

(1999) 04 GUJ CK 0063
In the Gujarat High Court

Case No : Company Application No 38 of 1999 in O.J. Appeal No. 69 of 1998

Contemporary Targett Praful P. Ltd.

APPELLANT

Vs

Jewel Brushes Pvt. Ltd.

RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Companies Act, 1956 — Section 10D, 397, 398
Copyright Act, 1957 — Section 3
Gujarat High Court Rules, 1993 — Rule 1, 2, 217, 256, 314
Law of Property Act, 1925 — Section 3(3)

Citation : (1999) 04 GUJ CK 0063

Hon'ble Judges : Rajesh Balia, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Mihir Thakore, for Singhi and Buch Asso, for the Appellant; A.C. Gandhi, for Respondents 1 to 3 and S.N. Soparkar, for Respondents 4 to 6, for the Respondent

Judgement

R. Balia, J.—This application has been filed by the appellant making a prayer that O.J. Appeal No. 69 of 1998 which is against an order of Company Law Board be placed for hearing before a Single Judge of this Court as under the High Court Rules the matter is one which has to be transacted by a single Judge. The application is opposed by the respondents.

2. It is contended by learned counsel for the applicant-appellant that the present appeal is preferred u/s 10F of the Companies Act, 1956. There is no provision under the Gujarat High Court Rules which require an appeal against the order of Company Law Board to be placed before a Division Bench.

3. Our attention was invited to Rules 1, 2, 217 and 314 of the Gujarat High Court Rules 1993 laying the foundation of the contention that the appeal is against an order of the Company Law Board on an application moved by the appellant u/s 397 and 398 of the Companies Act, 1956 which have been rejected by the impugned order. Thus, this is an appeal against a special act and not arising from

Civil Procedure Code. Rule 1 declares generally all jurisdiction of hearing to be with Division Bench except as otherwise provided by any law in force or by the Rules. Rule 2 enumerates the matters in which a Single Judge may exercise the jurisdiction. Entry 2 in the list enumerated under the heading "Civil" provides that appeals under any Special or Local Acts where the value of subject-matter before the trial court or tribunal or other authority does not exceed Rs. 1 lakh or is incapable of valuation. On this premise it is urged that the subject-matter of appeal being an application in the case of oppression and mismanagement of minority shareholders by the majority shareholders, the subject-matter of appeal is incapable of valuation. Therefore, unless expressly provided for elsewhere, the appeal is to be heard by a Single Judge. Rule 217 was referred to pointing out that all appeals under the Special Acts, require to be filed in High Court, shall be registered as First Appeals and are required to be dealt with according to the procedure prescribed for such appeals under the Special Acts or rules made under the concerned Special Acts. In the absence of any such prescription in the special acts, such appeals shall be governed by the procedure in these rules applicable to regular First Appeals under the CPC which again fall within the purview of entry 1 in the list of Civil Matters under Rule 2. As no special procedure has been prescribed governing hearing of the appeals under the Companies Act, the appeal is u/s 10F of the Companies Act. Rule 314 under Chapter XXIII which deals with appeals under the Companies Act, 1956 reads as under:

" All appeals u/s 10D of the Companies Act, 1956 (Act I of 1956) shall be filed in the Office of the Registrar and shall be heard and disposed of by a Division Bench to be appointed by the Chief Justice."

4. It has been pointed out that the aforesaid rule only relates to appeals u/s 10D of the Companies Act 1956 and not appeals under any other provision of the said Act. Learned Counsel urges that sec. 10D was inserted for the first time in the Companies Act, 1956 by the Companies (Amendment) Act, 1963 w.e.f. 1.1.64 and was omitted by the Companies (Tribunal) Abolition Act, 1967 with effect from 1.7.1967. The present appeal is u/s 10F of the Companies Act, 1956. Rule 314 providing for the hearing of appeals u/s 10D of the Companies Act by Division Bench cannot apply to the present appeal on the plain reading of the provision. Therefore, falling back on the general rule that all appeals arising under special acts where subject matter is incapable of valuation unless expressly provided for elsewhere be heard and disposed of by a Single Judge.

5. It has been urged by learned counsel for the respondents that it is true that on literal construction of rule 314 the appeal being u/s 10F of the Companies Act it may appear to be so that rule is not applicable. However, it is urged that the Gujarat High Court rules have been made in 1993 when only provision under the Companies Act 1956 providing for appeal to the High Court was sec. 10F. It cannot be assumed that while framing Chapter XXIII for laying down the procedure for appeals under the Companies Act, 1956, the rules were being

framed for the purpose of providing procedure of appeal against non-existent provision. The rules are the result of legislative activity undertaken by the rules framing authority and it being legislative in character it should not be assumed that legislative authority was making an exercise in futility. If literal construction leads to an absurdity or renders the very provision futile, it is open for the courts interpreting the provision to adopt necessary rule of construction, whether to read additional word or words or to omit the surplusage or the words in order to give meaning to such provision consistent with the object with which such legislative activity has taken place. Reference in this connection was made to 1993 S.C. 147.

6. Replying to above contention Mr. Thakore urged that from the reading of the set of rules framed under Chapter XXIII is clearly indicative of the fact that the rules framing authority was concerned with appeals against orders made by the Companies Tribunal and providing procedure which accorded with the original provisions of sec. 10D wherein appeals had been provided from the orders of the companies tribunal to the High Court and it was envisaged under the parent provision that appeals from the companies tribunal shall be heard and disposed of at least by a bench of two judges of the High Court. Therefore, it must be taken that the rules have been framed keeping in mind the provisions of the scheme of sec. 10D as it then existed and the rule framing authority had no intention to provide for procedure under any other provisions of the Act. Confining rules 314 to 320 under Chapter XXIII only to the appeals, if any, arising under sec. 10D of the Companies Act would not render the scheme and the rules unworkable or affect the right of appeal conferred on the aggrieved party against the order of the Company Law Board u/s 10F adversely inasmuch as the other provisions contained in the rules amply take care of those appeals.

7. The principles of constructing the provisions of statute including the subordinate legislations are fairly well-settled. Difficulty may arise in their applications. It is a primary rule of construction that ordinarily it is to be assumed that the words and phrases used by legislature are ordinarily used in their ordinary meaning and if such words have acquired technical meaning, they have been used in the technical sense and the sentences are to be construed according to rules of grammar. It is also part of the primary rule of literal construction that ordinarily every word used in legislation must be assigned a meaning. Nothing is to be added to or taken from a statute. No part of the expression used by the legislature should be assumed to be surpluses, futile or otiose. However, these general rules are not of universal application in all circumstances and do admit exceptions. Maxwell in his treatise on Interpretation of Statutes has stated,

"It is corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express."

Another principle which has to be kept in view while construing any legislative document that the legislature would legislate only for the purpose of bringing about effective result and would not be engaging in activity in futility. If construction which flows from literal interpretation of the expression used by legislation leads to absurd result or renders the very provision redundant or futile or defeats the object with which the legislation has been brought into being, it is permissible for the interpreter to depart from primary rules of literal construction to adopt such construction which avoids reducing the legislation to futility. In the process, depending on the object with which the concerned statute has been brought into being, it may have to consider whether to read something in addition to what has been expressed by the language used by the legislature or to avoid reading a part of the expression which leaves the remainder with life.

8. The following passage from the judgment of Lord Hobhouse in *Salmon v. Duncombe and others* (1886) II App Cas 627, may be usefully referred to .

"Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of law, except in the case of necessity or the absolute intractability of the language used."

Learned Counsel for the petitioner has referred to the following passage from the Bennion's Statutory Interpretation.

"The cases where rectifying construction may be required can be divided into six categories. These are: the garbled or correct text; the incomplete text; errors of meaning, the *casus omissus*; the *casus male inclusus*; and the textual conflict."

9. The other principle of relevance, to which Bennion has referred in the aforesaid work, may be usefully referred to in the context of the present controversy. In Para 141 of the work, it has been said,

"The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament."

In Para 324, the same author points out,

"The court seeks to avoid a construction that produces a futile or pointless result, since this is unlikely to have been intended by Parliament - Parliament does nothing in vain, a principle also expressed as *lex nil frustra facit* (the law does nothing in vain)."

10. While referring to the instances where the court may be required to deviate from the literal construction to make the statute meaningful, it has been stated in para 142 under title "garbled or corrupt text",

"A text may be garbled by the omission of words, the inclusion of unwanted words, the inclusion of wrong words, typographical errors or punctuation mistakes. The duty of the court is to rectify the text so as to give it the intended meaning."

11. Another principle which has been succinctly stated find a place in the treatise under sub-heading "Errors of Meaning" under para 142,

"Rectification of a more substantial kind may be required where the meaning is vitiated by some error on the part of the draftsman which is not apparent on the face of the text. He may have misconceived the legislative project, or based the text on a mistake of fact.

If the draftsman misconceives the factual nature of the legislative project his wording is likely to be ineffective. The court may be able to remedy this by applying a strained construction which accommodates the true facts without causing injustice or other disadvantage."

12. In short, rule of construction where, because of the draftsman's unskillfulness or basing the text of an enactment on a mistake of fact, makes it permissible for the court to deviate from literal construction and resort to remedial construction of the text which may warrant the omission of words as well as inclusion of words as the situation demands. If the literal interpretation of text renders the provision itself futile, which will be a specie of absurd result will be a field where it will be permissible for the court to supply words if such result is caused on account of omission of draftsman to use words or to omit by treating the word or words the inclusion of which was unwanted or was founded on a mistake of fact in the mind of the draftsman.

13. About the sanctity of the expression used in any enactment on the principle that every word of a statute has to be assigned a meaning, and Parliament and Legislature is not presumed to use superfluous or surpluses of words it must be held where choice is between giving meaning to every word used by legislature and render the legislation itself devoid of any sense or to abandon that attempt to sustain the legislative activity, the interpreter must have recourse to latter path. Craise on Statute law stated the principle referring to words of Colridge J. in *R.V. East Ardsley (inhabitants)* (1850) 14 Q.B.793 (6th Edn. P. 106).

"But a court of law will reject words as surplussage if it appears that by attempting to give a meaning to every word, we should as Colridge J said in *R.V. East Ardsley (Inhabitants)* have to make the Act of parliament insensible or if it is clear that otherwise the manifest intention of the legislature will be defeated."

14. To the same effect, the following statement of Lord Denning LJ in *Seaford Court Estate Ltd. v. Azhr* (1949) 2 All ER 155,

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding intention of parliament..... and then hemust supplement the written word so as to give force and life to the intention of legislature."

15. The said principle has since found its approval in a number of decisions of Supreme Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, , *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and*

Others, , and Directorate of Enforcement Vs. Deepak Mahajan and another, .

16. It will be pertinent to recall the opinion of Viscount Maugham in *Liversidge v. Anderson* (1942) AC 206 pointing out a difference in the presumption about exactness of the language used by Parliament vis-a-vis language used by a delegate while resorting to delegated or subordinate legislation,

"..... regulations pursuant to an Act of Parliament do not receive the same attention and scrutiny as statutes, and it is important to remember that, though they may be annulled, they cannot be amended in either House.... so that errors in language, if detected, cannot be corrected. There are, of course, no three readings and no committee stage in either House."

17. This was with reference to the fact that while an Act of Parliament comes into existence after the same had three readings after the committee has approved it before both the Houses and there are always possibility at different stage amendment can be carried out in the Parliament by the Parliament itself whereas this methodology of ingraining such an exactitude is not attributed to delegated legislation and there is bound to be certain amount of laxity in use of expression by the delegated legislation so that the same amount of exactitude is not expected from the delegated legislation as is expected from the Act of Parliament. Keeping in view this distinction in the efficiency of assessment at both levels while considering interpretation and resorting to literal interpretation or remedial rectifying interpretation and in the circumstances were to resort to such remedial interpretation of word or words has to be kept in mind.

18. In the present context, the following passage of the same work illustrates where the draftsman's errors need to be corrected.

"There are occasions.... when the language of the Legislature must be modified in order to avoid inconsistency with its manifest intentions [.....] It has to be accepted that drafting errors frequently occur [.....] This has always been so; and there is nothing new in it."

"Blackstone remarked that "in one statute only, 5 Anne, c 14, there is false grammar in no fewer than six places, besides other mistakes" (Karr B1 4th Ed. IV 177 - 8). In our own day we find Nourse J saying of s. 3(3) of the Law of Property Act 1925 that it is possible, "and no criticism of him at all", that the draftsman either overlooked or misunderstood the fact that the opening words were inappropriate because of the changes made by the 1925 Property legislation.

It would not be right to allow such human mistakes to frustrate the will of Parliament."

19. From the facts noticed above, one can clearly discern that rule framing authority has undertaken the task of framing rules for the purpose of laying down the procedure including defining the areas of jurisdiction to be exercised by a single judge as well as division bench of this court in framing Gujarat High

Court Rules, 1993. It cannot be doubted that one of the objects to the rules is to clearly lay down the areas in which the jurisdictions can be exercised by a judge sitting single or by a division bench consisting of two or more judges as is clear from rules 1 and 2. From the scheme of the rules it is also apparent that after laying down the areas of jurisdiction to be exercised by a single judge and a division bench generally, the rules also intended to provide for appeals or other proceedings arising under Special Acts other than the CPC or the Criminal Procedure Code. Item (2) in the list pertaining to civil matters under rule 2 refers to Appeals under Special or Local Acts in a general way. Yet in Item No. (3), (4), (5), and (9) it refers specifically to Special Acts namely, The Guardians and Wards Act, Hindu Minority and Guardianship Act, Hindu Marriage Act and other Matrimonial enactments, reference under Land Acquisition Acts. It also demarcates areas of jurisdiction between the two relating to petitions arising under Art. 226 of the Constitution generally and arising in respect of special enactments like the Customs Act, the Central Excises & Salt Act, other taxing statutes, Land Acquisition Act, the Import and Export Control Act, apart from general provisions made therein. We further find that independent provisions have been made in respect of certain Acts. In this connection reference may be made to Chapter XX titled as "Appeals under Special Acts". Rule 217 which finds place thereunder is of again generally applicable to all appeals arising under Special Acts where other provisions have not been made under the rules or provisions of the statute under which such appeals arise do not govern the practice and procedure. Chapter XXI deals with procedure for proceedings arising under the Banking Companies Act X of 1949. Rule 252 provides that subject to provisions of section 45-N(1) of the Act, an appeal shall lie from an order or decision of a Judge in a civil proceeding under the Act of the High Court. Likewise under rule 256, appeal against any order made under sec. 45-J is to be heard by a division bench. Reference to section 45-N and 45-J of the Act of 1949 shows that the orders under the respective provisions are to be made in the first instance by the High Court. Obviously, appeal has been provided to division bench from a judgment of single judge of the same court to the division bench of the same court. In contrast, under Chapter XXIV which deals with the appeals u/s 73 of the Copyrights Act, 1957, rule 321 requires appeals arising under sec. 73 of the Copyrights Act, 1957 to be heard by a division bench. The Copyrights Act does not have any provision like the Banking Regulation Act that the appeals to the High Court be heard by a division bench. In these circumstances, we cannot countenance the argument that under rule 314 the rule making authority was providing for hearing of an appeal by the division bench only because the rule under which the rules were being framed envisaged a provision to that effect. In other words, contention was that the provision under special enactments for hearing of appeal before the division bench has been made only for the purpose of making it commensurate with the provisions of the parent act under which the appeals were to be preferred. That obviously is not the case as we have noticed above. Therefore, we are unable to sustain that the rule making authority was undertaking exercise of framing rules under the Companies Act or other Special

Acts only for the purpose of defining the jurisdiction of division bench or single bench as per the provisions contained in the respective Acts. The intention appears to be clear that having laid down the acts under which appeal would lie before the single judge, it made special provisions in respect of appeals arising under different special enactments and specifically provided for hearing of appeals thereunder by a division bench which was not necessarily commensurating with the provisions of the concerned act.

20. The legislative intent of framing of rule 314, in our opinion, is not confined merely to making a provision for giving effect to hearing appeals contained under sec. 10D of the Act as it was existing in 1961. The glaring fact which emerge from the facts noticed above is that the text of rules framed under Chapter XXIII is based on a mistake of fact while drafting the rules in relation to appeals arising under the Companies Act. While the intention was clear to provide for procedure for hearing appeals arising under Companies Act, the mistake of fact under which the draftsman laboured was about the existing provisions as to the appeals under the Companies Act. While it has referred to sec. 10D which has long ceased to exist when the drafting of rule was undertaken and rules were actually framed, on putting specific question it was candidly stated by both the learned counsel that during the period sec. 10D was in operation that was the only provision under the Companies Act which provided appeal from any authority under the Companies Act lay to the High Court and when the rules were framed the only provision that existed under the Companies Act providing appeal to the High Court was sec. 10F which has come into existence only in 1988. The two provisions never stood simultaneously at any point of time. That is to say, the only matter in respect of which rule framing authority can be said to have undertaken the task of framing rules for prescribing procedure in 1993 could be attributed to is providing the procedure for entertaining appeals and hearing of such appeals under the provisions of the Companies Act as it stood at that time and there being no other provision than the sec. 10F, and there being no time during which both the provisions or more than one provisions were on the statute book providing appeals to the High Court, we have no hesitation in coming to the conclusion that the rule making authority has founded its texts on the mistake of fact about the existing provisions providing appeal to the High Court under the Companies Act while making rules for that purpose. That is how unwanted word sec. 10D or reference to the tribunal in the other relevant rules 317 and 320 have crept in. If the literal construction of assigning meaning to every word is given, it would result in nullifying the entire exercise of framing rules under Chapter XXIII, a result which is ordinarily deprecated to be brought about by adopting literal interpretation, both by text-book writers as well as adopted by the courts.

21. We are therefore not impressed by the contention of the learned counsel that even if the interpretation suggested by them results in nullifying the scheme under Chapter XXIII contained under rules 314 to 320 is not likely to prejudice anyone because the right of appeal will not be affected which existed under the

Companies Act and the procedure as contained in other rules will still be available to them. We repeat, unless there are overriding reasons for applying a construction that produces an absurd result, such construction is to be avoided.

22. If a draftsman misconceives the factual nature of the legislative project, if a draftsman has based his text on a mistake of fact, the court must be able to remedy this by applying such construction which accommodates from the facts without causing injustice or further disadvantage. We do not envisage that the construction which we put on rule 314, by omitting to read words "sec. 10D" would cause any injustice or other disadvantage to anyone, nor in fairness we must say that the counsel has argued that it would cause injustice or disadvantage. That being the case, the court must lean in favour of interpretation, if necessary, by omitting the unwanted words to sustain the legislative activity which has come into existence rather than allow it to result in an exercise in futility.

23. We find in the circumstances noticed by us above that if in Chapter XXIII reference to the word which relate to the repealed provisions of the Companies Act are omitted to be read it would give fulsome meaning and make the scheme of the rules workable in the matter of appeals arising under the Companies Act which, as discussed above, arise only under sec. 10F against orders of the Company Law Board. Therefore, by omitting to read words "sec. 10D" in rules 314 and 315 and 320 and by reading the Company Law Board in place of the word tribunal wherever used in the rules, which demonstrably has found its place in text as a result of a mistake of the draftsman would be a permissible construction of the rules.

24. There is yet another reason for us to adopt this recourse. Law is well settled that where specific provisions have been made under law governing any field, general provisions must give way to it. Rule framing authority has made its intention clear by making general provisions demarcating the fields of jurisdiction of a single judge and division bench under Rules 1 and 2, has also provided specifically in respect of appeals or other proceedings arising under different acts. Apart from the reference to which we have made above, reference in this connection may also be made to the rules providing for application under Articles 226, 227, and 228 particularly the reference to Habeas Corpus, cases arising under Industrial Disputes Act, the reference to applications under Income-tax Act and other taxing statutes under different chapters. Therefore, the said provisions providing the jurisdiction of division bench under those enactments must prevail over the general provision of providing jurisdiction of hearing appeals on the basis of valuation or incapability of valuation under rule 2. By providing specifically for appeals under Companies Act, 1956, the applicability of general rule in the facts of the present case must be ruled out.

25. As a result, the application for declaring the appeal to be heard by single bench is rejected and we hold that all appeals arising under the Companies Act against the orders of Company Law Board, unless the rules are amended, are to

be placed before the division bench.

26. The application accordingly stands disposed of.