
(1995) 09 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 9028 of 1995 and Civil Revision No. 2881 of 1995

Amarjit Singh and Another

APPELLANT

Vs

Deol Agro Oil Ltd. and Others

RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (1995) 111 PLR 406

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin and Sunil Chadha, for the Appellant; J.S. Narang and D.S. Jandiala, for Respondent Nos. 1 and 2 and Vinod Sharma, for the Respondent

Judgement

V.K. Jhanji, J.—This revision petition on behalf of the plaintiffs is directed against the order whereby in an appeal filed against the order passed by the Subordinate Judge on an application under Order 39 Rules 1 and 2, Code of Civil Procedure, plaint has been ordered to be returned for presenting before the Senior Sub Judge, Chandigarh.

2. Plaintiffs filed a suit for declaration to the effect that they being promoters/Directors of M/s. Deol Agro Oil Limited company (in short the company) are entitled to continue as Executive Director and Director of the company in terms of Memorandum and Articles of Association and other resolutions passed from time to time and the defendants have no right, title or interest to deny their status as Directors. The suit has been filed against the Company and also against M.S. Deol, Managing Director of the company and the Punjab Agro Industries Corporation Limited who is stated to be a collaborator. In the suit, two applications came to be filed; one by plaintiffs for injunction under Order 39, Rules 1 and 2, Code of Civil Procedure, and Anr. by defendants 1 and 2 (hereinafter referred to as defendants) under Order 7 Rules 10 and 10-A, Code of Civil Procedure, for return of plaint on the ground that the Civil Court at Hoshiarpur has no jurisdiction to entertain the suit. Both the applications were

decided by the trial Court on the same day, i.e. 5.12.1994. The application of the plaintiffs for ad-interim injunction was dismissed and the application of the defendants for return of the plaint was not decided as the trial Court was of the view that in absence of issue and evidence, this objection cannot be decided. The application thus, was kept pending to be disposed of at the proper stage. Against the decision dismissing the application for grant of ad-interim injunction, an appeal was preferred by the plaintiffs. In this very appeal, cross-objection were filed by defendants to take up the two objections, namely, the registered office of the plaintiffs is at Chandigarh and the Company Court alone has the jurisdiction to entertain the matter raised in the suit. During the pendency of the appeal, an undertaking was given by the defendants that they would not convene any meeting till the decision of the appeal. However, on 3.6.1995 counsel for the defendants made a prayer to withdraw the undertaking. The undertaking was allowed to be withdrawn subject to the condition that the company would hold only statutory meeting. Against this order, the plaintiffs filed Civil Revision No. 2518 of 1995 in this Court. This Court was of the opinion that it would be just and proper to direct for early decision of the appeal and accordingly this Court directed the learned Additional District Judge, Hoshiarpur to pre-pone the hearing of the appeal from 29.7.1995 to 22.7.1995 on which date he was directed to dispose of the appeal positively, but in any case he was directed to pass final order on or before 27.7.1995. The Additional District Judge instead of deciding the appeal on merits passed an order returning the plaint to be presented before Senior Sub Judge at Chandigarh. A reading of the order of the Additional District Judge shows that he allowed the cross-objections preferred by the defendants. In this revision petition, plaintiffs are challenging this order of Additional District Judge.

3. It is not in dispute that the matter with regard to jurisdiction (territorial or otherwise) of the Civil Court was not finally decided by the trial Court but was kept pending till the issue is framed or the parties are given an opportunity to lead evidence on that issue. No revision was preferred against this decision, meaning thereby that both the parties were satisfied with this decision for the time being. The appeal before the Additional District Judge was only limited to the decision given on application under Order 39, Rules 1 and 2, Code of Civil Procedure. The order impugned before him was the order whereby the injunction application of the plaintiffs was dismissed on merits. He in appeal could decide whether the order passed by the trial Court refusing injunction is good or bad or whether the plaintiffs on the pleadings or the material brought on record are entitled to injunction. As a matter of fact, for taking the objection with regard to jurisdiction of Civil Court at Hoshiarpur or that the Company Court alone has the jurisdiction to entertain the matter raised in the suit, the cross-objections filed by the defendants were not maintainable. Cross objections could be filed by the respondents in appeal against any finding given against them in the decree impugned in appeal though the decree wholly or in part may be in favour of the respondents. Admittedly, in the order deciding the application for ad-interim

injunction the trial Court has neither passed any decree nor has given any finding against the defendants. Entertaining and allowing the cross-objections of the defendants thus, was wholly unwarranted. In this view of the matter, I have no option but to set aside the order of the first appellate Court with a direction to it to decide the appeal afresh on merits. It shall, however, remain open to the defendants to raise the point of jurisdiction (territorial or otherwise) of the court as on of the grounds for opposing the prayer of the plaintiffs for injunction and the objection in this regard, if raised, shall be confined only for the purpose of deciding the application for ad-interim injunction.

4. At this stage, Mr. Vinod Sharma, Advocate, states that Punjab Agro Industries Corporation Limited (respondent No. 3) is not a necessary party and therefore, should be deleted from the array of parties. The Corporation, if so advised, may make an application before the trial Court in this regard and in case the trial Court finds that the Corporation is not a necessary party, the trial Court shall delete the name of the Corporation. In that event, if the Corporation has incurred any expenses towards the litigation, the same shall be awarded to the Corporation.

5. Accordingly, the order under revision is set aside with a direction to the first appellate Court to decide the appeal afresh on merits. The appeal shall stand transferred to the Court of the District Judge, Hoshiarpur, who shall make an endeavour to finally dispose of the appeal on 25.9.1995, but not later than 29.9.1995. Parties through their counsel are directed to appear before the District Judge, Hoshiarpur, on 22.9.1995. Till the decision of the appeal, defendants shall be entitled to hold only statutory meeting of the Company or the Board of Directors.

6. Revision petition stands disposed of accordingly.