

Mr. M. K. Trivedi vs. Mr. Ramesh Sharma
R.F.A. No. 05 of 2018

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.F.A. No. 05 of 2018

Mr. M. K. Trivedi,
S/o Late Pandit Ramagya Trivedi,
R/o Singtam Bazar,
P.O. & P.S. Singtam, East Sikkim.

..... **Appellant/plaintiff**

Versus

Mr. Ramesh Sharma,
S/o Shri Pasupati Sharma Chalisey,
R/o Linkey Busty,
P.O. Linkey, Pakyong, East Sikkim

..... **Respondent/defendant**

**Appeal under Order XLI, Rules 1 and 2 of the Code of Civil
Procedure, 1908.**

Appearance:

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for the Appellant/Plaintiff.

Mr. S. S. Hamal, Mr. Leada T. Bhutia and Ms. Sabina Chettri, Advocates for the Respondent/Defendant.

Date of hearing	:	25.04.2022
Date of Judgment	:	02.05.2022

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. This is a regular first appeal filed by the plaintiff against the judgment dated 31.08.2018 (impugned judgment) in Money Suit No. 17 of 2015 (the suit) passed by the learned District Judge, Special Division-I, East Sikkim at Gangtok (the learned District Judge) deciding all

the issues against the plaintiff and rejecting the relief sought for.

2. The plaint filed by the plaintiff essentially alleges that the defendant who was a Branch Manager of Religare Securities Private Limited (Religare), a trading company, persuaded the plaintiff to trade his shares after opening a demat account with Religare and transferring his equities and commodities lying with Reliance Securities and Sushil Finance to Religare. Certain details of monetary transactions was alleged but without any substantial proof thereof. It was the case of the plaintiff that thereafter, on 23.01.2015 the defendant finally agreed to return an amount of Rs. 35 lakhs including accrued interest by executing a memorandum of understanding (exhibit-6) and a money receipt (exhibit-5). The plaintiff thus sought for a decree of Rs.35 lakhs against the defendant with 10% interest thereon.

3. The defendant filed his written statement admitting that he was employed by Religare as Branch Manager of the Gangtok Branch; that he worked in Religare from 07.12.2007 till 05.05.2011. He stated that Religare used to facilitate its clients inclined to invest their money by suggesting purchase of shares of certain companies. He denied that he had convinced the plaintiff to open a demat

account with Religare or invest in shares as alleged by the plaintiff. The defendant stated that the plaintiff had himself visited the Religare office to open the account through the sales team. He denied any knowledge of the deposit made by the plaintiff with Religare. He denied that he had influenced the plaintiff to transfer all his equities and commodities from Reliance Securities and Sushil Finance to open a single portfolio with Religare. He stated that the plaintiff had prior experience in trading in shares as he was doing so with Reliance Securities and Sushil Finance before he started trading with Religare. He denied that he had cheated the plaintiff. He stated that in the trading platform every monetary transaction is done through direct bank payment system and whenever a client purchases shares, they deliver account payable cheques in the name of the company and the payout is directly through RTGS in the bank account of the client. The defendant also denied that the plaintiff sold part of his shares valued at Rs.2,28,762/- on 16.12.2009 and thereafter further shares valued at Rs.7,34,723/- on 27.12.2009 on being asked by him. The defendant further denied that he had advised and purchased gold and silver from the money he had obtained from sale of the plaintiff's shares. He denied that he had assured the plaintiff that he would earn profits on his

trading through Nirmal Bang Securities Limited (Nirmal) or guaranteed the principal invested would be refunded with all profits. The defendant stated that the plaintiff had approached the defendant to advice him in respect of investment in share market through Nirmal. The defendant stated that the memorandum of understanding had no sanctity and was not enforceable as the plaintiff himself did not desire to pursue the memorandum of understanding. The defendant had denied that he had embezzled any amount of the plaintiff. He stated that the plaintiff had suffered losses due to his own speculations and with the connivance of one S.B. Subba pressurized the defendant to sign on the money/share receipt as well as the memorandum of understanding. He denied that he had, on 23.01.2015, agreed to return Rs.35 lakhs along with the interest thereon within six months of the memorandum of understanding. He stated that the memorandum of understanding and the money receipt were executed by the defendant on immense pressure, force, coercion and undue influence. It was stated that the defendant was arrested by sadar police on 07.01.2015 in Sadar P.S. Case No.08/2015 under section 420/406 of Indian Penal Code, 1860 (IPC) on the false complaint of Mr. S.B. Subba and he was released on bail on 09.01.2015. The defendant pleaded that

stringent condition was imposed on him and the plaintiff taking advantage of it blackmailed him by firstly lodging the complaint and thereafter making him sign the memorandum of understanding under coercion. He prayed for dismissal of the suit.

4. The plaintiff examined himself, Shashi Shashank Trivedi, Shambu Kumar Ray, Rajeev Ranjan Trivedi and Abhimanyu Tiwari. The defendant examined himself and Dharni Sharma.

5. The learned District Judge examined the issues whether the plaintiff was entitled to recover a sum of Rs.35 lakhs from the defendant; whether the memorandum of understanding dated 23.01.2015 was executed between the plaintiff and the defendant and whether the money/share receipt dated 23.01.2015 was executed by the defendant in great detail. He concluded that the plaintiff's claim was not supported by any documentary proof. He further doubted the manner in which the money receipt and the memorandum of understanding got to be signed. He held that the witnesses to the money receipt and the memorandum of understanding had not identified their signatures thereon. He noted the conflicting stand taken by the plaintiff and his witnesses. He held that the plaintiff's witnesses Rajeev Ranjan Trivedi and Abhimanyu Tiwari

have themselves belied the claim of the plaintiff regarding the execution of the memorandum of understanding. The learned District Judge held that the money receipt and the memorandum of understanding have no sanctity and therefore of no consequence. Thus, the learned District Judge held that the plaintiff was not entitled to recover Rs.35 lakhs from the defendant.

6. Heard the learned Counsel for the parties. Mr. A. K. Upadhyaya, learned Senior Counsel for the plaintiff who is in appeal before this court submitted that the entire suit is based on the money receipt and memorandum of understanding which documents have not been denied by the defendants. Mr. S. S. Hamal, learned Counsel on the other hand submitted that the plaintiff had failed to establish his case.

7. A perusal of the written statement does indicate that there had been interactions between the plaintiff and the defendant and there had been some dealings. However, it is seen that none of the documents produced by the plaintiff and exhibited establishes his case. Exhibit-1 reflects the plaintiff's transactions in Nirmal. Exhibit-2 is once again the statement of holding of the plaintiff in Religare. Exhibit-3, which has not been proved in the manner required, purports to be declaration by the

defendant stating that he had purchased from one Pasupati Sharma and deposited the demand draft of Rs.1 lakh for the plaintiff as short margin payment. Exhibit-4 purports to be a correspondence between the plaintiff and Nirmal for closure of his account alleging that the defendant had failed to release the required sums of money. Exhibit-4 however, was also not proved in the manner required. The certified copies of the money receipt and memorandum of understanding, although exhibited, were not proved. In fact, the records reveal that the plaintiff had not even identified his signature in the memorandum of understanding leave alone identifying the signature of the defendant and the witnesses. Similarly, the plaintiff exhibited the money receipt but did not identify the signature or the handwriting therein. None of the witnesses to the memorandum of understanding or the money receipt also identified their signatures thereon. In cross-examination the plaintiff admitted that he had no documentary proof to substantiate the allegations he had made against the defendant. He admitted that he used to purchase shares of different companies. He admitted that he had not made any complaint before any authority after 06.08.2012 till 23.01.2015. He denied the suggestion that he had forced the defendant to put his signature on the

money receipt and the memorandum of understanding. He admitted that the witnesses to the money receipt and the memorandum of understanding were his relatives. He also admitted that he had lodged the First Information Report (FIR) before the CID Police, Gangtok on 12.09.2015 and one criminal case was pending before the learned Chief Judicial Magistrate. He further admitted that at the time of execution of the money receipt and memorandum of understanding the defendant was released on bail.

8. The plaintiff and his witnesses reiterated most of what was stated in the plaint. In cross-examination however, all the plaintiff's witnesses accepted that much of what they had stated in the examination-in-chief regarding the transactions between the plaintiff and the defendant were personally not known to them and further that there was no documentary proof in support of the allegations.

9. The plaintiff's witnesses admitted to their proximity with the plaintiff. Sambhu Kumar Ray admitted that he had seen the plaintiff paying Rs.22,500/- to the defendant in cash for depositing the same in his Religare account; that the plaintiff used to invest in share; that he had not seen the plaintiff giving demand draft of Rs.5 lakhs to the defendant; that he could not say if the defendant had taken an amount of Rs.18,45,985/- from the plaintiff; that the

memorandum of understanding in which he had stood as a witness was not in the case record; that he had not seen the defendant signing on the money receipt; that he did not know the contents of the memorandum of understanding and the reason for its execution; and that he did not know where the memorandum of understanding was prepared and signed.

10. Shashi Shanker Trivedi also admitted *inter alia* that the plaintiff had given an amount of Rs.22,500/- to the defendant through a cheque drawn in favour of Religare. He admitted that the plaintiff used to deal in share trading since 2008–2009. He admitted that he was not present when the money receipt and the memorandum of understanding were executed and therefore, he did not know where and why it was executed.

11. Rajiv Ranjan Trivedi admitted in cross-examination he did not know where the memorandum of understanding was prepared and further that Abhimanyu Tiwari had not signed on the memorandum of understanding in his presence. He admitted that he neither knew where the money receipt was executed by the defendant nor the contents thereof.

12. Abhimanyu Tiwari admitted that he was not present when the memorandum of understanding was drafted,

prepared and executed. He admitted that he did not know the contents of the memorandum of understanding.

13. Neither the money receipt nor the memorandum of understanding has been proved by the plaintiff. The plaintiff is required to stand on his own legs by proving his case. The burden of proof lies on the plaintiff. The plaintiff has failed to discharge this burden even on preponderance of probabilities and consequently this court finds nothing illegal in the conclusion arrived at by the learned District Judge.

14. The learned District Judge also examined as to whether the suit filed by the plaintiff was maintainable and whether it was barred by the law of limitation. The learned District Judge opined that his court was clearly barred in view of section 15 Y of the Securities and Exchange Board of India Act, 1992 (the Act). Section 15 Y *inter alia* provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under the Act or a Securities Appellate Tribunal constituted under the Act is empowered by or under the Act to determine. This court is unable to agree to the opinion of the learned District Judge on this aspect. The Act was enacted to provide for establishment of a board to protect the interests of investors in securities

and to promote the development of, and to regulate the securities market. The plaintiff, however, in the present case, was seeking to establish a case of coercion and embezzlement by an individual who was working as manager in Religare. The plaintiff had not made any allegation against Religare or had made it a party defendant. In such view of the matter it cannot be said that the suit was in respect of any matter which an adjudicating officer appointed under the Act or a Securities Appellate Tribunal constituted under the Act was empowered to determine. Consequently, although it is quite evident that the plaintiff had failed to establish his case, it cannot be said that the Court of the learned District Judge did not have jurisdiction to try the suit.

15. The learned District Judge did not examine the issue of limitation as he found that the suit was not maintainable. The plaintiff was seeking to realize a sum of Rs.35 lakhs from the defendant based on the memorandum of understanding and the money receipt. The recital in the memorandum of understanding dated 23.01.2015 provides that the defendant shall return an amount of Rs.35 lakhs to the plaintiff within six months of its signing. The six months period would expire on or around 23.07.2015. Based on the memorandum of understanding the cause of

action for pursuing the memorandum of understanding thereon would accrue on 23.07.2015. As the plaintiff had filed a money suit, the period of limitation would be three years from the cause of action. The suit was filed in the year 2015 itself and therefore, it is held that the suit was filed within time.

16. Consequently, the impugned judgment dated 31.08.2018 is modified to the above extent. In view of the finding that the plaintiff had failed to establish his case the prayers as prayed for in the plaint cannot be granted. It is accordingly so ordered.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting :
Internet :

Yes
Yes

to/