, Chairman, whole time Director and one of the plaintiff in suit No. 613 of 2021.

7. By virtue of the minutes of meeting of the Board of Directors dated October 19, 2011, Shri T.K. Sundaresan being the whole time Director of Punalur executed a Power of Attorney in favour of Mr. Kunal Dalmia and Mr. Ranoj Roy Chowdhury as the lawful Attorney of the Punalur. In terms of the agreement dated May 15, 2010 and the Power of Attorney executed in favour of the aforesaid two persons, compensation proceedings were pursued and out of several proceedings initiated, in one of such land acquisition proceeding concerning acquisition of the basement and ground floor of the property in question, a decree was passed on December 6, 2018 by the learned District Judge, Alipore in respect of LA Case No. 38 of 2007 for an amount of Rs. 27 crore. The State of West Bengal initiated an appeal against the said award and during the pendency of the appeal, on the submission made by the State of West Bengal that there was a mistake in calculation, instead of Rs. 27 crore, the figure should be Rs. 18,11,40,003/- and the Hon'ble Division Bench permitted Punalur to withdraw 50% of an amount without security and for release of the balance 50% of Rs. 18,11,40,003/- upon furnishing security was left open to be decided, if any, formal application is made by Punalur. As per the aforesaid order, Mr. Ranoj Roy Choudhury being one of the Power of Attorney holder of Punalur received the demand draft of Rs. 9,05,70,001.50/- on June 1, 2021 and deposited the said in the designated bank account.

8. The dispute started after the order dated January 4, 2021 when the amount was withdrawn after depositing the said amount in the designated account. In the month of March' 2021, KAHM filed a suit being Title Suit No. 314 of 2021 praying for declaration that the agreement dated May 15, 2011 is still valid and subsisting and binding upon defendant no. 1 including all defendants. The defendants have no right to close the said account mentioned in Schedule-B. KAHM has also prayed for injunction restraining Punalur & other defendants from closing the designated account and restraining from creating any obstruction in the operation of the account. On 6th March, the Trial Court passed an ad interim order restraining Punalur and other defendants from closing the bank account. On May 11, 2021 Punalur revoked Power of Attorney and on the same day Punalur had also filed a suit being Title Suit No. 613 of 2021 praying for declaration that Punalur alone is entitled to operate the said bank account standing in the name of Punalur through its authorized signatory T.K Sundaresan. KAHM has also filed the present suit being CS No. 149 of 2021 praying, inter alia, for delivery of an cancellation of the purported deed of revocation dated May 11, 2021 of the Power of Attorney dated November 11, 2011 and restraining the defendants relying on the said purported revocation deed dated May 11, 2021 or making any representation on the basis thereof.

9. Kunal Dalmia, has now filed a suit being C.S. No. 169 of 2021 against the Nelson Sebastian, Director of Punalur and T.K Sundaresan, Managing Director of Punalur praying for a decree for a sum of Rs. 10 crore and allied prayers. In the said suit, Mr. Kunal Dalmia has also filed an application being GA No. 1 of 2021 praying for injunction restraining respondents from publishing or circulating any letter, material, correspondence or article against the petitioner which are per se defamatory and false.

10. In Title Suit No. 314 of 2021, KAHM had also filed an application for injunction restraining Punalur and other defendants from closing the designated bank account and restraining them from creating any obstruction in the operation of the bank account. In the said application, the learned Trial Court passed an ad-interim order of injunction dated March 6, 2021 wherein Punalur and other defendants were restrained from closing bank account till April 6, 2021 and the said interim order continued for some time. Soon thereafter on May 11, 2021, Punalur revoked power of attorney granted earlier in favour of Kunal Dalmia and Ranoj Roy on May 15, 2010 and October 19, 2011.

11. In Title Suit No. 613 of 2021, Punalur had also filed an application for injunction on May 21, 2021, the IndusInd Bank was restrained from permitting any person to withdraw, encash or transfer any amount from the said bank account till June 19, 2021. It was also observed that proper adjudication, TS No. 314 of 2021 would be heard analogously with TS No. 613 of 2021 and Punalur was also directed to add M/s Lindsey Towers Private Limited as defendant No. 3. In view of the order dated May 21, 2021, IndusInd Bank refused KAHM to operate the bank account and disallowed withdraw of any compensation amount. After being aware of the interim order dated May 21, 2021, KAHM had preferred an appeal before the Division Bench of this Court being FMAT No. 377 of 2021. The Hon'ble Court had set aside the interim order dated May 21, 2021 and the learned Trial Court was directed to hear the injunction application afresh in the presence of the parties and whether KAHM is to be added as party in the suit was left open to be decided by the learned Trial Court. While remanding back for hearing of the injunction application, the Hon'ble Court had directed that during the intervening period neither party *"will in such manner so as to make the interim application before the court below infructuous"*. In the meantime on the basis of the request made by KAHM the IndusInd Bank on June 23, 2021 encashed a cheque amounting to Rs. 9,05,70,0001/- in the account of KAHM. On the prayer made by Punalur TS No.613 of 2021, the learned trial Court had added KAHM as defendant. By an order dated June 30, 2021, the learned trial court observed that neither party would be allowed to operate the bank account in any manner whatsoever till the disposal of injunction application as well as the application filed under Section151 of the Code of Civil Procedure.

12. By an order dated September 22, 2021, the learned trial Judge had disposed of the injunction application filed by Punalur by passing following order:

> *"It appears that the entire proceeding initiated by the Plaintiff [Punalur] is a deceitful action on the part of the Plaintiff and the same Director, who has taken part in Conveyance and Agreement, as well as Power of Attorney, came before this court for relief which he is not entitled and this case has no leg to stand upon. It is a futile attempt by Plaintiff, and this injunction application must be ended into dismissal. Hence, as an interim measure, to preserve the amount deposited in bank, it was ordered that neither party was allowed to operate the bank account in any manner whatsoever till the disposal of this case and well as TS o. 314 of 2021."*

13. Being aggrieved with the order dated September 22, 2021, both the parties have preferred appeal and the Hon'ble Division Bench by a common order has disposed of all appeals on April 5, 2022 by passing following order:

> *"The right to claim compensation in favour of KAHM arises from the deed of conveyance read with the agreement dated 15th May, 2010. The deed of conveyance is required to be read as a whole in order to find out the intention of the parties. The recitals in the deed of conveyance clearly shows that KAHM would solely and exclusively be entitled to receive an appropriate amounts of compensation now pending or as may hereafter become payable on account of and in respect of the acquisition proceedings. It clearly refers to the present and the future right of the KAHM to receive the said compensation and gives power to KAHM to continue such proceedings in the name of Punalur but at the expense of KAHM.*
>
> *This was reiterated after there was a change of shareholding in Punalur on 15th May, 2010. In fact, an irrevocable power of attorney was executed in favour of Kunal and Ranoj. The said power of attorney holders pursued the proceedings on behalf of Punalur that had ultimately resulted in a decree being passed in favour of Punalur being L.A. case no. 38 of 2007 for an amount in excess of Rs. 27 crores.*
>
> *Punalur was unable to demonstrate before us that they had pursued the aforesaid proceedings at their own cost and expenses. Punalur has not denied the execution of the deed of conveyance, the agreement dated 15th May, 2010 and the power of attorney which was revoked only on May 11, 2021. It is interesting to note that the power of attorney holders represented Punalur in the writ petition filed by the State of West Bengal being FAT no.473 of 2019 in which an order was passed for the release of part of the compensation amount to Punalur. These facts conclusively prove for the purpose of the interlocutory application that the power of attorney was acted upon and KAHM has conducted such proceeding for and on behalf of Punalur.*
>
> *The question arises whether this money should exclusively belong to KAHM or Punalur could have a claim on the said money. The learned Trial Judge noticing that Mr. T.K. Sundaresan, the Managing*

Director of Punalur, who was one of the signatories to the agreement dated 15th May, 2010, power of attorney dated 15th May, 2010 and 21st November, 2011, signed the plaint on behalf of Punalur had taken a completely contrary stand in the proceeding with a view to defeat the right of KAHM observed that the proceedings initiated by Punalur was deceitful and frivolous.

Initially Punalur did not file a suit for cancellation of the deed of conveyance dated 5th April, 2003. It is difficult for Punalur at this stage to contend that they were not aware of the execution of the deed of conveyance or subsequent documents giving exclusive rights to KAHM to receive and deal with the compensation amount.

An argument has been advanced that Kunal Dalmia took an active part in the deed of conveyance and the said property was sold at a meagre consideration. However, nothing prevented the majority shareholders after assuming control of Punalur to raise the issue and sue KAHM in cancellation of the deed of conveyance.

On the contrary the majority shareholder have agreed to execute an irrevocable power of attorney in favour of Kunal and Ranoj and required the power of attorney holder to prosecute and defend all actions against Punalur concerning the property in question at the cost of KAHM.

This clearly establishes that the cancellation of the power of attorney is prima facie illegal as it is an agency coupled with interest. Even if one may be persuaded to ignore the other claims of KAHM, the right that accrued in favour of KAHM by reason of acts done in pursuance of the power of attorney needs to be preserved.

At the same time Punalur cannot be made to suffer for Income Tax payable on the compensation amount as Punalur is not receiving the money and accordingly it cannot be treated as their income on which any tax can be levied.

Mr. Saha, learned Senior Counsel appearing on behalf of KAHM has submitted that no demand so far has been raised by Punalur for payment of Income

Tax dues and KAHM is willing to reimburse Punalur for any amount payable towards Income Tax in respect of the suit property.

The KAHM had in the meantime realised a sum of Rs.9,05,70,001.50/- on the basis of the order passed by the Co-ordinate Bench on 4th January, 2021 in FAT No.473 of 2019. It is undisputed that the power of attorney was revoked much later on 11th May, 2021 and at that time KAHM was entitled to the said amount. A suit filed subsequently cannot deny the payment of such compensation amount without Punalur establishing their right to receive the said compensation amount on revocation of the power of attorney. However, the learned Trial Court did not permit the parties to utilize the compensation amount till the disposal of the suit.

With a view to hold the ring pending final adjudication we permit KAHM to retain and utilize the said amount upon furnishing security to the satisfaction of the learned trial Court. In so far as the balance sum of Rs.9,05,70,001.50/- deposited in connection with LA case no.38 of 2007 we are not inclined to direct the Registrar General to release the said amount at this stage, on consideration of the decision of the Hon'ble Supreme Court in Baburao vs. State of Maharashtra, reported in 2017(11) SCC 333.

Since we are of the prima facie view that the cancellation of the power of attorney was illegal and the documents executed in favour of KAHM are establishing a clear right to receive the compensation, at this stage we do not direct KAHM to return the said sum of Rs.9,05,70,001.50/- to Punalur.

Mr. Jishnu Saha, learned Senior Counsel appearing on behalf of the KAHM has strenuously argued that the suit filed by Punalur Paper Mills Limited is not maintainable in law and expressly barred by limitation under Order II Rule 2 of the Code of Civil Procedure. It is submitted that the application for rejection of the plaint is pending before the learned trial Court; we request the learned trial Judge to dispose of the said application expeditiously, without being influenced by any observations made in this judgment.

The impugned order is modified to the aforesaid extent.

The appeals and cross appeals along with all the connected applications are accordingly disposed of."

14. Being aggrieved with the order dated September 22, 2021, Punalur had preferred a Civil Appeal No. 6945 of 2022 and the same was disposed of by the Supreme Court on September 26, 2022 by passing the following order:

"The Direction in the impugned order dated 05.04.2022 that the respondents would furnish security to the satisfaction of the trial court for Rs. 9,05,70,001.50/-, must be complied immediately and preferably within a period of two weeks from the date copy of this order is filed before the trial court. The security to be furnished to the satisfaction of the trial court should be a solvent security, which can be encashed and enforced in case of default.

Insofar as balance amount of Rs. 9,05,70,002.50/- is concerned, the said amount would not be withdrawn. This direction is subject to the decision in the suit.

If any further amount is deposited in the bank account in IndusInd Bank Ltd., the amount would not be withdrawn by any party without permission of the Court.

The respondents state that they would be disclosing the compensation received on account of acquisition of the property as income taxable in their hands. The respondents would file an affidavit to the said effect before the trial court. The statement and affidavit would be without prejudice to the rights and contentions of the appellant. If any tax liability arises, in view of the fact that compensation has been paid or made in the name of appellant, the appellant would be entitled to take recourse to appropriate proceedings.

> *We clarify that the observations made in the impugned order are only for the purpose of disposal of the appeal before the High Court and would not be treated as binding and conclusive findings. The trial court would determine the rights and pleas raised by the parties in accordance with law and based upon the evidence led by the parties."*

15. The plaintiff has filed the present suit praying for following reliefs:

> *"(a) Decree for a sum of Rs. 10 crore in favour of the plaintiff to be paid jointly and/or severally by the defendants;*
>
> *(b) Alternatively, an enquiry into the loss and damages and a decree upon such sum as may be found due and payable;*
>
> *(c) Perpetual injunction retraining the defendants, their men, agents and assigns from publishing and/or circulating any article containing the statements as mentioned in paragraph 34 above and/or words analogous thereto;*
>
> *(d) Mandatory injunction directing the defendants, their men, agents, servants and each of them to withdraw and retract the statements made in the said article dated August 2, 2021 and August 4, 2021 and to issue an apology in favour of the plaintiff."*

16. The plaintiff has filed the suit on the allegation that the defendants by letter dated August 2, 2021 make fictitious, speculative and specious allegation allegations which are per se defamatory and false. It is also alleged that the defendant No.1 had maliciously wrote and published various defamatory words and phrases against the plaintiff which are as follows:

> *"(i) "This is to bring to your kind notice that Punalur Paper Mills Ltd. is the owner in respect of the property…"*

(ii) "Mr. Kunal Dalmia was also authorised… by virtue of Power of Attorney dated 21st November, 2011 which was subsequently cancelled and or revoked by the present management of Board of Punalur Paper Mills Ltd by Deed of Revocation of Power of Attorney dated 11th May, 2021 since he misused the Power of Attorney."
(iii) "In Spite of the said Orders, Lindsay Towers, in connivance with Indus Ind Bank, has withdrawn the amount and suppressed the said fact before the Learned 6th Civil Court;

(iv) "In spite of having full knowledge of the aforesaid facts and circumstances the said Mr. Kunal Dalmia ………… represented themselves to be attorneys in respect of Punalur Paper Mills and have also withdrawn the amount from Indus Ind Bank Limited, Wood Street Branch illegally……."

(v) "That on 02.08.2021 the present management of Punalur Paper Mills Ltd., has come to know the said Mr. Kumal Dalmia…… are illegally representing themselves as the authority of Punalur Paper Mills Ltd. and on such misrepresentation, they are withdrawing money deposited by the authorities concerned illegally…….."

(vi) "It has further come to the notice of the Management Board of Punalur Paper Mills Ltd. that the said Mr. Kunal Dalmia illegally tried to open Bank Account with Bandhan Bank Limited but fortunately such illegal attempt did not succeed due to timely intervention of Management Board of Punalur Paper Mills Ltd."

(vii) "On 02.08.2021 the Management Board of Punalur Paper Mills further came to know that illegally the said Mr. Kunal Dalmia and….have been successful in opening Bank Account with IDFC First Bank Limited, Kasba Branch, Kolkata to encash the amount to the tune of Rs. 14 crores (the details and particulars are not known to the present management Board) as all Such affairs are being intentionally suppressed by the said Mr. Kunal Dalmia…..".

17. In the affidavit-in-opposition, the defendants have replied that the petitioner had misused the Power of Attorney dated November 21, 2011 by sending a manipulated account statement of the IndusInd Bank Ltd. for the period between April 1, 2019 to March 31, 2020 in order to camouflage certain high-value transactions in the account of Punalur and acted in the derogation of interest of Punalur. The defendants have revoked the Power of Attorney issued in favour of the petitioner by executing revocation of attorney dated May 11, 2021, on the strength of resolution dated April' 2021. The petitioner with the ulterior motive and fraudulent intentions had tried to open another account in the name of Punalur using the manupulated documents with Bandhan Bank and when the Bandhan bank refused to open the account on receipt of the e-mail of the defendants, the petitioner with this influence, opened an account with the IDFC First Bank in the name of Punalur.

18. It is found from record that an arbitration proceeding has commenced to resolve the dispute relating to 2nd floor and portion of the fifth floor in connection with 13, Nellie Sengupta Sarani, Kolkata and in order to safeguard his own interest, the defendant for the benefit of Punalur had written the letter to the learned Arbitrator informing that the plaintiff is misusing the Power of Attorney dated November 21, 2011.

19. Admittedly, several litigations are pending between the parties before the City Civil Court as well as before this Court with regard to the agreement and the Power of Attorney. Both the parties have moved injunction application and the matter went up to the Hon'ble Supreme

Court. The revocation of Power of Attorney is also the subject matter of one of the suit filed by the plaintiff before this Court being C.S No. 149 of 2021 in which the KAHM has filed an application for grant of injunction restraining Punalur or their management relying on the purported Deed of Revocation dated May 11, 2021. In the said suit, the Punalur had also filed an application praying for grant of stay of all the further proceedings of GA No. 1 of 2021 in C.S No. 149 of 2021 till the disposal of other proceedings. This court by a common order has allowed the prayer (i) of G.A No. 3 of 2022.

20. As there are several proceeding with regard to claim and counterclaim of the parties. In an order dated April 5, 2022, the Division Bench of this Court held that :

> *"Since we are of the prima facie view that the cancellation of Power-of-Attorney was illegal and the documents executed in favour of KAHM are establishing a clear right to receive the compensation, at this stage, we do not direct KAHM to return the said sum of Rs. 9,05,70,001.50/- to Punalur."*

21. The said order was challenged before the Supreme Court and the Hon'ble Supreme Court had passed the following order:

> *"3. The direction in the impugned order dated 05.04.2022 that the respondents would furnish security to the Satisfaction of the trial court for Rs. 9,05,70,001.50/-, must be complied immediately and preferably within a period of two weeks from the day copy of this order is filed before the trial court. The security to be furnished to the satisfaction of the trial court should be a solvent security, which can encashed and enforced in case of default.*

> *4. Insofar as balance amount of Rs. 9,05,70,001.50/- is concerned, the said amount would not be withdrawn. This direction is subject to the decision in the suit."*

22. Mr. Saha, learned Senior Counsel representing the petitioner relied upon the judgment reported in ***AIR 1969 SC 73 (Seth Loon Karan Sethiya -vs- Ivan E. John & Others)*** and submits that "*Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. He submitted that it is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked*".

23. This Court finds that the revocation of Power of Attorney is the subject-matter of the suit pending before this Court being CS No. 149 of 2021 and is also connected with the other suits pending before the learned City Civil Court. Interim orders have also been passed and this Court had also allowed prayer (i) of G.A No. 3 of 2022 filed by Punalur and at this stage, if any, order is passed as prayed for by the plaintiff, it would be multiplicity of the proceeding and will effect the orders passed in connection with other suit pending for adjudication. Thus this Court is of the view that at this stage, it would not be appropriate for this Court to pass any order in the present application as prayed for by the plaintiff.

24. Accordingly, **G.A No. 1 of 2021** is thus **dismissed**.

(Krishna Rao, J.)