BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 22.01.2019
Date of Decision : 01.02.2019

Appeal No. 278 of 2017

MLB Capital Pvt. Ltd.
301, Pratap Chambers, Gurudwara Road,
Karol Bagh, New Delhi – 110005. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Neerav Merchant, Advocate with Mr. Bharat Merchant, Advocate i/b Thakordas & Madgavkar for the Appellant.
Mr. Gaurav Joshi, Senior Advocate with Ms. Vidhi Jhawar, Advocate i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellant M/s. Orcap Securities Ltd. was a corporate member registered with National Stock Exchange ('NSE'). It was also granted registration by Securities and Exchange Board of India ('SEBI') on July 26, 1995. Since Orcap Securities Ltd. was a registered Company and was engaged in fund based activities, it was not permissible under Rule 8(1)(f) of the Securities Contracts (Regulation) Rules, 1957 to continue fund based business together with broking business. The entity, therefore, got its registration transferred to its group company i.e. MLB Capital Pvt. Ltd. ('MLB' for short) on December 24, 1997. The stockbroker claimed that the transfer was done under compulsion of law and, thus, claimed fee continuity benefit.

2. The appellant contended that SEBI registration fee was paid from time to time and claimed fee continuity benefit till the year 2003-04 and the payment was accepted by SEBI without raising any objection on account of any deficiency in the said payments. In the year 2004, the appellant was informed that fee continuity benefit cannot be granted and, accordingly, SEBI demanded fee for both the entities separately. SEBI, consequently, demanded fee of Rs. 28,76,980/- and interest amounting of Rs. 3,04,526/- i.e. a total amount of Rs. 31,81,506/-. The appellant made the aforesaid payment under protest vide letter dated November 11, 2004.

3. This arbitrary demand and denial of fee continuity benefit was challenged by the appellant before this Tribunal in Appeal No. 396 of 2004 seeking refund of Rs. 31,81,506/-. The Tribunal by the letter dated June 15, 2006 dismissed the appeal holding that the transfer of registration from M/s. Orcap Securities Ltd. to MLB was not under compulsion of law. The appellant being aggrieved filed an appeal before the Supreme Court which was allowed by the judgment dated December 9, 2015. The Supreme Court set aside the order of the Tribunal and directed SEBI to grant the benefit of fee continuity to the appellant.

4. Pursuant to the judgment of the Supreme Court, the appellant applied for refund of the amount paid under protest alongwith interest. While the matter was pending before SEBI, the appellant filed a misc. application before the Tribunal praying for a direction for refund of the amount deposited under protest alongwith interest. During the pendency of the appeal SEBI refunded an amount of Rs. 31,70,871/-. The Tribunal by an order dated December 7, 2016 disposed of the Misc. Application permitting the appellant to make a representation to SEBI for claiming interest on the principal amount. Based on the said direction of the Tribunal the appellant

made a representation for claiming a shortfall of Rs. 10,635/- towards principal amount and interest amounting to Rs. 38,51,420/- calculated at the rate of 10% p. a. for a period from November 11, 2004 to December 7, 2016. The said application was considered and rejected by SEBI by an order dated July 24, 2017 holding that there is no provision for payment of interest under the Act or Statute. Further, SEBI held that the Supreme Court while allowing the appeal by judgment dated December 9, 2015 did not issue any direction for refunding the fee alongwith interest. Further, while challenging the fee continuity benefit, the appellant only claimed the refund of the principal amount and did not claim any interest on the principal amount either before the Tribunal or before the Supreme Court and, therefore, the appellant was estopped from claiming interest.

5. We have heard Mr. Neerav Merchant, the learned counsel for the appellant and Mr**.** Gaurav Joshi, the learned senior counsel for the respondent at length. Even though the appellant has also prayed for refund of Rs. 10,635/- towards the principal amount, the learned counsel submitted that he is not pressing this relief and is confining his submissions only on the question of payment of interest.

6. The learned counsel for the appellant contended that the fee was recovered illegally by SEBI and, therefore, pursuant to the appeal being allowed by the Supreme Court, the appellant was entitled not only for the refund of the principal amount but also interest accrued on it. It was urged that the deposit was made by the appellant under protest and since the appellant had succeeded in his claim the principal amount was liable to be refunded alongwith interest. It was also contended that the respondent was under a legal obligation to refund the principal amount alongwith interest.

7. On the other hand, the learned senior counsel for the respondent contended that there was no prayer either before the Tribunal or before the Supreme Court for refund of the fee alongwith interest and consequently, no relief for interest could be granted in the second round of litigation. It was urged that the refund of the principal amount and interest accrued on it is regarded as one and the same cause of action. The principles envisaged under Order II Rule 2 of the Civil Procedure Code (CPC) would be applicable in the instant case. It was contended that since the appellant did not claim the relief of interest before the Tribunal or before the Supreme Court of India, such omission, being intentional, cannot allow the appellant now at this stage to make a claim on interest. It was urged that the appeal filed by the appellant for claim of interest was wholly erroneous and cannot be granted.

8. In order to appreciate the submissions of the learned counsel for the parties, it would be appropriate to bring on record the correct facts for better appreciation. We have perused the memo of appeal filed by the appellant being Appeal No. 396 of 2004 filed before this Tribunal. The relief claimed in paragraph 6 of the memo of appeal is :

> *"Refund of Rs. 31,81,506/- being the amount of additional registration fee paid by the Appellant in terms of revised liability created by SEBI."*

9. The appeal of the appellant was dismissed by an order of Tribunal dated June 15, 2006. The appellant being aggrieved filed a Special Leave Petition before the Supreme Court. A photocopy of the Civil Appeal has been produced before the Tribunal wherein the following reliefs were prayed :-

> *"(a) Admit the present appeal filed by the Appellant.*

(b) Admitted the final order dated 15-06-2006 passed by the Securities Appellate Tribunal, Mumbai in Appeal no. 396 of 2004, and

(c) Pass any other order / orders as may be deemed fit and proper in the facts and circumstances of the case."

The Supreme Court by judgment dated December 9, 2015 allowed the appeal, set aside the judgment of Tribunal and held that the appellants were entitled to be given the benefit of fee continuity.

10. Thus, from the perusal of the memo of appeal filed before SAT and before the Supreme Court of India, the appellant had only claimed refund of the amount deposited towards fee continuity. The appellant did not claim any relief for payment of interest on the principal amount.

11. After the decision of the Supreme Court, the appellant applied for refund alongwith interest. SEBI refunded the principal amount less Rs. 10,635/- and refused to grant interest. The appellant is now questioning the veracity of the impugned order denying to the interest.

12. In this regard, we are of the opinion that the principles of Order II Rule 2 of CPC would be fully applicable. For facility, the provision of Order II Rule 2 of CPC is extracted hereunder :-

*"**Rule 2. Suit to include the whole claim.**- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.*

*(2) **Relinquishment of part of claim.**- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

***(3) Omission to sue for one of several reliefs.**- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

> *Explanation.- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

Order II, Rule 2 of CPC, like the principle of *res judicata*, is based on the salutary and cardinal principle that all disputes must be settled once and for all and no person ought to be vexed twice for one and the same cause. When the claim has been filed and the person omits to claim a portion of relief the person cannot be allowed to claim the remaining portion of the relief at a later stage. The principle is that all disputes must be settled once and for all and no person ought to be vexed twice for one and the same cause. In **Shiv Kumar Sharma vs. Santosh Kumari [AIR (2008) SC 171],** the Supreme Court explained the proposition of law and the scope and interrelation between Rules 2, 3 and 4 of Order II in the following words :-

> *"16. In terms of Order II, Rule 2 of the Code, all the reliefs which could be claimed in the suit should be prayed for. Order II, Rule 3 provides for joinder of causes of action. Order II, Rule 4 is an exception thereto. For joining causes of action in respect of matters covered by Clauses (a), (b) and (c) of Order II, Rule 4, no leave of the court is required to be taken. Even without taking leave of the court, a prayer in that behalf can be made. A suit for recovery of possession on declaration of one's title and/ or injunction and a suit for mesne profit or damages may involve different cause of action. For a suit for possession, there may be one cause of action; and for claiming a decree for mesne profit, there may be another. In terms of Order II, Rule 4 of the Code, however, such causes of action can be joined and therefor no leave of the court is required to be taken. If no leave has been taken, a separate suit may or may not be maintainable but even a suit wherefor a prayer for grant of damages by way of mesne profit or otherwise is claimed, must be instituted within the prescribed period of limitation. Damages cannot be granted without payment of court-fee. In a case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the court and the balance court fee is to be paid when a final decree is to be prepared."*

13. In **State Bank of India vs. Gracure Pharmaceuticals Ltd. [2014 (3) SCC 595] decided on November 22, 2013**, the Supreme Court held that the plaintiff cannot be permitted to drag the defendant to the Court twice for the same cause of action by splitting up the claim, in the first instance, in respect of a part of claim only. The Supreme Court further held that if the cause of action on the basis of which the previous suit was brought, does not form the foundation of a subsequent suit, the latter, namely, the subsequent suit will not be barred by the rules contained in Order II Rule 2, CPC, but if the second suit was in respect of the same cause of action as that the previous suit was based then the plaintiff was barred from claiming the relief in the second suit.

14. In the light of the aforesaid, we find that the cause of action was same and was not distinct or different. The appellant before the Tribunal had prayed for refund of fee liability. No refund for interest was claimed. The appellant did not claim the relief of interest even before the Supreme Court. In the second round of litigation, the appellant cannot now claim the relief of interest. The claim of interest flows from the same cause of action, namely, the refund of fee liability.

15. In view of the aforesaid, since the appellant did not claim the relief of interest while seeking the refund of fee liability, the appellant is now barred by principle of Order II Rule 2 of CPC from claiming the refund of interest. In the light of the aforesaid, it is not necessary for the Court to dwell on the decisions cited by the learned counsel for the respondent on the question of *res judicata* and *constructive res judicata*. Similarly, the decisions cited by the claimant, namely, **Bapusaheb Chimansaheb Naik Nimbalkar vs. Mahresh Vijaysinha Rajebhosale [AIR (2017) SC 2491:2017(7) SCC 769]**, **Allahabad Bank vs. MECON [AIR (2005) Jhar**

54:2005 (2) BankCas 387], **Renuka Datla vs. Solvay Pharmaceuticals B.V. [AIR (2004) SC 321:2004 (1) SCC 149]** are distinguishable and have no application to the present facts and circumstances of the case. Consequently, for the reasons stated aforesaid, we do not find any merit in the appeal. The claim of interest was rightly rejected by the respondent.

16. The appeal fails and is dismissed. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

01.02.2019
Prepared & Compared by
PTM