

(2013) 12 GUJ CK 0105

In the Gujarat High Court

Case No : O.J. Appeal No. 16 of 2013 and Civil Application No. 403 of 2013 in
O.J. Appeal No. 16 of 2013

Baroda Crystal Glass Works Limited and Others

APPELLANT

Vs

Sumankumar Sinha

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 183 CompCas 130

Hon'ble Judges : Ravi R. Tripathi, J; Mohinder Pal, J

Bench : Division Bench

Advocate : Harmish K. Shah, s No. 1 - 2, for the Appellant;

Judgement

Ravi R. Tripathi, J.—On 13th November, 2013, this Court passed a detailed order and as per the prayer made by learned advocate, Mr. Uday Joshi, two weeks time was granted to him, as a last chance, to enable him to produce either of the two documents, viz. payment receipt from LIC or order of attachment having been vacated by the Court. The matter was listed on 2nd December, 2013 and on that day, again, learned advocate, Mr. Uday Joshi, for M/s. Trivedi & Gupta was granted time upto 16th December, 2013. Today, when the matter is called out, learned advocate, Mr. Joshi, repeats and renews his request for more time saying that the matter is very old and he is not able to get any paper in support of his case pleaded in Company Petition No. 22 of 2012. It is really painful that Company Law Board without being mindful of the fact that the petitioner before the Company Law Board has approached the Company Law Board without any supporting evidence to the case pleaded in the company petition has allowed the company petition and has issued certain directions to the Company.

2. Heard learned senior advocate, Mr. Soparkar for the appellant-Company. The matter requires consideration. ADMIT.

3. At the request of learned senior advocate, Mr. Soparkar, for the appellant - original respondent, this appeal is taken up for final hearing as it involves a very

short question and facts are not disputed. The request is granted. Learned advocate, Mr. Joshi, cannot have any objection to hearing of the appeal finally. The matter is taken up for final hearing.

4. The case pleaded by the original petitioner - respondent herein in the company petition is that he inherited the shares as stated in para-A-(ii) at page No. 8. The details of the shares are set out in the tabular form. The said table is reproduced for ready perusal.

5. The case of the original petitioner- respondent herein is that he inherited the shares listed at serial number Nos. 1 to 4 in the said table.

6. It is also not in dispute that the case of the original petitioner- respondent herein is as under:

9. Presidency Life Insurance Company was also taken over by LIC in the month of June 1956, leading to appointment of a Custodian for the properties of Presidency Life Insurance Company. Pursuant to such takeover of Presidency Life Insurance Company by LIC, it was found that some securities could not be accounted for, owing to which the Custodian instituted a suit being Misc. Petition No. 222 of 1956, before the Hon"ble High Court of Bombay.

10. The Custodian passed an order attaching the entire estate of the said Mr. Nandvandan J. Gor and his family members viz. Sarlaben N. Gor (Wife), Shirish Chandra N. Gor (Son) and Anila Shroff @ Anila Sinha (daughter). Even the shares held by the aforesaid persons in the Respondent No. 1 Company, were attached.

11. In December, 1956, Mr. Nandvandan J. Gor died intestate leaving behind his wife, Shirish Chandra N. Gor (son) and Mrs. Anil Shroff @ Anila Sinha (daughter). The properties of late Mr. Nandanvan J. Gor devolved upon his wife, son and daughter, in equal shares, including the shares of the Respondent No. 1 Company, held by late Mr. Nandvandan J. Gor either directly or through Gor & Company.

12. Shirish Chandra N. Gor and Mrs. Anila Shroff @ Anila Sinha, being the son and daughter respectively of late Mr. Nandanvan J. Gor, relinquished their rights in the properties of late Mr. Nandanvan J. Gor in favour of their mother, Smt. Sarlaben N. Gor.

13. In the year 1984, Smt. Sarlaben N. Gor died leaving behind a Will dated 28.4.1966 bequeathing her entire property in equal proportion to her son Shr. Shirish Chandra N. Gor and her daughter, Mrs. Anila Shroff @ Anila Sinha.

14. The Will of Smt. Sarlaben N. Gor dated 28.4.1966 was granted probate by the Ld. District Judge, Patna vide order dated 3.9.1991 in Probate Case No. 132 of 1986.....

(Emphasis supplied)

7. Now, today, the case of the original petitioner, respondent herein is that, "at the relevant time, an amount of Rs. 31,19,100/- with interest payable upto the date of actual payment was paid by the original petitioner, respondent herein".

8. The next chapter of the story of the original petitioner, respondent herein is that original petitioner, respondent herein wants every word of his be taken at face value and be believed by all concerned including that of aforesaid payment was made. That too in absence of any proof of payment. This Court is not able to accept that a person will make payment of Rs. 31,19,100/- to LIC and will not obtain the receipt of such payment. The Court is also not ready to believe that the person will not have in his custody the papers relating to vacating of attachment after the amount is paid to LIC. In absence of any such document produced, it was warranted that the Company Law Board shall pass the order impugned in this appeal.

9. Learned senior advocate, Mr. Soparkar, invited the attention of the Court to interesting aspect that the prayer in this Company Petition was as under:

(H) In a view of the facts and circumstances of the case, the petitioner most respectfully prayed that this Hon''ble Board be pleased to grant the following reliefs :-

(a) Direct the Respondent No. 1 Company to register 24795 shares of the Company in the name of the petitioner

(b) Pass such further orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the instant case.

(Emphasis supplied)

10. The learned senior advocate submitted that despite this specific relief prayed for the Company Law Board was generous enough to grant following relief:

16. In view of the foregoing, the Respondents'' contentions are not found to be tenable. The R-I Company is hereby required to rectify the Register of Members as per prayer of the petitioner within two weeks of receipt of this order. The petitioner is required to furnish Indemnity Bond to the R-I Company on the furnishing of which the R-I Company is required to issue Duplicate Share Certificates within four weeks.....?

(Emphasis supplied)

11. Learned senior advocate submitted that though there was no prayer for issuance of duplicate share certificate and though there was no urgency to allow the company petition and direct the company to rectify its register the Company Law Board has allowed the petition though petitioner has not produced any supporting document to substantiate his case pleaded before the Company Law Board.

12. This Court has no hesitation in holding that Company Law Board has

transgressed the scope of the Company Petition No. 22 of 2012 by passing the order which was not warranted in the facts and circumstances of the case.

13. If the original petitioner, respondent herein, before the Company Law Board was desirous of obtaining such order, the original petitioner, respondent herein ought to have produced convincing documents before the Company Law Board so that the Company Law Board can pass such order.

14. The order is found without authority of law and the same is quashed and set aside.

15. At the request of Mr. Uday Joshi, it is clarified that allowing of this appeal and quashing of the order passed in Company Petition No. 22 of 2012 will not preclude the original petitioner, respondent herein from approaching the Company Law Board afresh after he is able to obtain the necessary documents to substantiate his case. Present appeal is allowed.

Civil Application No. 403 of 2013

In view of the disposal of appeal, no order in Civil Application. Hence, present Civil Application stands disposed of.