

(2013) 01 UK CK 0005
In the Uttarakhand High Court
Case No : Company Appeal No. 01 of 2013

Abid Hussain Khan and others	Vs	APPELLANT
Jaspal Singh and other		RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d)
Companies Act, 1956 — Section 397, 398, 399

Citation : (2013) 01 UK CK 0005

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : T.A. Khan, with Mr. R.R. David, for the Appellant;

Judgement

Servesh Kumar Gupta, J.—On due consideration, urgency application no. 358 of 2013 is allowed. Admit the appeal.

2. Issue notice to the respondents seeking their response, if any, within three weeks.

3. List immediately after winter vacation before the regular Bench.

4. Also heard on stay application no. 527 of 2013.

5. Having heard the learned Counsel extensively, it appears that the company, in question, having its field at Haldwani, is engaged in the manufacturing of paraffin and candles.

6. At the time of inception of the company, the respondents along with all the appellants were the Directors of the same. This company was indebted to the U.P. Financial Corporation (UPFC) and with the passage of time, the respondents segregated from the company, and subsequently thereafter the appellants held the total charge of the Company. The entire dues, as have been claimed, were paid by the instant appellants to the UPFC and thus, have fully stepped in the shoes of respondents.

7. When the company was taken over by the appellants, it commenced to flourish, on which the respondents came to intervene and began to advert their shares in the same. So, appellant Abid Hussain Khan was impelled to file a petition before the Company Law Board, New Delhi Bench besides other litigations before the District Courts as also before the Registrar of the Companies. The said petition was kept pending for three years wherein both the parties were elaborately heard by the Board and ultimately the same was rejected under Order 7 Rule 11 C.P.C. vide the impugned order dated 18.12.2012.

8. Learned Counsel has argued that before the rejection of complaint, Company Law Board did pass an interim stay on 18.8.2009 in order to permit the appellants/petitioners to operate the affairs of the Company and this order is referred to at page no. 195 of the paper book.

9. Learned Counsel has relied upon the precedents of Hon''ble Apex Court in the case of (1) J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others, and (2) Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, , wherein it was propounded that the principle is well settled in this regard which adumbrates that in order to examine whether the complaint is barred by any law, as contemplated by Order 7 Rule 11(d) CPC, the averments made in the complaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.

10. Thus, in light of the above law settled by the Apex Court, it was argued that the Company Law Board could not have kept the petition filed by appellants/petitioners pending for three years, and also could not have heard the entire matter in great detail by calling the counter affidavit, as also the written statements of either of the parties and then to pass orders in the matter.

11. Besides, as has been adverted in the impugned order itself that the appellant no. 1 had 400 equity shares in the company out of total 4000 shares and as per the spirit of Sections 397 r/w Section 398 and 399 of the Companies Act, he passes the test of the eligibility.

12. In view of what has been stated above, it is hereby directed that the judgment and order passed by the Company Law Board dated 18.12.2012 in C.P. No. 69(ND)/2010 will cease to have its effect upon the appellants till the next date. It is further directed that during this period, the order passed by the Company Law Board on dated 18.8.2009 shall be deemed to be operative, with the result, the respondents will not interfere with the appellants while managing the day to day affairs of the Company. Stay application stands disposed of accordingly.