

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J

Notice of Motion No.1728 of 1997

in

Suit No 1254 of 1997

Vinod Agarwal and ors .. plaintiffs

vs

Vineet Agarwal and ors ..defendants

Mr M L Bansal with Ms S M Poddar for plaintiffs

Mr K D Parikh with Mr H N Thakore i/b M/s T

Jariwala and Associates for defendant nos.1 to 4

Ms Hemlata Salian for defendant no. 5

CORAM : A.P.SHAH J.

Dated 16.4.1999

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1. This is plaintiffs' notice of motion for appointment of Court Receiver in respect of 1,83,2000 shares of the defendant no. 5 company more particularly described in the scheduled attached to the plaint and alternatively for injunction restraining the defendant nos.1 to 4 from selling, disposing of, transferring or receiving any rights in respect of the said shares. Briefly the facts are that the plaintiffs held

substantial number of shares of the defendant no. 5 company and their share holding was over 80% of the total share holding of the defendant no. 5 company. The plaintiffs were desirous of selling their share holding in the 5th defendant company and pursuant to an advertisement published by the defendants in the Economic Times, defendant nos. 1 to 4 responded to the offer made by the plaintiffs. According to the plaintiffs a meeting took place between the parties on 20.1.1996 in which meeting it was agreed that plaintiffs and their group would sell and transfer their entire share holding of 8,90,100 equity shares constituting 73.71% of the issued, subscribed and paid up capital of the defendant no. 5 company at the agreed price of Rs.17.50 per share. It was also agreed that the 1st defendant and/or his nominees would purchase the shares subject to the Takeover Regulations so as not to exceed their total share holding beyond 80% of the 5th defendant company's share capital. Further according to the plaintiffs it was agreed that if pursuant to the public offer under the Takeover Regulations the 1st defendant, his nominees/ associates were offered from the public share holdings, shares less than 6.29% of the 5th defendant's issued, subscribed and paid up capital, the 1st defendant, his nominees./ associates would

acquire the entire share holding of each of the plaintiffs group. The suit is mainly based on the aforesaid understanding which was allegedly arrived at in the meeting held on 20.1.1996.

2. The parties thereafter signed the Memorandum of Understanding (MOU) dated 13. 2.1996 Exhibit G to the plaint wherein it was provided that defendants shall offer 1,83,200 shares from their own holdings to the 1st defendant at the rate of Rs.17.50 per share. There is no dispute that the shares were accordingly sold to the 1st defendant for a sum of Rs.32,06,000. This is evident from Exhibit D which described the list of shares to be acquired by the new management of Sunflex Finance and Investment Ltd. At this stage it is necessary to consider the second of MOU which was executed on the same day i.e. 13.2.1996. Under the said second MOU it was agreed that buyers i.e. the 1st defendant will make cash offer to the shareholders of SFIL and company with Securities and Exchange Board of India ( Substantial Acquisition of Shares and Takeovers) Regulations, 1994 in lieu of clauses 40A and 40B of the listing agreement and other statutory requirements and formalities. It was also agreed that the buyer will take up 80% of the share capital of the company if offered in the public

offer by the existing shareholders of the company.  
Sub-clause (ix) of clause (j) of the MOU provided  
as under:

"(ix) In the event of any unforeseen circumstances and if the take over does not come through, both the parties hereby agree to call back the transactions. Under the circumstances, the monies so paid for acquiring 1,83,200 equity shares of SFIL will be refunded without interest. While Mr. Vineet Agarwal and his representatives will surrender the 1,83,200 equity shares of SFIL initially purchased by them.

It is further agreed that under such circumstances the loss of fees to the Merchant Bankers will be shared equally by both the parties and Shri Praful Bhatt shall immediately resign from the Board of Directors of SFIL".

3. It appears that in response to public offer the 1st defendant received only an offer of 3000 shares. It seems that on 17.10.1996 a letter was addressed by the 1st defendant along with 5 cheques drawn on United Bank of India, Maskati Market Branch, Ahmedabad, in all amounting to Rs. 44 lacs towards the purchase price of the shares of the 5th defendant company. It was also stated that balance cheques would be sent on 23.10.1996. However, it seems that the cheques were dishonoured and this led to the filing of present suit for specific performance. The plaintiffs have taken out the present notice of motion for temporary injunction restraining the defendant nos.1 to 4 from selling, disposing of, or transferring or receiving any rights in respect of the said shares.

4. I have heard Mr. M L Bansal for plaintiffs and Mr K D Parikh for defendants. I find some substance in the case of the plaintiffs that the entire share holding of the plaintiffs was to be purchased for a sum of Rs.155 lacs and pursuant to the said oral understanding cheques worth Rs.44 lacs were issued by the 1st defendants. However, it has come on record that as per the SEBI Regulations further offer to the public was necessary and since SEBI by its letter dated

31.10.1996 categorically asked the 1st defendant to take steps to make such an offer and in the absence of public offer it was not permissible for the 1st defendant to complete the transaction. Under the circumstances, the remedy of the plaintiffs would be one to claim damages and not specific performance of the agreement. It seems that at one stage the defendants wanted to buy the entire share holding of the plaintiffs. But it seems that due to technical objections raised by SEBI or may be for some other reasons, they have backed out from the agreement. If the defendants are held guilty of the breach of contract the plaintiffs will be entitled to claim damages. The defendants have paid valuable consideration for 1,83,200 shares. It is not possible to grant any interim relief in respect of the said shares as it would deprive the defendants of the benefit of the shares although they have paid the full price for the said shares.

. In the result, notice of motion is dismissed with no order as to costs.