(2009) 06 BOM CK 0034

In the Bombay High Court

Case No : Notice of Motion No. 4799 of 2007 in Suit No. 3461 of 2007

Amratlal Bhanji Laxman APPELLANT

Vs

Kusum Prabhudas Laxman and Others RESPONDENT

Date of Decision : 11-06-2009

Acts Referred:
Companies Act, 1956 — Section 34

Citation : (2009) 4 BomCR 645

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : M.M. Vashi, for the Appellant; Santosh Shetty, for Defendant No. 4, Virendra Tulzapurkar J.P. Avasia, H.N. Vakil, i./b., Mulla and Mulla Craigie Blunt and Caroe for Defendant Nos. 5, 6 and 8 and B.K. Bali, i./b., Thakkar and Bali for Defendant No. 7, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—Heard the learned Counsel for the parties.

2. This motion is taken out by the plaintiff for appointment of Receiver of the business of "Hotel Ajanta" carried out by the defendant No. 7 and for an order and injunction restraining the defendant Nos. 5 to 7 from alienating, encumbering or parting with possession or creating third party rights in the business of "Hotel Ajanta".

3. The plaintiff and the defendant Nos. 1 to 6 are close relatives, that is to say they are lineal descendants and/or their wives of late Bhanji Laxman. According to the plaintiff, the said Bhanji Laxman and his family started two businesses; one of a hotel and another of a travel agency. The business of travel agency was started by forming a private limited company which is the defendant No. 8 and the business of hotel was started by forming a private limited company which is the defendant No. 7. The entire share capital of the private limited companies, i.e. defendant Nos. 7 and 8, was held by Bhanji Laxman and the family members. After the death of Bhanji Laxman, disputes arose between the family

members. In a meeting of the Board of Directors, who were the family members, held on 7th May 1997, the shares were transferred amongst the members of the family in an attempt to resolve family disputes. The disputes however continued between the parties and finally the present suit has been filed by the plaintiff for partition of the business of "Hotel Ajanta" and its properties.

4. According to the plaintiff, though the businesses of "Hotel Ajanta" and the business of tours & travels are carried out by defendant Nos. 7 and 8 companies respectively, in fact both the businesses belong to the joint family. According to the plaintiff, all the assets of the two companies in fact belong to the joint family and, therefore, they are entitled to partition of all assets and properties standing in the name of the defendant Nos. 7 and 8 companies. The plaintiff contends that the businesses are being mismanaged by defendant Nos. 1 to 6 who are in control of the defendant Nos. 7 and 8 companies and, therefore, a receiver needs to be appointed in respect of the assets of the said businesses.

5. There is some controversy as to whether the plaintiff continues to be the shareholder because according to the defendants, the plaintiff presently does not own any shares in either defendant Nos. 7 and 8 companies. However, that controversy is not material at this stage because even if it is assumed that the plaintiff holds some shares in defendant Nos. 7 and 8 companies, that, in my view, would not make any difference to the result of the motion.

6. Section 34 of the Companies Act provides that a company on incorporation shall be a body corporate having perpetual succession and common seal. On incorporation, a company becomes distinct from its members/shareholders. Property of the company is also distinct from the property of the members/ shareholders and the property of an individual member/shareholder is distinct from the property of the company. Property of the members is not property of the company and the property of the company is not the property of the members/shareholders. It is the company who owns its property and not the shareholders See Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, .

7. The properties of which the plaintiff is seeking appointment of a receiver are the properties of defendant Nos. 7 and 8 companies. They are not the properties of the joint family. The plaintiff was only shareholder and presently may continue to be a member/shareholder of defendant Nos. 7 and 8 companies, but that does not mean that he is owner of any of the properties of the companies. The properties of the defendant Nos. 7 and 8 companies, therefore, cannot be a subject matter of a suit for partition of the alleged joint family. If the shares of defendant Nos. 7 and 8 companies are held by the joint family either in the name of its karta/manager or in the name of any of its members, such shares, at the most, can be made a subject matter of a suit for partition, but the properties of the defendant Nos. 7 and 8 companies cannot be made a subject matter of partition. Since the properties of the companies cannot be a subject matter of partition, there is no question of appointment of a receiver of the properties of the defendant Nos. 7 and 8 companies in a suit for partition of a joint family filed

by one of its shareholder or a past shareholder.

8. No ground for an injunction restraining the defendant Nos. 7 or defendant No. 8 for alienating or dealing with their properties is made out. The plaintiff, assuming that he is a shareholder, is not entitled to a relief of injunction against the defendant Nos. 7 and 8.

9. For these reasons, there is no merit in the notice of motion which is hereby dismissed. Costs in cause.