
(1991) 07 RAJ CK 0021
In the Rajasthan High Court
Case No : Company Petition No. 18 of 1988

Dhanna Lal Banthia

APPELLANT

Vs

Gaurav Private Ltd.

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Companies Act, 1956 — Section 398

Citation : (1994) 81 CompCas 881

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : R.P. Garg, for the Appellant; R.M. Lodha, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—By this company petition u/s 398 of the Companies Act, 1956 (for short, "the Act"), against Gaurav Pvt. Ltd. (for short, "the company"), the petitioner, Dhannalal Banthia, has sought the following reliefs :

- (i) to pass an order for the change of the management of the company and the petitioner may be ordered to be appointed as director of the company,
- (ii) Shri Dharam Chand Jain and Shri Suresh Chand Jain may be ordered to be removed from the post of directors and they may be restrained from controlling the management of the company,
- (iii) to set aside all the meetings held by the directors of the company,
- (iv) to pass an order setting aside all the illegal actions and decisions taken by the directors in the affairs of the company and for the same the directors personally be held liable,
- (v) to pay the due amount of the petitioner and also pay dividend to the petitioner on his shares with interest.

2. The company was incorporated on October 21, 1982, and has its registered

office at Jaipur. As appears from the memorandum of association and articles of association of the company (annexure 1) initially the authorised share capital of the company was Rs. 5,00,000 (Rs. 5 lakhs) divided into 5,000 equity shares of Rs. 100 each. But by a special resolution passed in its extraordinary general meeting in 1983 the articles of association of the company were amended and the share capital of the company was fixed as Rs. 13,00,000 (Rs. 13 lakhs) divided into 5,000 equity shares of Rs. 100 each and 8,000 9% non-cumulative redeemable preference shares of Rs. 100 each. Again, on April 19, 1984, by resolution the share capital of the company was fixed at Rs. 15 lakhs divided into 5,000 equity shares of Rs. 100 each and 10,000 9% non-cumulative redeemable preferential shares of Rs. 100 each. The objects of the company as per its memorandum of association and articles of association are many, including the object to carry on the business of builders, contractors, engineers, designers, architects, masonry, plumbers, decorators and furnishers and to purchase, take on lease, hire, build, construct, own, alter, maintain, enlarge, pull down, remove, renovate, replace, furnish, decorate, manage, improve, develop, erect or otherwise acquire and to sell, lease out, exchange, contract, allot, let on hire or otherwise deal in land (freehold and leasehold) flats, dwelling houses, apartments, offices, factories, etc.

3. To achieve the aforesaid objects, an agreement for sale of a half portion of Haveli Banthia Building, bearing Municipal No. 2050, situated at Chowkri Ghat Gate, Rasta Haldiyan, Jaipur, was entered into between the petitioner, Smt. Sajjan Devi, his wife and her sons, the owners of the building and Ganesh Narain Agrawal and Dharam Chand Jain, directors of the company, allegedly for a consideration of Rs. 8 lakhs though the registration for the aforesaid share of the Haveli was executed only for Rs. 5 lakhs and Rs. 3 lakhs is said to have been agreed to be paid separately. The other half portion of the said Haveli is said to have been purchased by the directors from the other owner of the company. Out of the sale consideration Rs. 1 lakh was to be paid in cash and Rs. 4 lakhs were to be paid by way of preferential redeemable shares and the rest of the amount was to be paid separately in cash. In furtherance of the aforesaid agreement, a sale deed was executed on November 10, 1982, for a consideration of Rs. 5 lakhs and a sum of Rs. 3 lakhs was agreed to be paid after execution of both the sale deeds and according to the petitioner it was never paid.

4. Thus, the case of the petitioner is that he is the holder of 4,000 redeemable preferential shares of the value of Rs. 100 each, i.e., of a total value of Rs. 4 lakhs, and his preferential shares became equity shares after two years and certain rights have been conferred on him including the right to vote but neither has the company issued any notice of the meeting to the petitioner nor has the petitioner received the same till today. In fact no meeting as per the provisions of the Act is ever being held by the directors of the company nor has it ever informed the petitioner that others that the dividends have not yet been paid. A true account of the affairs of the company is neither maintained nor submitted to the Registrar of Companies. According to the petitioner, the directors and officers

of the company are mismanaging the affairs of the company and are taking undue advantage. Therefore, the aforesaid prayers have been made.

5. The petition is contested by the directors of the company and the case of the non-petitioner is that the petition is mala fide and wholly misconceived and has been filed with ulterior motive. It is denied that any agreement for sale was entered into on September 11, 1982, between the petitioner and Ganesh Narain Agarwal for sale of half of the portion of the petitioner's Haveli Banthia building bearing Municipal No. 2050. As a matter of fact, the property is said to have been sold by the petitioner to the company for a consideration of Rs. 5 lakhs only by registered sale deed and the payment of Rs. 1 lakh towards consideration of sale price was made through cheque. Only an agreement to sell dated November 10, 1982, is admitted wherein it was agreed to purchase the property for Rs. 5 lakhs. It is denied that any sum in excess of Rs. 5 lakhs was agreed to be paid. It is not disputed that the petitioner has been allotted redeemable preferential shares of Rs. 4 lakhs. In accordance with the amendment made in the articles of association, it was not necessary that any notice should have been given to the petitioner. By a special resolution passed in the extraordinary general meeting of the members of the company held on August 1, 1983, at 11 a.m. at the registered office of the company it was resolved that Clause 5(a) be inserted after the existing Clause 5 in the articles of association of the company and by insertion of Clause 5(a) it was made clear that the preferential shareholders shall have voting rights only on resolution placed before the company which directly affects the rights attached to preferential shares irrespective of the fact that whether or not dividend for any number of years have been paid thereon. A copy of the special resolution passed on August 1, 1983, has been annexed as annexure R-1. According to the non-petitioners, they never refused to inform the petitioner on the points on which the petitioner sought information. The affairs of the company have been conducted in accordance with the Companies Act and in the best interests of the company. The company has been convening annual general meetings every year and the annual general meeting for the year 1985 was held on April 23, 1985, for the year 1986 on May 6, 1986, and for the year 1987 on February 18, 1987. A copy of the notice of the annual general meeting for the year 1987 has been annexed as annexure R-2.

6. It has been stated that the company has been maintaining proper books of account as required by law and the balance-sheet and profit and loss accounts have been prepared in accordance with the books of account. The said accounts give complete information as required by the Act.

7. According to the non-petitioner there is adequate internal control procedure commensurate with the size of the company and the nature of its business for the purchase of assets. It has got audited the balance-sheet and profit and loss account for every financial year. The non-petitioner has annexed a photostat copy of the auditor's report dated March 23, 1988, as annexure R-3. It has also annexed the assessment order dated March 30, 1988, for the assessment year

1985-86 as annexure R-4. Thus, the case of the non-petitioner is that the directors have been acting in the best interest of the company and their acts are not prejudicial to the company or shareholders. So far as alleged payment of Rs. 25,000 vide cheque No. 6012827 drawn on the Union Bank of India, Johri Bazar Branch, Jaipur, against the said payment of Rs. 3,00,001 is concerned, according to the non-petitioner, the true and correct fact is that the petitioner agreed to sell the shares of Rs. 25,000 to Jain Sari Store, a partnership firm having Dharamchand Jain and Smt. Prem Jain as partners. The petitioner agreed to sell the said shares of Rs. 25,000 on January 15, 1986, and since the relations between the parties were cordial, a cheque referred to above was given by Jain Sari Store to the petitioner. It is denied that the aforesaid cheque was paid towards the sum of Rs. 3,00,001 which was to be paid in excess amount of Rs. 5 lakhs over- and above the sale consideration entered in the sale deed. Jain Sari Stores filed a suit for recovery of an amount of Rs. 32,500 against the petitioner in the month of July, 1988. The said sum included the sum of Rs. 25,000 as principal amount and Rs. 7,500 towards interest thereon. It is also the case of the non-petitioner that the directors of the company are acting in the interests of the company as well as the shareholders as will be clear from the fact that the building plans have been got sanctioned from the Municipality, Jaipur. The Income Tax Department initiated proceedings u/s 269UD(1) of the income tax Act, 1961, for acquisition of the property purchased from the petitioner and other co-sharers which proceedings were contested and properties were got released from the competent authority under the Income Tax Act. A compromise was entered into with the various tenants and the property was got vacated from the tenants. Not only this, the shops of three apartments bearing No. 261, Johri Bazar, have been purchased by the non-petitioner from Mohd. Umar for a consideration of Rs. 1,75,000. These facts will show that the directors were acting in the best interests* of the company and not prejudicial to the interest of the company and proper account books are being kept. The petitioner, being a preferential shareholder, can have voting right only on resolution which directly affects the right attached to preference shares. It is denied that the petitioner's preference shares became equity shares after two years and the petitioner has also right of voting in the meeting. It was contended by Mr. Garg, learned counsel for the petitioner, that u/s 87 of the Act, the petitioner was the holder of 4,000 redeemable preferential shares of the value of Rs. 100 each and in view of Section 87 of the Act the petitioner had a voting right but no notice of the meetings was given to him and he was deprived of his voting right. A bare reading of Section 87 of the Act will show that the holder of any preferential share has a right to vote in a resolution placed before the company which directly affects the rights attached to his preference shares. As per the Explanation to Sub-section (2) of Section 87 of the Act any resolution for winding up the company or for the repayment or reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause. Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, be

entitled to vote on every resolution placed before the company at any meeting if the dividend due on such capital or any part of such dividend has remained unpaid, (i) in the case of cumulative preference shares in respect of an aggregate period of not less than two years preceding the date of commencement of the meeting, and (ii) in the case of non-cumulative preference share, either in respect of a period of not less than two years ending with the expiry of the financial year immediately preceding the commencement of the meeting or in respect of an aggregate period of not less than three years comprised in the six years ending with the expiry of the financial year aforesaid. It will, therefore, be clear from a bare reading of Section 87 that the holder of a preferential share only has the right to vote on the resolution placed before the company which directly affects the rights attached to his preference shares. It is not the case of the petitioner nor has any material been produced that any resolution was placed before the company which directly affects his right. Therefore, the aforesaid section could not be attracted in this case.

8. There can be no dispute that as provided u/s 166 of the Act, it is mandatory for every company in each year to hold in addition to any other meetings a general meeting as its annual general meeting and to specify the meeting as such in the notice calling it and not more than fifteen months" time shall elapse between the date of one annual general meeting of a company and that of the next. Every such meeting shall be called for a time during business hours, on a day that is not a public holiday and it has to be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. u/s 172(2) of the Act every notice of meeting of a company shall be given to every member of the company in any manner authorised by Sub-sections (1) to (4) of Section 53 of the Act. It will appear from the reply filed by the non-petitioner that the annual general meeting of the company was held after due notice to the members as required by law. A look at annexure R-2, dated February 10, 1987, will show that it is a notice of the annual general meeting to be held on February 18, 1987, and it was a notice for the alleged third annual general meeting of the members of the company. It will appear from the audit report annexure R-3 that the profit and loss account for the year ending on October 22, 1987, was audited and it shows that proper books of account as required by law have been kept by the company so far as appears from the examination of those books by the auditor. In the opinion of the auditors and to the best of their information and according to the explanation given to them, the said accounts read with the notes thereon, give the information as required by the Act in the manner so required and give a true and fair view (i) in the case of the balance-sheet, of the state of affairs of the company as on October 22, 1987, and (ii) in the case of the profit and loss account, of loss for the year ended on that date. It can, therefore, be said that there is no material to show that the accounts are not being kept as required by the provisions of the Act. It will further appear from the assessment order of the Income Tax Officer for the assessment year 1985-86 that there has been

assessment and there was net loss of Rs. 6,480. It will appear that the petitioner himself has filed a suit against the company and Ganesh Narain where the petitioner himself has come out with a case that in the sale deed it was stated that the possession of half share of the property sold had been given to the company but in fact no possession was given and injunction was sought that the company should not transfer the possession of half share of the property which was sold to the company by the petitioner. The petitioner is still in possession of it. The suit was filed some time in the year 1987. No rejoinder to the aforesaid reply was filed and, therefore, it can be said that the petitioner had himself filed a suit and sought injunction in respect of the same property which is said to have been sold by him. This court will not go and should not go into the question whether the agreement to sell was executed for Rs. 8 lakhs and whether the petitioner who was the owner of a half share in the property is entitled to Rs. 3 lakhs over the above sale-consideration entered into the sale deed. This is a matter which it is not for this court to examine. The only question is as to whether the affairs of the company are being conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interest of the company and only if the court is so satisfied, the court has ample power to make such an order as it thinks fit to bring to an end the matter complained of which power includes the power to remove the directors and to make suitable orders so that the affairs of the company are managed properly in the interest of the company as a whole. The Supreme Court in the case of *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [1981] 51 Comp Cas 743, was dealing with an application u/s 397 of the Act. The court said that before granting relief u/s 397 of the Act, the court has to satisfy itself that to wind up the company will unfairly prejudice the members complaining of oppression, but that otherwise the facts will justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up. The court also said that an isolated act which is contrary to law may not necessarily and by itself support the inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts following one upon another can in the context lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed. The court also said that on a true construction of Section 397, an unwise inefficient or careless conduct of a director in the performance of his duties cannot give rise to a claim for relief under that section and the persons complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder. In the case of *Gupta (C. K.) v. Pannalal Girdharilal P. Ltd.* [1984] 55 Comp Cas 702, the Delhi High Court was dealing with an application u/s 398 and the powers of the court in the aforesaid section. The court said that stray illegal acts would not amount to oppression and in a case where the directors are quarrelling and not taking interest in the affairs of the company, the court can interfere u/s

398 and can order take-over of the company by the majority shareholders against whom the petition u/s 397 of the Act has been made. The court said that the first pre-condition is that positive acts are done by the management which result in prejudice being caused to the company. The court also said that even when no action at all is taken by the management and such non-action results in prejudice, being caused to the company, Section 398 of the Act may be attracted. In the opinion of the court the expression "the affairs of the company are being conducted in a manner prejudicial to the interests of the company" in Section 398(1)(a) of the Act will take within its ambit the non-conduct of the affairs of the company which non-conduct results in prejudice being caused to the company. In the case of *Gajara Bai Patny v. Patny Transport (Pvt.) Ltd.* [1966] 36 Comp Cas 745 (AP), the court was dealing with a case where the directors withheld the transfer of shares in favour of the petitioners whereas some other shares were transferred in the name of managing agency of the firm. Holding that such an action was vindictive, harsh and unreasonable and amounted to oppression, the court ordered the directors to transfer the shares in the terms of the will but it refused to appoint a committee of shareholders in the place of the board of directors. The court also said that the court has power to issue directions to the directors or to make any other order looking to the situation in the interest of the company in case such a case is made out, but before such a power can be exercised, the court must be satisfied that the conduct of the directors amounted to oppression and affairs of the company were being managed prejudicial to the interest of the company.

9. Thus, there is no dispute that the court had power u/s 398 of the Act to make such order as it considers proper if it was of the opinion that the affairs of the company were being conducted in a manner prejudicial to the interest of the company. But, in the instant case, the allegations are that the annual general meetings were not held, notice was not given, accounts are not being properly maintained and it does not appear from the record that the affairs of the company are being conducted in the manner prejudicial to public interest or prejudicial to the interest of the company, rather the company contested the proceedings in the Income Tax Department initiated against it u/s 269UD(1) of the Income Tax Act, 1961, vacated the tenants of the property, rather it appears that it is the petitioner who filed a suit for injunction against the company. There is another suit also and the main dispute between the parties appears to be in respect of Rs. 3,00,001 which according to the petitioner was payable to him by the company and, as per the company, it is not payable to him. The petition does not appear to be a bona fide petition u/s 398 of the Act. Even otherwise, as stated earlier, the petitioner has not been able to make out any case.

10. Consequently, I find no merit in this petition. It is hereby dismissed with no order as to costs.