

(2012) 12 DEL CK 0272
In the Delhi High Court
Case No : Co. A (SB) 103 of 2012

Ashok Agarwal and Others

APPELLANT

Vs

Amar Ujala Publications Ltd and Others

RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Companies Act, 1956 — Section 397, 398

Citation : (2012) 12 DEL CK 0272

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Yatish Mohan, for the Appellant; Vibhu Bakhru with Mr. Arun Kathpalia and Mr. P.R. Rajhans, Advocates for R-1 to R-7 Mr. Shank Sengupta and Ms. Priyani Deep Shah, Advocates for R-8, 9 and 10, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the order of the Company Law Board (CLB) dated 05.10.2012 whereby the application filed by Mr. Ashok Aggarwal and others (hereinafter referred to as the appellants) seeking an amendment under Order VI Rule 17 of the CPC (hereinafter referred to as the Code) of the petition filed by them u/s 397 read with Section 398 of the Companies Act had been dismissed. This is the grievance of the appellants. Record shows that a petitioner u/s 397 read with Section 398 of the Companies Act is now ripe for arguments and is pending before the CLB. This petition has been filed on 27.10.2009. Almost two years later i.e. on 08.8.2011 an application under Order VI Rule 17 of the Code has been filed by the appellants.

2. Record shows that Amar Ujala Publication Limited is a company comprising of the Maheshwari Group and the Aggarwal Group; a foreign investor D.E. Shaw Composite Investments had infused capital into the company. Disputes had thereafter arisen between the parties.

3. Averments contained in the application under Order VI Rule 17 of the Code

have been perused. Submission of the appellant is that he is not pressing his plea qua the submission that the aforementioned company was really in the nature of a partnership; he is also not aggrieved by the finding returned by the CLB that Ashok Aggarwal will continue to remain as a director in the company till the disposal of the petition pending before the CLB; his grievance is limited to the submission that Manu Anand, another director, had been noted by the CLB to have retired; submission being that Manu Anand having got the requisite educational qualification was always agreed to be retained as a whole time director and it was an understanding between the parties that his term would be continued to be extended even beyond the initial period of five years; he being an integral part of the management of the company.

4. Amendment to the said effect has accordingly been sought in para 5 of the petition; the other amendments as detailed in the body of the application have not been pressed.

5. On advance notice, the respondent has put in appearance. His submission is that the controversy now sought to be raised by the petitioner by filing the present application has been set to rest by the various orders of the CLB and by the High Court; last of which was passed by the High Court on 09.4.2012.

6. This submission of the learned counsel for the respondent is well substantiated.

7. On 29.10.2009 the CLB had passed an order that petitioner no. 2 Manu Anand shall not be removed as a whole time director of respondent no. 1; this was on the undertaking of the respondent that in the Board meeting proposed for 03.11.2009 there will be no change in the interse shareholdings of the parties.

8. On 20.4.2010 the CLB had noted that Manu Anand had been appointed as a whole time director for a period of five years i.e. w.e.f. 02.4.2005 which period had expired on 01.4.2010; no status quo qua the position of Manu Anand had been granted.

9. The order dated 20.4.2010 was the subject matter of an appeal before the High Court which was disposed on 31.5.2010. The appeal was withdrawn with liberty granted to the appellant to redress his grievances before the CLB by fresh proceedings which the respondent was permitted to contest on merits and as per law.

10. Thereafter an application i.e. C.A. No. 385/2010 had been filed by the appellants before the CLB which was disposed of on 03.12.2010 vide which the CLB had directed the appellants to obtain clarification from the High Court before examining the said application.

11. Appeal against the directions of the CLB dated 03.12.2010 had been disposed of on a consent order dated 01.4.2011. Parties had agreed that the appellant would file an application seeking amendment of his petition where the appellant was permitted to raise all such averments which are permissible under the law with right to the respondent to respond to the same.

12. It was in this scenario that the application under Order VI Rule 17 of the Code came to be filed on 08.8.2011 which has since been disposed of by the impugned order.

13. Submission of the respondent that the controversy about the whole time directorship of Manu Anand had already been set at rest by the order of the CLB dated 20.4.2010 and which order has since attained a finality as the appeal against the said order has been withdrawn, is a submission with force. On 20.4.2010 CLB had noted that appointment of Manu Anand expired on 01.4.2010 and no justification was noted for granting status quo qua the position of Manu Anand; appeal against this order had been withdrawn by the appellant on 31.5.2010.

14. On 09.4.2012 this Court had disposed of the two appeals assailing the interlocutory orders passed by the CLB on 24.9.2010 and 13.10.2011 wherein both the appellants i.e. Ashok Aggarwal and Manu Anand had sought their reinstatement as whole time directors. While disposing of these appeals on 09.4.2012 this Court had noted that it was only an interim arrangement which has been put in place; plea of Ashok Aggarwal that he continued to be as a whole time director till the final hearing of the petition by the CLB had been noted; no relief to Manu Anand has been granted.

15. By way of the present petition under Order VI Rule 17 of the Code the petitioner is seeking a relief from the CLB which has already been declined by a higher court. All these facts have been noted in the correct perspective by the CLB while rejecting the application for amendment.

16. An application under Order VI Rule 17 of the Code may be entertained by the Court only if it is necessary for deciding real issue in controversy between the parties. The applicant party must also show to the court that the application has been filed bonafide and not to only prolong the proceedings which appears to be so in the present case. The High Court had set the matter at rest; Ashok Aggarwal had continued to be retained as a whole director of the respondent but the relief sought for by Manu Anand was declined. What the appellant is now trying is to get out of the rigour of those orders by seeking an amendment which would in fact be contrary to the order passed by this Court on 09.4.2012. No amendment is permissible which is prejudicial to the other party; a prayer which would amount to an obstruction of substantial justice cannot be granted. Impugned order had noted these contentions; sound reasons have been detailed for disallowing the amendment which order in no manner calls for any interference.

17. Reliance by the learned counsel for the appellants upon the judgment AIR 1957 L.J. 357 Leach and Company Ltd. Vs. Jardine Skinner and Co. and the judgment in Appeal (Civil) 4983-4984 of 2004 Pankaja & Anr. Vs. Yellappa (D) disposed of by Supreme Court on 05.8.2004, is misplaced. There is no doubt that the law of amendment should be liberally construed and where it does not

change the nature of the case the same may be permitted.

18. The facts of the instant case are distinct. As noted supra, if the amendment as sought for by the appellants is allowed it would be in derogation of the order already passed by this Court setting the controversy at rest qua the role of Manu Anand. The present appeal is nothing but an abuse of the process of the Court. It is dismissed with cost of Rs. 25000/-.