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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30th April, 2024

+ CS (COMM) 28/2023

BHAVIK KOLADIA

..... Decree Holders

Through: Mr. Gaurav Pachnanda, Senior Advocate with Mr. Sidhant Goel, Mr. Deepankar Mishra, Ms. Anvi Sharma & Mr. Aditya Maheshwari, Advocates.

versus

ASHNEER GROVER & ANR.

..... Judgement Debtor

Through: Mr. Giriraj Subramaniam, Ms. Veda Singh, Mr. Simarpal Singh Sawhney, Mr. Joy Banerjee, Mr. Akhilesh T., Mr. Siddhant Juyal, Ms. Urvashi Singh, Mr. Ravi Pathak, Advocates for D-1.
Mr. Sourabh Rath, Advocate for D-2.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

I.A. 897/2023 (Application under Order XXXIX Rule 1 and 2 of the CPC)

1. The plaintiff has filed the abovementioned suit for a declaration that a Letter Agreement dated 03.12.20218, for sale of shares of defendant No. 2 - company by the plaintiff to defendant No. 1 [“the



Agreement”], has become void, and for cancellation of the share transfer form [“Form SH-4”] dated 03.12.2018 executed by him pursuant to the Agreement. Plaintiff also seeks a declaration that he continues to be the owner of the shares in question and an injunction restraining defendant No. 1 from creating any third-party interest in the said shares or exercising any rights therein. By way of this judgment, I propose to dispose of I.A. 897/2023, filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 [“CPC”], whereby the plaintiff seeks an interim injunction restraining defendant No. 1 from alienating or transferring or creating any third-party rights in the shares or exercising any rights therein or claiming ownership thereof, and an injunction directing defendant No. 2 to reflect the plaintiff as the legal and beneficial owner of the shares in question in its register of members.

A. Facts as pleaded by the parties.

2. The factual details set out in the plaint, so far as they are relevant for the disposal of the present application, are as follows:-

- a. The plaintiff, alongwith one Mr. Shashwat Nakrani were partners of a partnership firm – M/s EZY Services, which developed a payment platform under the trademark “BharatPe” in 2016. They incorporated defendant No. 2 - company on 20.03.2018 as a private limited company with 10,000 equity shares. The plaintiff and Mr. Nakrani each held 5,000 shares. The BharatPe platform was transferred to defendant No. 2 by the erstwhile partnership firm under an assignment deed dated 10.08.2018.
- b. In May 2018, defendant No. 1 was employed as Chief Executive Officer [“CEO”] of defendant No. 2 - company. He was also given



the title of “Co-Founder” and was offered 31.9% shareholding in the company.

- c. The shareholding was transferred to him by the plaintiff and Mr. Nakrani to the extent of 745 shares and 2447 shares respectively. In both transactions, the consideration was fixed at ₹10 per share.¹
- d. The parties were thereafter engaged in raising funds for defendant No. 2, including from foreign investors. However, defendant No. 1 informed the plaintiff that there was an impediment in raising funds from investors in the United States of America because the plaintiff had been prosecuted in the United States of America in the year 2013. Although eighteen of the nineteen charges were dismissed, and the last was the subject matter of plea agreement, the plaintiff agreed to transfer his shares in defendant No.2 - company to defendant No. 1 and Mr. Nakrani, so as to obviate the concerns of any potential investors. According to the plaintiff, it was the common understanding and intention of the parties that the plaintiff’s interest in the company would be protected by way of other contractual arrangements, including a call option to ensure that the plaintiff’s shares could be retransferred to him in future.
- e. Plaintiff and defendant No.1 entered into the Agreement dated 03.12.2018 for the sale of 1,611 equity shares of the company by the plaintiff to defendant No. 1 [“the Suit Shares”], together with all rights attached, at a consideration of ₹5,500 per share [wrongly mentioned in the Agreement as ₹31,516/- per share]. A similar

¹ These shares are not the subject matter of the present suit.



agreement was entered into between the plaintiff and Mr. Nakrani for transfer of 1,289 shares of the company from the plaintiff to Mr. Nakrani.²

- f. According to the plaintiff, transfer of title in the shares was, in terms of the Agreement, to be simultaneous with payment of consideration by defendant No. 1 to the plaintiff.
- g. The plaintiff, defendant No. 1 and Mr. Nakrani also entered into a “Call Option Agreement” dated 12.12.2018 which gave the plaintiff a right to repurchase a proportion of the shares on the terms and conditions mentioned therein.³
- h. The plaintiff performed his obligations under the Agreement on 03.12.2018, including by execution of Form SH-4 in favour of defendant No. 1. He also resigned from directorship of the company, but continued to provide services to the company under a Consultancy Service Agreement dated 01.12.2018, which continued in force until 31.07.2022.
- i. The name of defendant No. 1 has been recorded in the share transfer register and register of members of the company, in respect of the Suit Shares.
- j. Despite the passage of four years since the execution of the Agreement, defendant No. 1 has not paid the purchase consideration for the Suit Shares to the plaintiff.
- k. The plaintiff therefore claims a declaration that the Agreement and

² The said agreement is not the subject matter of the present suit.

³ For the purposes of the present application, the parties have not advanced arguments on the basis of the Call Option Agreement.



Form SH-4 executed by him stand rescinded and that he continues to be the owner of the Suit Shares, alongwith certain consequential reliefs. The Suit Shares have since been sub-divided into 10 shares each i.e. the shares now comprise of 16,110 equity shares.

1. The appointment of defendant No. 1 as Co-Founder and Managing Director of defendant No. 2 ceased in March, 2022. According to the plaintiff, defendant No. 1 has around the same time publicly asserted ownership of the Suit Shares, including in press interviews and in a book authored by him titled “*Doglapan*” published in December, 2022.

m. The plaintiff sought return of the Suit Shares by an email dated 24.03.2022 addressed to defendant No. 1, to which he did not receive a response. He has thereafter rescinded and terminated the Agreement by notice dated 14.01.2023.

3. A written statement has been filed by defendant No. 1. Although the veracity of the Agreement relied upon by the plaintiff⁴ has been denied in the written statement, Mr. Giriraj Subramaniam, learned counsel for defendant No. 1, stated that, for the purposes of the present application, the Court may proceed on the basis of the Agreement dated 03.12.2018, placed on record by the plaintiff. With this qualification, the relevant contents of the written statement filed by defendant No. 1 may be summarised as follows:-

a. Defendant No. 1 became a 34% shareholder in defendant No.2 - company sometime after June 2018.

⁴ Document No. 1 of the plaintiff’s list of documents.



- b. Due to the plaintiff's prior criminal antecedents in the United States of America, he was required to terminate his relationship with defendant No.2 - company at the time of seeking investment. He was to enter into two separate agreements with regard to sale of his shares, one with defendant No. 1 and Mr. Nakrani, and the other with the potential investors. The Agreement was entered into as part of this arrangement.
- c. The consideration for the amount payable under the Agreement was in fact paid. The understanding between the plaintiff and defendant No. 1, who shared a "*multi-faceted commercial relation with each other*", was that defendant No. 1 would reimburse the plaintiff towards the value of the shares "*as and when able*".
- d. Nonetheless, the value of the Suit Shares was, in fact, reimbursed by the plaintiff having use of a furnished residence of defendant No. 1 from October 2019 to October 2021 without payment of rent or deposit. It is urged that consideration of ₹12,00,000/- was thus passed on to the plaintiff as foregone rent.
- e. On 21.04.2020, defendant No. 1 paid ₹10,00,000/- to the plaintiff in cash, which "*was a part consideration in cash which was towards the commercial relationship*" between them.
- f. The consideration for the Suit Shares was part of a sum of ₹8,00,00,000/- remitted by the wife of defendant No. 1 to the plaintiff's wife. The transaction was structured in this manner, and shown as a loan at the request of the plaintiff. In any event, the consideration for the Suit Shares would be covered by the interest foregone upon the aforesaid loan amount.



4. The contents of the plaintiff's application under Order XXXIX Rule 1 and 2 of the CPC and the reply of defendant No. 1 thereto are along the same lines.

B. Relevant clauses of the Agreement and Form SH-4.

5. Before recording the submissions of learned counsel for the parties, the relevant clauses of the Agreement, relied upon by them, are set out below:-

“1. This letter agreement (“Letter Agreement”) is with reference to discussions and agreement amongst Mr. Bhavik Koladiya, resident of 3B, Sidsar Road, Kaminiya Nagar, Adhewada Bhavnagar, Takhteshwar, Gujarat 364002 holding PAN FRLPK4175F (“Seller”) and Mr. Ashneer Grover, resident of B1/36, Second Floor, Tikona Park, Malviya Nagar, South Delhi, Delhi-110017, holding PAN AJZPG0291K (“Purchaser”) relating to the sale and purchase of 1611 (one thousand six hundred eleven) equity shares (“Sale Shares”) of Resilient Innovations Private Limited (“Company”) having a face value of INR 10/- each by the Purchaser from the Seller.

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3. Pursuant to the terms of this Letter Agreement, **the Purchaser hereby agrees to purchase from the Seller, and the Seller agrees to sell to the Purchaser**, the Sale Shares at a consideration of INR 31,516 (Rupees thirty one thousand five hundred sixteen) per Sale Share, being an aggregate amount of INR 88,60,500 (Rupees eighty eight lacs sixty thousand five hundred) (“Purchase Consideration”).

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5. **On a date mutually agreed between the Purchaser and Seller (“Closing Date”), the following actions shall be consummated simultaneously:**

(a) The Seller shall:

(i) deliver to the Purchaser **duly executed share transfer forms** in respect of the Sale Shares in favour of the Purchaser;

(ii) deliver to the Purchaser the original share certificates in respect of the Sale Shares.



- (b) *The Purchaser shall:*
- (i) **remit the Purchase Consideration to the following bank account of the Seller:**

Account Holder: Mr. Bhavik Koladiya
Bank Name: Yest Bank Limited
Branch: Silver Arc Building, Plot
No. 9, Waghawadi Road,
Bhavnagar, Gujarat-
364001
IFSC Code: YESB0000064

- (ii) *procure payment of stamp duty in respect of, and lodge with the Company, the duly executed share transfer form for the Sale Shares, along with original share certificates received from the Seller.*

- (c) *The Company shall:*
- (i) *convene a meeting of the Board to approve the following:*
- (A) *take on record the transfer of Sale Shares by the Seller to the Purchaser, and authorize the endorsement of the share certificates in respect of the Sale Shares to reflect the Purchaser as the owner thereof, and update the register of share transfer of the Company; and*
- (B) *update the register of members to register the Purchaser as the legal and beneficial owner of the Sale Shares.*
- (ii) *deliver to the Purchaser original share certificates in relation to the Sale Shares, duly endorsed by the Company, to reflect the Purchaser as the owner of the Sale Shares.*

6. *The Seller hereby represents and warrants to the Purchaser that each representation and warranty below is true, correct, valid and subsisting in every respect, as of the date hereof, **and shall remain true, correct, valid and subsisting on the Closing Date** (as if such warranties have been made as on and as of such date) (“Seller Warranties”)*

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- (c) *The Sale Shares held by the Seller have been properly and legally acquired, and are each fully paid.*



(d) **The Seller has the right to transfer to the Purchaser full legal and beneficial interest in such Sale Shares** together with all rights and benefits attached thereto, in the manner set out in this Letter Agreement.

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(g) The Seller shall be responsible for the payment of any capital gains tax relating to the sale of the Sale Shares hereunder and the Purchaser shall have no liability in that behalf whatsoever.

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7. The Purchaser represents and warrants to the Seller that each representation and warranty below is true, correct, valid and subsisting in every respect, as of the date hereof, **and shall remain true, correct, valid and subsisting on the Closing Date** (as if such warranties have been made as on and as of such date):

(a) the Purchaser has all necessary power, authority and capacity to enter into, and undertake the transactions contemplated by, this Letter Agreement;

(b) this Letter Agreement constitutes valid and legally binding obligations on him and is enforceable against him in accordance with its terms.

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9. This Letter Agreement shall be effective from the date hereof and shall continue to be valid and in full force and effect, unless it is terminated by the mutual consent of the Seller and Purchaser.

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11. No modification or amendment of any of the provisions of this Letter Agreement shall be effective unless made in writing specifically referring to this Letter Agreement and duly signed by each of the Seller and Purchaser.”⁵

6. Defendant No. 1 also relies upon the Form SH-4 executed by the plaintiff which is reproduced below:-

⁵ Emphasis supplied.



Form No. SH-4

Securities Transfer Form

[Pursuant to section 56 of the Companies Act, 2013 and sub-rule (1) of rule 11 of the Companies (Share Capital and Debentures) Rules 2014]

Date of Execution: 05/12/18

FOR THE CONSIDERATION stated below the "Transferor(s)" named do hereby transfer to the "Transferee(s)" named the securities specified below subject to the conditions on which the said securities are now held by the Transferor(s) and the Transferee(s) do hereby agree to accept and hold the said securities subject to the conditions aforesaid.

CIN: U74999DL2018PTC331205
Name of Company (in full): Resilient Innovations Private Limited
Name of the Stock Exchange where the company is listed, if any: Not Applicable

DESCRIPTION OF SECURITIES

Table with 4 columns: Kind / Class of Securities, Nominal Value of each unit of security, Amount called up per unit of security, Amount paid up per unit of security. Includes rows for Equity Shares and summary of securities transferred.

Table for Distinctive Number (From 2645 To 4255) and Corresponding Certificate No.

Transferor's Particulars:-

Table for Transferor's Particulars including Registered Folio No. (01), Sr. No., Name(s) in full (Bhavik Koladiya), and Signature(s).

I, hereby confirm that the Transferor has signed before me.

Signature of witness
Name and address

Transferee's Particulars:-

Table for Transferee's Particulars with columns: Name in Full, Father's / Mother's / Spouse Name, Address & E-mail Id, Occupation, Existing Folio No. if any, Signature. Includes details for Mr. Ashneer Grover.

Folio No. of Transferee: 03

Specimen Signature of Transferee

Three specimen signatures of Ashneer Grover numbered 1, 2, and 3.

Value of stamp affixed



C. Submissions of learned counsel for the parties.

7. Mr. Gaurav Pachnanda, learned Senior Counsel for the plaintiff, relied upon the contents of the Agreement dated 03.12.2018, particularly Clauses 4, 5 and 6, to submit that property in the Suit Shares was to pass to defendant No. 1 only upon payment of consideration. He relied upon Sections 4, 12, 19, 32 and 46 of the Sale of Goods Act, 1930 [“SoGA”] to submit that in such circumstances, the plaintiff retained ownership of the Suit Shares. Mr. Pachnanda cited the judgments of the Supreme Court in *Arihant Udyog vs. State of Rajasthan*⁶ and the judgment of a Single Judge of this Court in *Pawan Hans Helicopters Ltd. vs. Aes Aerospace Ltd.*⁷ and *Benjamin’s Sale of Goods*⁸ in favour of this contention.

8. Mr. Pachnanda argued that the averments of defendant No. 1 in the written statement itself demonstrate that the purchase consideration was not paid at the time the Agreement was entered into. He argued that the inconsistent and contradictory contentions of defendant No. 1 with regard to the time of payment also belied his contentions in this regard.

9. Mr. Giriraj Subramaniam, learned counsel for defendant No.1, on the other hand, submitted that the facts and circumstances of this case demonstrate that the time for payment of the consideration stipulated in the Agreement was not of essence to the contract. He drew my attention to Sections 11 and 12 of SoGA to submit that in the absence of a contrary intention, the stipulation as to time is not to be regarded as of the essence in a contract for sale of goods, and breach thereof would therefore not

⁶ (2017) 8 SCC 220.

⁷ 2008 (103) DRJ 174.

⁸ Eleventh edition, Sweet & Maxwell.



give a party a right to treat the contract as repudiated. In the present case, although the Agreement contains the stipulation as to the time of payment, it does not provide any consequences for the breach thereof.

10. According to Mr. Subramaniam, the attendant circumstances of the present case, including execution of Form SH-4, which expressly provides that consideration had been received by the plaintiff, the entry of defendant No. 1's name on the register of members of defendant No.2 – company, and the fact that the present suit was not instituted for a period of four years after the Agreement, all point to the conclusion that parties did not treat time to be of the essence of the contract.

11. Mr. Subramaniam also drew my attention to the contents of the legal notice dated 14.01.2023 sent on behalf of the plaintiff and paragraphs 2.29 and 2.30 of the plaint to submit that the plaintiff's own construction of the Agreement was that the payment of the sale consideration did not necessarily have to be made at the time of the Agreement, but could have been made within a reasonable period thereafter.

12. He submitted that in such circumstances, Sections 20, 46 and 55 of SoGA provide that property passed to defendant No. 1 at the time of the Agreement and that the rights of the plaintiff are now limited to a suit for the price of the Suit Shares. He relied upon the judgment of the Rajasthan High Court in *Pakharsingh vs. Kishansingh*⁹ in support of these contentions.

13. Mr. Subramaniam also relied upon a judgment of a Coordinate

⁹ 1973 SCC OnLine Raj 39.



Bench of this Court in a suit instituted by Mr. Nakrani against defendant No. 1¹⁰. He submitted that Mr. Nakrani had asserted an agreement for sale of shares, which was in similar terms to the agreement in issue in the present case. The Coordinate Bench however dismissed an application under Order XXXIX Rule 1 and 2 of the CPC. According to Mr. Subramaniam, the facts of the two cases are similar.

14. Mr. Pachnanda, in rejoinder, submitted that Section 20 of SoGA, relied upon by Mr. Subramaniam, would be inapplicable to the present case as the Agreement itself provided that property could not pass until the payment of consideration. He submitted, relying upon Section 19 of SoGA, that Sections 20 to 24 would come into play only if the Court comes to a conclusion that the Agreement did not express any intention as to when property should pass in the present case. He drew a distinction between Form SH-4 which constitutes a “*document of title to goods*” under Section 2(4) of SoGA and a legal question of when property would pass to the purchaser. For this purpose, he relied upon the judgment of the Supreme Court in *Vasudev Ramchandra Shelat vs. Pranlal Jayanand Thakar & Ors.*¹¹.

15. Mr. Pachnanda also distinguished the judgment of the Coordinate Bench in *Shashvat Nakrani*¹² on the ground that the agreement pleaded in that case was an oral agreement, whereas the intention of the parties is clearly evident in the present case from a written document. He submitted that defendant No. 1 in that case had taken an express defence that the

¹⁰ Judgment dated 15.12.2023 in CS(COMM) 166/2023 [*Shashvat Nakrani vs. Ashneer Grover*].

¹¹ (1974) 2 SCC 323.

¹² *Supra* (note 10).



consideration amount of ₹24,470/- had been paid in cash whereas, in the present case, the contentions of defendant No. 1 in this regard were ambiguous and inconsistent, not deserving of acceptance on a *prima facie* basis.

D. Analysis.

16. Having regard to the aforesaid contentions of the parties, the key question which requires determination is whether the plaintiff has made out a *prima facie* case that he continues to retain property in the Suit Shares as consideration under the Agreement remained unpaid. Learned counsel for both parties proceeded on the basis that, if the Court comes to the conclusion that property in the Suit Shares had passed to defendant No. 1 upon execution of the Agreement and Form SH-4, the plaintiff's rights would be limited to recovery of the agreed price. However, if the Court finds *prima facie* that property in the Suit Shares had not passed in the absence of consideration, the plaintiff retained the right to repudiate the transaction and claim the Suit Shares.

17. Learned counsel for the parties relied upon the following provisions of SoGA in support of their contentions:-

“2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

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(4) “document of title goods” includes a bill of lading, dock warrant, warehouse-keeper's certificate, wharfingers' certificate, railway receipt, 5[multimodal transport document,] warrant of order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

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(7) “goods” means every kind of movable property other than



actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

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4. Sale and agreement to sell.—(1) *A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may by a contract of sale between one part-owner and another.*

(2) *A contract of sale may be absolute or conditional.*

(3) *Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.*

(4) *An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.*

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11. Stipulation as to time.—*Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.*

12. Condition and warranty.—(1) *A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.*

(2) *A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.*

(3) *A warranty is a stipulation collateral to the main purpose of the contract, the breach of which give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.*

(4) *Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.*

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19. Property passes when intended to pass.—(1) *Where there is a contract for the sale of specific or ascertained goods the property in*



them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state.—Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

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25. Reservation of right of disposal.—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission, to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipts, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

Explanation.—In this section, the expressions, “railway” and “railway administration” shall have the meanings respectively assigned to them under the Indian Railways Act, 1890 (9 of 1890).

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45. “Unpaid seller” defined.—(1) *The seller of goods is deemed to be an “unpaid” seller within the meaning of this Act—*

(a) *when the whole of the price has not been paid or tendered;*
(b) *when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.*

(2) *In this Chapter, the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, is or directly responsible for, the price.*

46. Unpaid seller's rights.—(1) *Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—*

(a) *a lien on the goods for the price while he is in possession of them;*
(b) *in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;*
(c) *a right of resale as limited by this Act.*

(2) *Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.*

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55. Suit for price.—(1) *Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.*

(2) *Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.”*

18. Looking at the terms of the Agreement in the context of these provisions, I am *prima facie* of the view that the parties had agreed that property in the Suit Shares would pass to defendant No. 1 only upon payment of the sale consideration. The following clauses of the Agreement dated 03.12.2018 support this conclusion:-



- a) Clause 3 employs the phrases “*hereby agrees to purchase*” and “*agrees to sell*”, which *prima facie* indicate that the Agreement was in the nature of an “agreement to sell” under Section 4(3) of SoGA, rather than a “sale”.
- b) Clause 5 refers to a “Closing Date” in the future, and to simultaneous delivery of the share transfer forms and the share certificates with the remittance of the purchase consideration by defendant No. 1 to the designated bank account of the plaintiff.
- c) Clauses 6 and 7 contain warranties of the parties which are stated to be true on the date of the Agreement and would remain “*true, correct, valid and subsisting on the Closing Date*”. This also indicates a closing date in the future.
- d) Clause 6(d) stipulates that the plaintiff had the right, until the closing date, to transfer full legal and beneficial interest in the Suit Shares to the defendant No. 1. This indicates that, until the closing date - which also refers to payment of the sale consideration by defendant No. 1 - plaintiff retained the legal and beneficial interest in the Suit Shares.

19. On the above basis, I am of the view that plaintiff has made out a *prima facie* case that property in the Suit Shares was to be transferred only upon payment by defendant No. 1. As a consequence, the provisions of Sections 20 to 24 of SoGA would have no application, as they would come into play only if no contrary intention was evident from the



contract. The judgment of the Supreme Court in *Arihant Udyog*¹³ in paragraphs 16 to 22, clearly holds that the provisions of Section 20 to 24 of SoGA would be applicable only if the intention of the parties as to when property in the goods would pass, cannot be discerned from the contract:-

“22. A conjoint reading of the aforesaid provisions makes it clear that title in goods is transferred from the seller to the buyer only on the sale of goods. As to when such a sale fructifies and the property passes is to be ascertained from the intention of the parties having regard to the terms of the contract. If no such intention can be gathered from the terms of the contract, the property in goods passes where the goods are in a deliverable state and there is unconditional contract for sale of specific goods.”¹⁴

20. The judgment of the learned Single Judge of this Court in *Pawan Hans*¹⁵ also supports this conclusion:-

“17. Section 19 of the Sale of Goods Act, 1930 specifically provides that the property passes when it is intended to pass. Section 19 (1) stipulates that where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. In this context, it would be pertinent to reiterate that clause 7 of the addendum of 24.09.1999 specifically stipulated that the title in the goods would only pass to the purchaser (respondent) once the full payment of GBP 9,00,000 under the said agreement was received by the vendor (petitioner) upon the delivery of the package FOB Mumbai for shipment to U.K. Admittedly, the petitioner has not received the agreed price of GBP 9,00,000. The intendment under the said clause is clear that unless and until the petitioner received the full price for the said goods, the property in them would not pass to the respondent and would continue to vest in the petitioner. In the light of Section 19 of the Sale of Goods Act, 1930, it can be safely concluded, at this stage, that the property was intended to pass only upon the full payment of GBP

¹³ Supra (note 1), paragraphs 16 to 22.

¹⁴ Emphasis supplied.

¹⁵ Supra (note 2). The judgment of the learned Single Judge was affirmed by the Division Bench by a judgment dated 11.08.2008 in FAO(OS) 258/2008 and FAO(OS) 259/2008. The Supreme Court declined Special Leave to Appeal by order dated 30.01.2009 in SLP(C) 1231/2009.



9,00,000 by the respondent to the petitioner. That has not happened, therefore, the property has not passed to the respondent. **This being the position, the agreement dated 16.06.1999 alongwith its addenda would only be regarded as an agreement to sell within the contemplation of Section 4 (3) of the Sale of Goods Act, 1930 and not as a sale. The agreement to sell has not matured into a sale inasmuch as the conditions that were required to be fulfilled, subject to which the property in the goods was to be transferred, have not been fulfilled. Therefore, in law, no sale has taken place and the parties had only entered into an agreement to sell.**¹⁶

21. Mr. Pachnanda also cited the following passage from *Benjamin's Sale of Goods*¹⁷, which supports the position that the plaintiff in the present case be ultimately be entitled to recovery of possession of the shares:

“4. MISCELLANEOUS REMEDIES

Recovery of possession, or damages for conversion Although the seller may have delivered the goods to the buyer, he may be entitled to recover possession from the buyer under an express term of contract; or where, before the property in the goods has passed to the buyer, he justifiably terminates the contract on account of the buyer's breach. When the buyer has possession of the goods but not the property in them, he is the bailee of the seller who may be entitled, either under the terms of the contract or under the ordinary law of contract, to determine the bailment and demand the immediate return of goods, if the buyer commits a breach of his obligations under the contract. The appropriate remedies are the proprietary ones for chattels under the law of torts, viz. proceedings for wrongful interference with the goods in which the claimant seeks an order for specific delivery of the goods, or for damages for conversion when the buyer has dealt with the goods in a manner which denies the seller's title to them. Similarly, when the seller retains the property in goods, he may be entitled, on the basis of his immediate right to possession of the goods, to bring proceedings for wrongful interference to obtain an order for specific delivery or damages for conversion against a stranger who wrongfully interferes with the goods while they are in the possession of the buyer, or who wrongfully detains them after taking them out of the possession of the buyer. The unpaid seller who is in possession of the goods as a result of his having exercised his right of

¹⁶ Emphasis supplied.

¹⁷ Supra (note 8); paragraph 16-091.



*lien or of stoppage in transit may bring proceedings for wrongful interference with the goods against a stranger; and the unpaid seller who is immediately entitled to possession of the goods by virtue of his having stopped the goods in transit may bring such proceedings against the carrier or other bailee who fails to comply with the seller's instructions, or against a stranger who detains or interferes with the goods.*¹⁸

22. Mr. Subramaniam sought to distinguish the judgment in *Pawan Hans*¹⁹, on the ground that there was an express clause in that case that title in the goods would not pass until payment was made. He submitted that the present Agreement contains no such clause. While such an express provision is indeed missing in the present case, I have not been shown any authority to suggest that such an intention must be express, or that the provision would be inapplicable even if the intention of the parties can be gathered from the terms of the Agreement, as in this case.

23. Similarly, I am of the view that Mr. Subramaniam's reliance upon Sections 11 and 12 of SoGA is misconceived. The question in the present case is not whether the stipulation as to time of payment was of the essence of the contract, but as to whether the property has passed at all. The provisions of Section 11 and the judgments relied upon would be of assistance, if the Agreement provided only for payment of consideration at a particular time, but did not link the payment with the passing of property. In the present case, the plaintiff's argument is not predicated upon the stipulated time for payment of consideration, but upon the interrelationship between the payment and the property passing. For this reason, the judgment of the Rajasthan High Court in *Pakharsingh*²⁰,

¹⁸ Emphasis supplied.

¹⁹ Supra (note 7).

²⁰ Supra (note 9).



relied upon by Mr. Subramaniam, is also of little assistance. The judgment deals with the question as to whether time is of the essence to a particular contract. However, the real question to be addressed in the present case is not about a specific time when payment of the consideration amount ought to have been made by defendant No.1, but whether property in the Suit Shares passed to him, absent such payment.

24. The next question, therefore, is whether the sale consideration had in fact been paid by defendant No.1 to the plaintiff. The most important document relied upon by defendant No.1, in this connection, is Form SH-4, signed by the plaintiff and defendant No.1, on the same day as the Agreement i.e. 03.12.2018. Mr. Subramaniam points out that the document contains the entry of Rs.88,60,500/- under the column “*Consideration received (Rs.)*”. As against this, Mr. Pachnanda submitted that defendant No.1 had not placed any evidence of actual transfer of the amount.

25. At this stage, the Court is required to return only a *prima facie* finding on this disputed question of fact. Upon a consideration of the material before the Court at this stage, I am of the view that the *prima facie* case is in favour of the plaintiff, i.e. that the consideration was in fact not paid. This is not only because of a complete lack of any documentary evidence of payment – whether by way of bank statements or otherwise – but also because the pleadings of defendant No.1 himself are, at best, ambiguous. There is no pleading whatsoever that payment was in fact made on 03.12.2018, as recorded in Form SH-4. There is also no pleading that payment was made in terms of the Agreement, i.e. to the



bank account designated in Clause 5(b)(i) of the Agreement²¹. The pleas taken by defendant No.1 with regard to payment are also vague and multifarious. As noted above, he has claimed payment in three ways - in kind [by use of a furnished residence], payment of part consideration in cash “*towards the commercial relationship*” between the parties and by way of interest forgone upon a loan advanced by his wife to the plaintiff’s wife. These alternative and inconsistent pleas lead me to a *prima facie* conclusion that they are in fact afterthoughts and unrelated transactions are being retrospectively explained to cover the consideration amount.

26. Mr. Subramaniam sought to stress upon the contents of the legal notice and the plaint to suggest that the time for payment of the consideration amount was not in fact fixed. He emphasised that the plaintiff has pleaded non-payment of consideration within a reasonable time after the signing of the Agreement. I do not consider this to be a relevant consideration, at least at the interlocutory stage, because of the *prima facie* finding that consideration has, in fact, not been paid at any stage, whether simultaneously with the Agreement or subsequently.

27. Mr. Subramaniam’s reliance upon the judgment in *Shashvat Nakrani*²² also does not persuade me to a contrary conclusion. Although the facts are similar at first blush, there are significant differences which, on a more considered view, tip the scales in favour of the plaintiff. These are as follows:-

²¹ I do not intend to suggest at this stage that remittance of consideration by any other method, if proved, would still be inadequate to show compliance with the Agreement. That question is left open for adjudication at trial.

²² *Supra* (note 10).



- (a) The most significant difference is that there was no written agreement in *Shashvat Nakrani*²³. The plaintiff's case, regarding the link between payment of consideration and passing of property was, therefore, pleaded but not backed up by any document. The Court therefore noted the execution of Form SH-4 and the statutory consequences and presumptions which arise as a consequence. There was no document or evidence before the Court to contradict those presumptions. In contrast, in the present case, the written agreement itself provides such a basis. The present case, proceeding on the above analysis of the written agreement, is different in this fundamental respect.
- (b) The second significant distinction is that in *Shashvat Nakrani*²⁴, defendant No.1 had asserted that the consideration amount of Rs.24,470/- was paid in cash, simultaneously with the execution of Form SH-4. In the present case, the consideration was of a substantially higher sum of Rs.88,60,500/-, and there is no such factual assertion. I have also come to a contrary *prima facie* finding, with regard to the payment of consideration.
- (c) While deciding the application in *Shashvat Nakrani*²⁵, the Court also proceeded on an analysis of the provisions of SoGA, which for the reasons noted above, are inapplicable.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*



(d) The admissions of Mr. Nakrani, in other suits between the same parties, were also held against him, whereas no such admissions are relied upon in the case of the plaintiff herein.

28. The injunction sought by the plaintiff, at this stage, is to restrain defendant No.1 from selling or creating any third-party rights in the Suit Shares or in any rights that have accrued as a consequence thereof. For the reasons aforesaid, I am of the view that the plaintiff has made out a *prima facie* case for grant of such an injunction. Defendant No.2 is a private limited company whose shares are not traded. The balance of convenience is also, therefore, in favour of an injunction being granted. I am satisfied that the plaintiff would suffer irreparable loss and prejudice if third-party rights are created in the Suit Shares claimed by the plaintiff at this stage.

E. Conclusion.

29. Defendant No.1 is therefore restrained from transferring or creating any third-party rights in the Suit Shares, or any rights accrued or which may accrue to him as a consequence thereof, until the disposal of the suit.

30. It is made clear that the observations and findings in this judgment have been recorded only for disposal of this application and are not intended to prejudice the parties at trial.

31. The application stands disposed of.

PRATEEK JALAN, J.

April 30, 2024
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