

In the Court of VIth Joint Civil Judge Junior Division, Pune

**IN THE COURT OF VI-TH JOINT CIVIL JUDGE JUNIOR DIVISION
PUNE AT PUNE**

(BEFORE SHRI D.K. MULLASAHEB)

REGULAR CIVIL SUIT NO.1432/99

EXH. NO. 38

M/s. Kirloskar Consultants Ltd.
A Company registered under
the Companies Act having its
Registered Office at
917/19, A, Shivajinagar,
Pune-411004

through its Managing Director,
Mr. Dattatraya Vishwanath Tikekar

..... Plaintiff

Vs

1. Council of Architecture,
India Habitate Centre,
Core 6-A, 1st Floor, Lodhi Road,
New Delhi
Pin-110003
Through it's Admn. Officer
K. Gopalkrishna Bhat
2. Mr. Sudhir Diwan,
Age - Adult, occ - Architect,
R/o - 4, Masion Beleverdre
107, Queens Rd. (Next to IT office)
New Marine Lines
Bombay-400020

..... Defendents

(Summons to be served by Reg. A.D. Post)

Shri S.M. Kelkar advocate for plaintiff

Shri B.R. Phatak advocate for defendant no.1

Suit proceeded without W.S. against defendant no.2

**SUIT FOR DECLARATION &
MANDATORY INJUNCTION**

JUDGEMENT

(Delivered on 20.10.2000)

1. This is a suit for declaration and mandatory injunction against defendant no.1.
2. The averments of the plaintiff in his Plaint are as under:-

The plaintiff is a public Limited Company having it's registered office at Pune. Plaintiff company is dealing in business of consultation, and the company by name "FOSECO INDIA LTD" has intrusted the plaintiff company with the work of structural engineering, services inclusive of process engineering, detail engineering, project engineering services, work of road, area drainage and sewage, structural engineering services for plant building and other allied works including land development. Plaintiff further alleged that, the work of conceptual design of the said project has been given to one M/s. Sudhir Diwan from Bombay. The said conceptual design was to be

submitted to Foseco India Ltd. and Foseco India Ltd. to prepare a detailed drawing as per their choice and Foseco India Ltd. is at liberty to make any such changes as they desire.

3. It is further alleged by plaintiff that, plaintiff company has got team of experts architects, who are members of defendant no.1 and who work as an associate in the company. There are skilled architects on the panel of the company, who are also the members of the defendant. On 13th April, 1999, plaintiff company received the letter dt. 7.4.1999 from Administrative Officer of defendant company. The defendant no.1 thereby informed plaintiff company about the misuse of the title and style of the Architect by plaintiff company and of underbidding of fees than quoted by Architect. Plaintiff company further alleged that, due to the letter issued by defendant no.1, plaintiff company was at a loss to receive such letter because the said work has been awarded to the company on 4.12.1997 to the knowledge of defendant no.2. Plaintiff company further contended that, the defendant no.1 is not proper and correct forum to make the complaints mentioned in the letter of defendant no.1. It is further alleged that, again on 24.6.1999, defendant no.1 sent a show cause notice to the plaintiff company and suo moto hold the inquiry of the plaintiff company. The plaintiff further alleged that, defendant no.1 suo moto appointed itself as enquiry committee on the basis of correspondence between defendant no.1 and defendant no.2. Defendant no.1 at any time did not disclose any correspondence or complaint of defendant no.2 to the plaintiff company on the basis of which defendant no.1 has initiated inquiry.
4. Plaintiff company has further alleged that, defendant no.1 was under legal obligation to follow the principles of natural justice. The show cause notice is in respect of dispute, which is time-barred and not within the purview of the jurisdiction of defendant no.1. The dispute raised by defendant no.1 in show cause notice comes under the exclusive jurisdiction of Civil Courts or High Courts. Plaintiff has given reply to that notice on 7.4.1999 and asked defendant no.1 to furnish the copy of the complaint made by defendant no.2 alongwith all such other documents. Plaintiff further alleged that, the notice dt. 7.4.1999 and show cause notice dt. 24.6.1999 are bad in law and they are required to be squashed. Plaintiff further alleged that, it is also necessary that, all correspondence between defendants that has resulted into issuing of the show cause notice should be furnished by defendant no.1 to the plaintiff company. Hence, plaintiff company has filed this suit for Mandatory Injunction and declaration that, defendant should produce the correspondence between them with all necessary documents and also prayed that, notice dt. 7.4.1999 and show cause notice dt. 24.6.1999 sent by defendant no.2 be declared as null and void.
5. Defendant no.1 has resisted the plaintiff's claim by submitting it's W.S. at Exh. 16. Defendant no.1 has denied all the contents and allegations of the plaintiff against defendant no.1. Defendant no.1 contended that, present suit is not in a proper form and therefore, is not maintainable. It is further contended that, plaintiff's suit is affecting by the principles of non joinder of necessary parties and therefore, it required to be dismissed. It is further contended that, plaintiff has not added Foseco India Ltd., as necessary party to his suit. Defendant company shows it's ignorance about the project entrusted by company Foseco India Ltd. Defendant no.1 contended that, in letter dt. 7.4.1999 itself, this defendant has disclosed the source of the information on the basis of which, the letter dt. 7.4.1999 was issued to the plaintiff. Defendant no.1 further contended that, the letter dt. 7.4.1999 issued by this defendant as alleged by plaintiff. The letter dt. 13.5.1999 bearing no. PED/CAS issued by plaintiff in reply to the letter dt. 7.4.1999 issued by this defendant contains several investment and business allegations. The said letter dt. 13.5.1999 issued by plaintiff does not answer the allegations and charges levelled against plaintiff. Defendant no.1 shows ignorance about the transaction with defendant no.2.
6. The defendant no.1 further contended that, defendant has followed the principles of natural justice and fairness of the procedure while issuing letters and notices to the plaintiff. Defendant contended that, defendant no.1 has jurisdiction to hold inquiry and to issue show cause notices under the provisions of Architect's Act, 1972. Defendant no.1 further contended that, the letter dt. 2.12.1998 received from defendant no.2 disclosed that, plaintiff company was appointed as a engineering consultation for detailed work mainly of civil and structural parts of the project and for preparing tendered document and other things. Defendant no.1 took notice of the fact that, plaintiff company has actually violated the provisions of Section 36 and 37 of Architect's Act, 1972 by entering into the contract with Foseco India Ltd. to provide them with architectural design and drawing alongwith other engineering designs and drawings. Defendant has therefore, started process in inquiry, the plaintiff company has violated the provisions of Section 36 & 37 of Architect's Act by issuing notice Under Section 39 of the said Act. The defendant no.1 further contended that defendant has right to initiate further action against plaintiff. Defendant no.1 has further mentioned the statement of object & reasons of Architect's Act and some of the provisions of the said Act. Defendant no.1 further contended that, the impugned letter dt. 7.4.1999 and notice dt. 24.6.1999 issued by this defendant in discharge of it's statutory function and authority, the relief claimed by plaintiff in the suit cannot be granted. The defendant further contended that, plaintiff's suit is required to be dismissed with Compensatory Costs.

Defendant no.2 has not filed his W.S. Suit proceeds against him without his W.S.

7. In view of the above averments of the plaintiff and defendant no.1, following issues have framed at Exh.17. I have given my findings against each of them for the reasons given thereunder:-

ISSUES**FINDINGS**

1. Does plaintiff prove that, plaintiff company has given work of conceptual design of structural engineering services project by FOSECO Co. ?
.....Yes
2. Does plaintiff company prove that, conceptual design was to submit to Foseco India Ltd, for approval ?
.....Yes
3. Does plaintiff prove that, plaintiff company has team of expert architects who are member of defendant no.1 ?
.....Yes
4. Does plaintiff company prove that, work has been allotted to plaintiff company on 4.12.1997 to the knowledge of defendant no.2 ?
.....Yes
5. Does plaintiff company proved that, notice dt. 7.4.1999 & 24.6.1999 are illegal ?
.....No
6. Does defendant no.1 prove that, defendant no.1 has right to inquire whether plaintiff company violated the provisions of Sec. 36 & 37 of Architect's Act, 1972 by issuing show cause notice dt. 24.6.1999 ?
.....Yes
7. Does plaintiff company entitled for declaration as prayed ?
.....No
8. Does plaintiff company entitled correspondence between defendants as prayed ?
.....Yes
9. What order & decree ?As per Final Order
8. AS TO ISSUES NO.1 TO 4

The learned advocate appearing on behalf of plaintiff has submitted that, Foseco India Ltd. company has intrusted plaintiff company the work of it's project. The Foseco India Ltd. Company has allotted the work of structural engineering services and other work, of it's project. He further submitted that, however, the Foseco India Ltd. company has allotted the work of conceptual design to the defendant no.2. Defendant no.2 has to submit his conceptual design to Foseco India Ltd. and afterwards Foseco India Ltd. has to prepare detail drawings as per their choice. The learned advocate appearing on behalf of plaintiff further submitted that, the plaintiff company has team of experts architects, who are members of defendant no.1. He further pointed out that, defendant no.2 has knowledge that, Foseco India Ltd. company has allotted work of it's project on 4.12.1997. In support of his contentions, he relied upon the deposition given by plaintiff's witness no.1 Sharad Prabhakar Karandikar at Exh. 21. He pointed out that, plaintiff's witness no.1 has deposed on oath in support of these issues. Defendant no.1 has not challenged the evidence lead by plaintiff's witness in respect of the allotment of the work by Foseco India Ltd. Company to the plaintiff's company. He further submitted that, these issues have not contested by defendant no.1. He submitted that, there is no rebuttal evidence lead by defendant no.1 to disprove these issues no.1 to 4.

9. Plaintiff has examined Sharad Prabhakar Karandikar at Exh.21. He deposed that, he knows that, plaintiff company has done the work of Foseco India Ltd. Company. He further deposed that, Foseco India Ltd. Company has given the work of over all project of consultancy to the plaintiff company. The work which is done by plaintiff company in project of Foseco India Ltd. includes structural designs, electrical works, mechanical works and other works. He has also deposed that, plaintiff company has architectural work of Foseco India Ltd. company. He further deposed that, defendant no.2 has to submit his conceptual design to Foseco India Ltd. Company. He has also deposed that, the Foseco India Ltd. Company is not under obligation to construct as per the conceptual design given by defendant no.2.
10. In his cross-examination, defendant no.1 has put suggestion that, plaintiff company is having business in engineering consultancy. It appears that, defendant has not denied that, the Foseco India Ltd. company has given conceptual design of the structural engineering services project to the plaintiff company. Defendant no.1 has also not denied that, defendant no.2 has to submit conceptual design to the Foseco India Ltd. Company for it's approval. The evidence lead plaintiff clearly shows that, company has a team of architects, who are members of defendant no.1. Defendant no.1 has cross-examined plaintiff's witness on this point. Plaintiff's witness has given some of the names who are working as architect in the team of plaintiff's company. Defendant no.1 has not cross-examined plaintiff's witness and denied that, defendant no.2 has no knowledge about the work intrusted by Foseco India Ltd. Company to the plaintiff.
11. So, the evidence on record clear that, plaintiff company has done the work of Foseco India Ltd. Company. The evidence on record also shows that, the Foseco India Ltd. Company has accepted conceptual design and constructed it's work as per his choice. Plaintiff's witness deposed on oath that, some architects are working with plaintiff company. All these facts are not denied by defendants. Defendant no.1 or 2 have not denied that, defendant no.2 has no knowledge that, Foseco India Ltd. Company has intrusted project work to the plaintiff company. In absence of the contrary evidence on record, I am of the opinion that, plaintiff has proved all these four issues. Hence, I answer these issues no.1 to 4 in affirmative.

12. ISSUES NO. 5 & 6

These two issues are related with each other. The main controversy between the parties are in respect of the legality of the notices issued by defendant no.1 to the plaintiff. Plaintiff has come with the specific case that, notices issued by defendant no.1 on 7.4.1999 and 24.6.1999 are illegal. On the other hand, defendant no.1 has contended that, it has right to inquire whether plaintiff company violate the provisions of Section 36 and 37 of Architect's Act, 1972 by using the name and style and discharging duties as architect firm. So, it is just and reasonable to consider these both issues at one and same time.

13. The learned advocate appearing on behalf has no right to issue notice to the plaintiff and ask plaintiff to desist from using the title and style of architect. He further submitted that, the second notice issued by defendant no.1 on 24.6.1999 is in continuation of the notice issued by defendant no.1 on 7.4.1999. He pointed out that, defendant no.1 directed the plaintiff company to share the remuneration of defendant no.2. He pointed out that, the question of remuneration of defendant no.2 and also the question in respect of charging fees are not covered by the provisions of section 36 and 37 of Architect's Act, 1972. He further submitted that, plaintiff has a team of expert architects. They are employees of the company. The architects who are employees of the plaintiff company are members of defendant no.1. So, there can not be mis-use of title and style of the architect even in view of the provisions contained in Section 36 and 37 of the Architects Act 1972. He further submitted that, these notices are at Exh. 24 & 26. Plaintiff has given reply by issuing notice, which are at Exh. 25 and 27. He submitted that, plaintiff has made all the facts clear in his notice at Exh. 25 and 27 still defendant no.1 has issued show cause notice to the plaintiff. Plaintiff company is a reputed company, which caused loss to the plaintiff company. So, it is

apparently clear that, the notice issued by defendant no.1 at Exh. 24 and 26 are illegal and not as per the provisions of Section 36 and 37 of Architect's Act, 1972.

14. On the other hand, the learned advocate appearing on behalf of defendant no.1 submitted that, defendant no.1 is a Body Corporate looking after the implementation of Architect's Act 1972. He further submitted that, defendant no.1 has issued notices to plaintiff which are at Exh. 24 and 26 in discharge of it's legal duties. He pointed out that, defendant no.1 has received letter from defendant no.2 as the plaintiff is involved in Architectural consultancy. He further pointed out that, plaintiff company has admitted in clear terms in notice reply at Exh. 25 that, plaintiff company has a team of Architects as full time employees of it's organisation where every architect is a member of defendant no.1 council. Plaintiff has also admitted that, it has all rights to perform the duties of architect to prepare architectural design, drawings and specifications of plaintiff firm. The learned advocate appearing on behalf of defendant no.1 submitted that, these admission given by plaintiff itself creates doubt in the mind of defendant no.1 whether plaintiff is violating the provisions Under Section 36 and 37 of Architect's Act, 1972. He further pointed out that, plaintiff's witness no.1 admitted in his cross-examination that, he can not state whether all the directors of the plaintiff company from 1996 to 1999 are the professional Architects or not ? He submitted that, as per the provisions of Section 37 of Architect's Act, 1972, "No person other than registered architect or a firm of architect shall use the title and style of architect". He submitted that, plaintiff has not made clear whether all the directors of the plaintiff company are professional architects or not ? The evidence, notice reply given by plaintiff disclosed that, plaintiff company is not architect firm. So, as per the provisions of law, defendant no.1 has issued first notice on 7.4.1999 and after that, defendant no.1 has issued show case notice as per the provisions of law on 24.6.1999. Both these notices are legal and as per the law. It is admitted fact that, plaintiff company is providing structural engineering services, detailed engineering project, engineering services, structural engineering services. Plaintiff's witness Sharad Prabhakar Karandikar has admitted that, plaintiff company is providing architectural services by appointing architects as employee or associates. Plaintiff company has also admitted in it's notice at Exh.25 that, plaintiff company is a team of architects as a full time employee who are members of defendant no.1 - council. It further admitted that, plaintiff company has all rights to perform the duties of architect to prepare architectural designs. So, it is clear from the evidence that, plaintiff company is engaged in providing architectural services. From the admissions given by plaintiff, it appears that, plaintiff has a team of full time employees of architects. But, it is not the firm of architects. So, naturally, there is doubt as to whether the plaintiff company has violated the provisions of Section 36 and 37 of Architects Act because as per the provisions of Architect's Act, no person except registered architect or a firm of Architects use the title and style of Architect. In above circumstances, it appears that, defendant no.1 has issued show cause notice on 24.6.1999, is legal and valid. Notice issued by defendant no.1 on 7.4.1999 is also as per the provisions of Law. It appears that, defendant no.1 stated in notice dt. 7.4.1999 to help defendant no.2 in getting his share of remuneration. It is clear from the notice that, defendant no.1 has not directed plaintiff company to pay or share the remuneration of defendant no.2. So, I am not agree with the submissions of learned advocate for plaintiff that, defendant no.1 has issued illegal notice on 7.4.1999 and 24.06.1999 beyond the scope of provisions of Section 36 and 37 of Architect's Act, 1972.
15. Admittedly, plaintiff has come with the case that, plaintiff company has a team of experts architects. These architects are the employees of the plaintiff company. It is not the case of the plaintiff that, the plaintiff company is a firm of architects, which provides architectural consultancy. So in order to verify whether the plaintiff company is a firm of architects as per the provisions of Section 36 of Architectural Act, 1972. Defendant no.1 has issued show cause notice to the plaintiff on 24.6.1999. It appears that, defendant no.1 has issued these notices in discharge of it's legal duties. Defendant no.1 has right to inquire whether plaintiff company violated the provisions of Section 36 and 37 of Architect's Act, 1972 ?
16. In view of the evidence on record, I finds no force in the submissions of learned advocate for plaintiff that, defendant no.1 has illegally issued notices on 7.4.1999 and 24.6.1999. Hence, I am of the opinion that, plaintiff has failed to prove issue no.5. On the other hand, defendant no.1 has succeeded in proving issue no.6. So, I answer issue no.5 in negative and issue no.6 in affirmative.

17. ISSUE NO. 7

Plaintiff is claiming declaration that, notices dt. 7.4.1999 and 24.6.1999 are declared to be null and void, because these notices are illegal. I have already given finding on issue no.5 in negative. It is apparently clear that, plaintiff is providing architectural consultancy services. However, plaintiff company is not the firm of architects. Plaintiff company itself admitted that, company has a team of architect employees. In above circumstances, to verify whether plaintiff company is a architect firm as per the provisions of Section 36 of Architect's Act or not ? defendant no.1 has issued show cause notice to the plaintiff on 24.6.1999.

18. There is no breach of obligation between plaintiff company and defendant no.1. It appears that, defendant no.1 has directed plaintiff company to show that, plaintiff company is discharging duties as per the provisions of Architect's Act or not ? as defendant no.1 has started legal enquiry by issuing show cause notice. There is no illegal breach

on the part of defendant no.1 in respect of the plaintiff company. Hence, plaintiff is not entitled to declaration that, the notice dt. 7.4.1999 and 24.6.1999 is null and void. Hence, I answer this issue no.7 in negative.

19. ISSUE NO. 3

It is fact on record that, defendant no.1 has received a letter from defendant no.2. Defendant no.2 has made complaint against plaintiff that, plaintiff is not the firm of architect even though it engaged in providing architectural consultancy services. There is no dispute that, defendant no.2 has made complaint with defendant no.1 against plaintiff. Defendant no.1 has given some contents of letter written by defendant no.2. In this W.S. in para no.16. The W.S. of defendant no.1 is at Exh.16. It is the also fact on record that, defendant no.1 in it's notice at Exh. 24 mentioned that, it has been brought to their notice that, plaintiff firm is a engineering consultancy firm. So, defendant no.1 admitting that, defendant no.2 has made complaint against plaintiff company that, plaintiff company is mis-using the title and style of the architects. In above circumstances, plaintiff company has right to ask the correspondence occurred between plaintiff and defendant no.2 in respect of it's complaint. It is also just and reasonable on the part of defendant no.1 to disclose exact what complaint received by defendant no.1 against plaintiff company. Unless and until defendant has provided the documents on the basis of which defendant no.1 has issued show cause notice to the plaintiff company, plaintiff company will not be in a position to meet out it's case. Plaintiff company can not give proper reply to the show cause notice issued by defendant no.1 unless plaintiff company gets all the documents and correspondence on the basis of which defendant no.1 has issued show cause notice.

20. In this regard, I am not agree with the submissions of learned advocate appearing on behalf of defendant no.1 that, defendant no.1 is not under obligation to submit the documents on the basis of which defendant no.1 has issued show cause notice. So, I am of the opinion that, plaintiff is entitled for the copy of letter written by defendant no.2 to defendant no.1 and other documents if any referred and relied upon by defendant no.1 at the time of issuing show cause notice to the plaintiff. Hence, I answer this issue in affirmative.

21. In the result, I pass the following order.

ORDER

1. Plaintiff's suit is partly decreed.
2. Defendant no.1 is directed to supply the copy of letter written by defendant no.2 to defendant no.1 making complaint against plaintiff company and other documents if any referred and relied upon by defendant no.1 at the time of issuing show cause notice to the plaintiff on 24.6.1999.
3. Plaintiff's suit for declaration is hereby stands dismissed.
4. Defendant no.1 is directed to pay proportionate costs to the plaintiff company.
5. Decree be drawn up accordingly.

Sd/-

Pune
Date : 20.10.2000

(D.K.MULLA)
6th Jt. Civil Judge, J.D. Pune

SEAL OF THE COURT