
(1983) 11 CAL CK 0005

In the Calcutta High Court

Case No : Appeal No. Nil of 1983 in Suit No. 654 of 1983

Calcutta Chemical Co. Ltd.

APPELLANT

Vs

Dhires Chandra Roy

RESPONDENT

Date of Decision : 28-11-1983

Acts Referred:

Companies Act, 1956 — Section 171, 172(3)

Citation : (1985) 1 CALLT 60 : (1985) 58 CompCas 276 : (1985) 2 CompLJ 51

Hon'ble Judges : T.K. Basu, Acting C.J.; Suhas Chandra Sen, J

Bench : Division Bench

Advocate : Mukherjee, for the Appellant; R. Nag, for the Respondent

Judgement

Suhas Chandra Sen, J.—The dispute in this case relates to the holding of the 60th and 61st annual general meetings of the Calcutta Chemical Co. Ltd., hereinafter described as "the company". Because of various disputes and litigations, the 60th and 61st annual general meetings of the company for the financial years 1980-81 and 1981-82, respectively, could not be held. Ultimately, various petitions filed in this court were disposed of by several orders passed on August 11, 1983.

2. On September 9, 1983, a meeting of the board of directors of the company was held and at that meeting it was resolved that the 60th and 61st annual general meetings of the company would be held on October 7, 1983, at different times. A notice was published in the Business Standard on September 12, 1983, informing all concerned that the annual general meetings were to be held on October 7, 1983, at the place and time specified therein. It is the case of the appellant that on September 12, 1983, the appellant posted under certificate of posting proper notices together with the annual reports to all the registered shareholders of the company including the respondent, Dhires Chandra Roy. The appellant has produced the certificate of posting in support of his contention in court.

3. It has been stated on behalf of the respondent that the notices were posted on September 16, 1983, as would appear from the postal endorsement on the envelope received by the respondent. The case of the respondent is that the respondent received the said two notices both dated September 9, 1983, on September 22, 1983. The respondent was not given clear 21 days' notice for the meetings scheduled to be held on October 7, 1983, as enjoined by Section 171 of the Companies Act, 1956. It has been contended that the two annual general meetings that were held on October 7, 1983, were held disregarding the mandatory provisions of law and the proceedings of the two meetings were clearly illegal and invalid. A suit was filed by the plaintiff for a declaration that the two notices both dated September 9, 1983, and the purported convening of the 60th and 61st annual general meetings of the company were wrongful, illegal, null and void, invalid and of no legal effect.

4. On October 5, 1983, Mr. Dhiresh Chandra Roy, the respondent herein, made an application in that suit on which an interim order was passed by R.N. Pyne J. to the effect that the annual general meetings due to be held on October 7, 1983, could be held but no effect was to be given to the resolutions that might be passed in such meetings until further order of the court. The operation of that order, however, was stayed till October 7, 1983. On October 7, 1983, on a further application moved on behalf of Mr. Roy before the Vacation Bench, J.N. Chaudhuri J., inter alia, ordered that "the annual general meeting or meetings due to be held on October 7, 1983, could be held but no effect should be given to the resolution or resolutions that might be passed at such meeting or meetings until further order of this court." On November 17, 1983, the matter appeared in the list of R.N. Pyne J. as a new motion. After hearing both the parties, R.N. Pyne J. gave directions for filing of affidavits. The interim order that was passed earlier was continued until further orders of court.

5. In the meantime, the two annual general meetings of the company were duly held on October 7, 1983, and certain resolutions were passed at those meetings. The allegation of the appellant is that Mr. Roy, the respondent herein, took part in those two meetings.

6. In this appeal, the contention of Mr. Mukherjee, appearing on behalf of the company, is that the two annual general meetings of the company have been held after protracted litigations. The notices for the annual general meetings had been duly issued. Advertisements were given in the press. According to the certificate of posting, the notices were issued in good time. Therefore, the court should not intervene in this matter and pass any order of stay. Mr. Mukherjee has contended that the matter is of some urgency. The management of the company has been seriously prejudiced by various orders of injunction passed by the court from time to time. Dhiresh Chandra Roy owns only seven shares of Rs. 10 each. There is BO reason why the interim order should be continued.

7. It has next been submitted that even if the allegations made by Dhiresh Chandra Roy are all assumed to be true and correct, even then the respondent

would not be entitled to obtain an order of injunction.

8. It has been submitted that it is not necessary to file any affidavit and the matter can be disposed of here and now on the assumption that the allegations made by the respondent are all true and correct.

9. The only grievance of Dhiresh Chandra Roy is that the two notices both dated September 9, 1983, were received by him on September 11, 1983, and the annual general meetings were held on October 1, 1983. The period prescribed u/s 171, however, is 21 clear days" notice. u/s 171(2)(i), a general meeting may be held after giving a shorter notice only with the consent of all the members entitled to vote thereat. Mr. Nag, appearing on behalf of the respondent, has argued that the provisions of Section 171 are mandatory. At least 21 days" notice in writing must be given to every shareholder for holding the annual general meeting of a company u/s 171(1). A shorter notice can be given only under the circumstances set out in Section 171(2). In this case, there has been no compliance with the requirements of Section 171(1). Therefore, the notice is void and of no legal effect and the two meetings that were held and also the resolutions that were passed are of no legal consequence.

10. The only question before us is a question of law and that is whether the two annual general meetings can be said to have been lawfully and validly held in view of the fact that Mr. Dhiresh Chandra Roy received the two notices less than 21 days before the scheduled date of the meetings. In this connection, it has to be borne in mind that Mr. Dhiresh Chandra Roy is a resident of Calcutta. The meetings were to be held at Calcutta and Mr. Dhiresh Chandra Roy had at least 15 clear days" notice. Moreover, advertisements were published on September 12, 1983, in a newspaper giving the particulars of the two meetings that were to be held. It has not been shown how Mr. Roy was prejudiced by the shortness of the individual notice. It does not appear from the facts set out earlier in the judgment that the company was not acting bona fide. The very fact that the company inserted an advertisement in a newspaper on September 12, 1983, notifying the dates and the other particulars of the two annual general meetings go to show that the company was not trying to suppress the dates of the meetings from a section of the shareholders. It cannot also be said that the company was trying to hold meetings on short notice with ulterior motive. The company"s case is that all the individual notices were sent under certificate of posting and the certificate goes to show that the notices were posted in good time.

11. The question, therefore, is whether Section 171(1) which lays down that " A general meeting of a company may be called by giving not less than 21 days" notice in writing" is mandatory or not. A shorter notice can be given in the circumstances set out in Sub-section (2) of Section 171. Section 171(3) provides: ;

" The accidental omission to give notice to, or the non-receipt of notice by, any

member or other person to whom it should be given shall not invalidate the proceedings at the meeting."

12. Section 171(3) makes it abundantly clear that it is not a condition precedent to the holding of the annual general meeting of a company that a clear 21 days' notice must be given to each and every member of the company. The accidental omission to give notice to any member or non-receipt of notice by any member shall not invalidate the proceedings at the meeting. If we have to uphold the contention of the respondent, we shall have to hold that if the notice to a shareholder is not accidentally posted at all, the proceedings at the annual general meeting of a company will be valid. But if the notices were posted accidentally less than 21 days before the meeting, the proceedings at the meeting will be void even though the shareholder received the notice in good time before the meeting was held and actually attended the meeting. If Mr. Dhires Chandra Roy did not receive the notice at all, the company could have invoked the protection of the provisions of Section 172(3) of the Act. In our opinion, such a construction would lead to absurdity and should be avoided. We are aware of the dictum that law is not always logic. But the court should be very slow to give a construction to a section which would lead to absurdity and will cause injustice. We are unable to accept the contention that a short notice served on a member will invalidate a meeting altogether but non-receipt of the notice by a member will not have the same effect.

13. In the case of *Hungerford Investment Trust Ltd. v. Turner Morrison and Co. Ltd.* ILR [1972] 1 Cal 286, one of the points that came up for consideration was whether defect in a notice or non-receipt of a notice calling an annual general meeting could be ratified or waived. P.B. Mukharji C. J. held in that case that at best this was an irregularity which could be ratified by conduct. This judgment, which dealt with many other points, was reversed in appeal; but the Appeal Court did not upset the learned judge's decision on this point.

14. The point, that is now being agitated before us, came up for consideration directly in the case of *Surajmull Nagarmull v. Shew Bhagwan Jalan* ILR [1973] Cal 207. In that case, this question was debated at great length. After referring to the judgment of the Madras High Court in the case of *N.V.R. Nagappa Chettiar v. Madras Rose Club* [1949] 19 Comp Cas 175, A.N. Sen J. observed at p. 293 of the report:

"These observations, to my mind, were made in the context of the particular facts of the case and were not intended to lay down a general proposition of law that a short notice in breach of the provision of the Act, necessarily invalidates the meeting and renders the proceedings void. In my opinion, the said observation should be construed to mean that the requirement as to notice is imperative and mandatory in the sense that any breach thereof necessarily invalidates the meeting and invariably renders the proceedings thereof null and void. Any such interpretation of the observations will necessarily imply that any breach of the said requirements of the statute, if considered mandatory and

imperative, cannot be waived under any circumstances except as provided in the statute itself. Such interpretation, to my mind, is not warranted and will be inconsistent with the well-recognised principle of law enunciated in Halsbury's Laws of England (3rd Ed., Vol. XIV, p. 637, Article 1175), which I have earlier quoted and to which reference has been made in the judgment of the Madras High Court as well, and such interpretation will also be contrary to the view expressed by the Supreme Court in the case of Narayandas Shreeram Somani Vs. The Sangli Bank Ltd., to which reference has also been made earlier."

15. Another aspect of the matter was emphasised by A. N. Sen J. at pp. 302-303 of the report:

" The English courts appear to take , a realistic view of the working and management of the affairs of the company and consider the problems of a company from a practical business point of view. The approach of the English courts to the question of these requirements is not generally a narrow and a legalistic one and is essentially a realistic one from the view-point of the actual working of a company in practice, bearing, however, in mind the requirements of justice in each case. The approach of the English courts, to my mind, is eminently reasonable and; sound. The said approach serves the purpose for which the said provisions have been made and at the same time promotes the cause of justice and results in effective and proper working of the company."

16. Mr. Nag drew our attention to a Division Bench judgment of the Madras High Court in the case of N.V.R. Nagappa Chettiar v. Madras Race Club [1949] 19 Comp Cas 175. That case was noted and dealt with by A.N. Sen J. in Surajmull's case ILR [1973] Cal 207. That was a case decided under the Indian Companies Act, 1913. In that case, construing Section 81(2) of the Indian Companies Act, 1913, which corresponds to Section 171 of the Companies Act, 1956, it was held that the provisions of Sub-section (2) of Section 81 requiring not less than 21 days' notice was mandatory and it could only be dispensed with by the agreement of all the members in the manner laid down in the Act. It was not enough that the members present at the meeting indicated either expressly and impliedly that they consented to or acquiesced in shortening the period of notice. The Indian Companies Act, 1913, did not contain a provision similar to Section 172(3). The Madras High Court did not have any occasion to consider the implication of Section 172(3). In our opinion, in view of the clear provisions of Section 172(3), it cannot be said that the requirements of Section 171 are mandatory and a short notice given to any member will render the entire meeting void and of no legal consequence even if that member has not suffered any prejudice in any way.

17. Mr. Nag also drew our attention to a decision of this High Court in the case of The Asansol Electric Supply Co. and Others Vs. Chunnilal Daw, . In that case, the plaintiff, an employee of the company, instituted a suit, inter alia, for a declaration that certain resolutions purported to have been passed by the board of directors of the company as also by its shareholders were illegal, void,

inoperative and not binding on the plaintiff and also for some other reliefs. It was not a case of shortness of notice at all. In that case, a notice was issued on July 5, 1963, for holding an extraordinary general meeting of the company on July 29, 1963, to consider and if thought fit, to pass certain resolutions. The resolution which was notified to be proposed at the meeting was neither placed nor moved and accordingly not passed. On the contrary, a resolution was passed to the effect that the plaintiff was not to be appointed store-in-charge with effect from May 1, 1963, and further that the plaintiff had ceased to hold office with effect from the said date. Salil Kumar Datta J. observed *Hari Prasad Singh Vs. Commissioner of Income Tax, West Bengal and Others*, :

" The language of the obligation in Section 172, as already observed, clearly indicates its mandatory nature and accordingly, the non-compliance will have the fatal consequence of rendering the resolution void and ultra vires."

18. The learned judge's observation must be understood in the context of the facts of that case. To ensure the validity of the resolutions passed at the meeting, the company was under a legal duty to give notice of the resolutions that were sought to be passed. In that case, the learned judge had no occasion to go into the question of the effect of the shortness of notice and also the implication of Section 172(3). The point at issue and the facts of that case were entirely different. The judgment of A. N. Sen J. in the case of *Surajmull Nagarmull v. Shew Bhagwan Jalan* ILR [1975] Cal 207, was neither cited nor considered in that case.

19. In the case before us, the two annual general meetings of the company for the financial years 1980-81 and 1981-82 have been held belatedly , and with great difficulty. The working of the company has come to a standstill. The company will suffer prejudice if the newly elected board of directors is not allowed to take charge at this juncture. The petitioner admittedly has not suffered any prejudice in any way from the shortness of the notice. There is no reason why the new board of directors should not be allowed to take charge of the company and given a chance to revive it. From a practical business point of view there is no reason why the balance of convenience does not require that the interim order should be continued.

20. It was also argued on behalf of the respondent that the injunction was sought in aid of a legal right. There was a clear violation of the provisions of Section 171(2) of the Companies Act. The court was bound to grant an injunction in this case. Reliance was placed for -this proposition on the case of *Fullwood v. Fullwood* [1878] 9 Ch 176. There the allegation of the plaintiff was that the defendants were liable to action for deceit. Fry J. observed (at p. 179):

"In such a case, the injunction is, in my opinion, a matter of course if the legal right be proved to exist."

21. But in that case the plaintiff was prejudiced by the way the defendant was carrying on its business. The defendant was restrained from representing that

the said business was identical with or in any way connected with, the plaintiff's business or the goods manufactured and sold by the defendants were manufactured by the plaintiff. The case before us is not a case of misrepresentation or deceit at all. Mr, Roy, the plaintiff, has not suffered any prejudice or damage. A notice was actually served upon the plaintiff. There is really no basis for issuing an order of injunction.

22. It was, lastly, contended that the order of injunction that was passed was a discretionary order and a court of appeal should not interfere with the exercise of discretion of the learned judge. It is true that an appellate court would not interfere with the exercise of discretion of the trial judge solely on the ground that the appellate court would have taken a different view of the matter had the case been argued before it at the trial stage. It was held by the Supreme Court in the case of *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, :

" As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial judge : but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach, then it would certainly be open to the appellate court--and in many cases it may be its duty--to interfere with the trial court's exercise of discretion. In cases falling under this class, the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court. These principles are well established; but, as has been observed by Viscount Simon L.C. in *Charles Osenton & Co. v. Johnston* [1942] AC 130 "the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is clue only to the application of well settled principles in an individual case ."

23. In this case, in our view, the order of injunction should not have been passed in favour of the plaintiff when the plaintiff was unable to show any loss or prejudice in any manner whatever. The balance of convenience does not require an order of injunction. In fact, the two annual general meetings were at last held after protracted litigations. We fail to see why the resolutions passed at the annual general meetings will not be given effect to merely because one shareholder having seven shares of Rs. 10 each actually received the individual notices less than 21 days in advance. There is no dispute that the notice of the meetings was published in a newspaper in good time. There is also no dispute that the shareholder is a resident of Calcutta. Advertisement was given in a newspaper having circulation in Calcutta. The two annual general meetings were held at Calcutta. There is also no dispute that apart from a highly technical legal plea, the shareholder has not been able to make out any case of any prejudice at all. In our view, there is no legal ground for passing an order of injunction in this case.

24. Mr. Mukherjee has contended that there is a more important reason for not

passing this interim order. The holding of the annual general meetings has been blocked by certain parties who wanted to acquire the controlling shares of the company and litigations have gone on for a very long time. The Companies Act, 1956, is a practical Act and the working of a company should not be held up on trivial technicalities. Mr. Mukherjee has contended that Dhiresh Chandra Roy having seven shares of Rs. 10 each was not really fighting his own case. We do not express any opinion on this aspect of the matter. But, in our view, having regard to the background of the litigations that have gone on and also having regard to the fact that at last the two annual general meetings of the company have been held of which notices were given to all the shareholders and also in view of the notice that was published in good time in a newspaper, we are of the opinion that an interim order should not have been passed restraining the implementation of the resolutions passed at the annual general meetings that were held.

25. We have heard this case without any affidavits having regard to the urgency of the matter. The factory of the company is under lock-out. We are of the view that the respondent's case is frivolous and without any merit and that the legal process of this court is being abused only to frustrate the holding of the annual general meetings and giving effect to the resolutions passed therein. We have proceeded on the undisputed and admitted facts only. All the formalities of appeal are dispensed with by consent of parties. The application succeeds and this appeal is allowed. The interim order passed by the court below restraining implementation of the resolutions is vacated. There will be no order as to costs. Mr. Nag prays for stay of operation of this order. The prayer is refused.

T.K. Basu, Actg. C.J.

26. I agree.