

(2003) 07 SC CK 0062

In the Supreme Court Of India

Case No : Civil Appeal No"s. 4774-76 and 4777-78 of 1996

Dwarka Prasad Agarwal (D) by Lrs. and Another	APPELLANT
Vs	
Ramesh Chandra Agarwala and Others	RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Code Of Civil Procedure, 1908 — Section 9, Order 39 Rule 1, Order 39 Rule 2
Press And Registration Of Books Act, 1867 — Section 5, 5(2), 8B, 8C
Code Of Criminal Procedure, 1973 — Section 145
Companies Act, 1956 — Section 2(10), 2(11), 9, 10, 107, 155, 163(2), 237, 397, 425
Specific Relief Act, 1963 — Section 6

Citation : AIR 2003 SC 2696 : (2003) AIRSCW 3328 : (2003) 4 AWC 2975
Supp : (2003) 3 BLJR 2417 : (2003) 96 CLT 568 : (2003) 117 CompCas 206 :
(2003) 4 CompLJ 385 : (2003) 3 CTC 184 : (2003) 2 JKJ 421 : (2004) 1 JLJ
353 : (2003) 4 LW 255 : (2003) 4 RLW 472 : (2003) 5

Hon'ble Judges : V. N. Khare, C.J.;S. B. Sinha, J;AR. Lakshmanan, J

Bench : Full Bench

Advocate : Sunil Gupta, S. K. Gambhir, Shanti Bhushan, A.M. Singhvi, P.P. Rao, R.C. Srivastava, TLV Iyer and Kailash Vasdev, P.D. Tyagi, Vivek Vishnoi, R.R. Singh, N.K. Modi, Anil Sharma, Awnish Sinha, H.K. Puri, U. Hazarika, Ankur Modi, Sanjay Kr. Pathak, B.B. Thakur, Shirin Khajuria N.P., Gaurab Banerjee, Niraj Sharma, Syed Ali Ahmad, Syed Tanveer Ahmad, G.D. Upadhyay and R.D. Upadhyay, for appearing partie, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, J.—These appeals involving identical questions of law and facts were taken up for hearing together and are being disposed of by this common judgment.

2. civil Appeal Nos. 4774-76 of 1996 arise out of the judgments and orders dated 12.3.1993 and 18.3.1993 passed by the Gwalior Bench of the Madhya Pradesh High Court in Miscellaneous Petition Nos. 1654, 1727 and 1728 of 1991; wherein the legality/validity of three orders passed on 29.5.1991 by the Press and Registration Board purported to be in exercise of its jurisdiction u/s 8-C of the

Press and Registration of Books Act, 1867 (for short 'the Act') were questioned by the Respondent No. 1 herein.

3. civil Appeal Nos. 4777-78 of 1996 arise out of the judgment and order dated 29.6.1991 passed by the Gwalior Bench of the Madhya Pradesh High Court arising out of Misc. Appeal Nos. 60-61 of 1998.

4. Factual matrix of the matter, shortly stated is as under:

5. Ramesh Chander Agarwal s/o late Dwarka Prasad Agarwal, a partner of M/s Dwarka Prasad Agarwal and Brothers allegedly upon taking advantage of his father's ill-health made an attempt to create a lease in relation to the right to publish Dainik Bhaskar from Bhopal. According to late Dwarka Prasad Agarwal, to the best of his knowledge, he did not sign the said document dated 13.4.1984 and in any event the same was meant to be applicable only for Bhopal and not for any other place. On 13.4.1985, a partition/family settlement deed was prepared wherein late Dwarka Prasad Agarwal was not a signatory. Allegedly, Bishambhar Dayal also did not agree to the said settlement and did not sign the said purported deed of family settlement.

6. Ms. Hemlata, Agarwal, eldest daughter of late Dwarka Prasad Agarwal through his second wife, was made a Joint Managing Director of Bhaskar Publications and Allied Industries. Ramesh Chander Agarwal being intrigued thereby tried to increase the equity shares of the company to such an extent that he gets majority in the equity shares purported to be in total disregard and violation of the provisions of the Companies Act, 1956. The said respondent also took alleged forcible possession of the Printing Press on 3.7.1987 which had been leased out by M/s Dwarka Prasad Agarwal and Brothers (the Firm) to M/s Bhaskar Publications and Allied Industries Private Limited. Allegedly, late Dwarka Prasad Agarwal and his two daughters were also physically assaulted by the first respondent leading to initiation of a proceeding u/s 145 of the Code of Criminal Procedure. In the said proceedings, the Executive Magistrate directed the police to open the locks put in the premises of the printing press in presence of both the parties. However, late Dwarka Prasad Agarwal was not permitted to run the said printing press.

7. Thereafter, Ramesh Chander Agarwal filed a declaration before the District Magistrate, Jabalpur, wherein he allegedly accepted the partnership of M/s Dwarka Prasad Agarwal and others as owners of the newspaper Dainik Bhaskar. In terms of the provisions of Section 5 of the Press and Registration of Books Act read with the rules framed thereunder, declarations are required to be filed by the owner as also the printer(s) and publisher(s) thereof. Six declarations were filed; three each by Respondent No. 2 on the purported authority of the Dwarka Prasad Agarwal and three by the Respondent No. 1. Objections to the said declarations were field by late Dwarka Prasad Agarwal before the appropriate authority.

8. By an order dated 6.6.1988, the District Magistrate, Gwalior, in exercise of his

power u/s 8-B of the Act cancelled the said declarations dated 11.3.1985 filed by Respondent No. 1. He preferred an appeal there against before the Press and Registration Appellate Board, but the same was ultimately withdrawn.

9. He is the meanwhile filed a writ petition before the High Court for stay of the proceedings before the District Magistrate. Although an order of stay was passed therein but before the same could be communicated the aforementioned order dated 6.6.1988 was passed. Ramesh Chander Agarwal, Respondent No. 1, then filed another writ petition against the said order dated 6.6.1988 before the High Court but the same was withdrawn on the ground that he had in the meanwhile availed alternative remedy of filing an appeal against the same order. During the pendency of the said appeal before the Board, yet another writ petition was filed by the first respondent marked as Writ Petition No. 798 of 1988 praying therein for quashing of the order dated 6.6.1988 whereby the declarations were directed to be filed.

10. The said appeals filed by Ramesh Chandra Agarwal were dismissed by the Appellate Board on 29.5.1991 holding as under:

"(a) The document at the top portion is pasted with thick opaque white paper slips from both sides, perhaps to cover up and make unreasonable something which was written or printed under these slips;

(b) Below the seal of the Deputy Collector and Executive Magistrate, Bhopal (party superimposed) appears a somewhat blurred impressed of the seal of the Executive Magistrate, Gwalior;

(c) The printed proforma of A1 is patently of Bhopal. That proforma does not tally with the printed form produced by the Appellant with his application. Annexure A-1, is only a photocopy of the original, in the absence of which, the true effect of these suspicious circumstances (a) to (c) cannot be correctly assessed. However, the appellant admits that the photocopy of the declaration A-1 was presented by Devinder Tiwari not personally by him (appellant). This Devinder Tiwari who, according to the appellant, as a Director of the Company did not file any letter of authority on behalf of the Company or even from the appellant, to explain why the declaration was not presented in person by the appellant".

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"Nevertheless, there is not reason to differ from the finding of the District Magistrate, that Shri S.C. Shukla (Deputy Collector) Executive Magistrate, not being a District, Presidency of Sub-Divisional Magistrate was not competent, in view of Section 5(2) of the Act, to entertain and authenticate the declaration dated 11.3.1985, filed by the appellant.

For all the reasons aforesaid, we would uphold the order dated 6.6.88 of the District Magistrate, Gwalior and dismiss the Appeal No. III filed by Ramesh Chander Agarwal."

11. A writ petition was filed by Ramesh Chander Agarwal there against. Similar writ petitions came to be filed in relation to the orders passed in respect of other declarations.

12. By reason of the impugned order dated 12.3.1993, the order of the Appellate Board dated 29.5.1991 as also that of the District Magistrate, Gwalior, dated 6.6.1988 were quashed and the Appellate Board was directed to consider the matter afresh within a period of three months. Strangely enough, however, the same learned Judge on a review application filed by the first respondent herein by an order dated 18.3.1993 directed that the inquiry by the District Magistrate should be deferred if an application is filed before him till the final outcome of the civil litigations by the parties.

13 Late Dwarka Prasad Agarwal, alleging his alleged illegal dispossession from the printing press, filed a suit for eviction and permanent injunction in the court of A.D.J., Gwalior, which was registered as Suit No. 1-A of 1988. An application for grant of injunction in terms of Order 39, Rules 1 and 2 of the CPC was filed wherein a prayer was made for grant of temporary injunction against Respondent No. 1 restraining him from publishing the newspaper illegally and furthermore not to indulge in false propaganda and/or to take forcible possession of the printing press. Respondent No. 1, Ramesh Chander Agarwala also filed a suit against late Dwarka Prasad Agarwal praying therein for a permanent injunction restraining him from interfering with the working of the press at Gwalior and not to take possession thereof. He also filed an application for grant of interim injunction in terms of Order 39, Rules 1 and 2 of the Code of civil Procedure.

14. The First Additional District and Sessions Judge before whom the matters were pending, disposed of both the applications by a common order dated 28.5.1988. The court directed maintenance of status quo by the parties and further directed that Ramesh Chander Agarwal would not interfere with the working of late Dwarka Prasad Agarwal in the matter of managing the affairs of the company. However, in his order relating to the application filed for injunction in Suit No. 2-A of 1988 of Respondent No. 1, the court directed the original appellant, late Dwarka Prasad Agarwal not to interfere in the printing and publishing of the newspaper Dainik Bhaskar from Gwalior.

15. Both the parties preferred appeals before the High Court against the said orders were marked as M.A. No. 60 of 1988 and M.A. No. 61 of 1988. The High Court allowed the appeal preferred by Ramesh Chander Agarwal and dismissed Appeal No. 61 of 1988 filed by late Dwarka Prasad Agarwal holding that the suit for temporary injunction was barred u/s 10 of the Companies Act.

16. These appeals were filed by Dwarka Prasad Agarwal (since deceased), questioning the legality/correctness of the said orders.

17. The questions, in the aforementioned factual backdrop, which arise for consideration in these appeals are:

1) Whether the High Court was justified in issuing a direction that its earlier direction contained in order dated 12.3.1993 directing the Appellate Board to dispose of the appeal within three months need not be adhered to, if Ramesh Chander Agarwal files an application for stay of the inquiry by the District Magistrate during the pendency of the civil suit?

2) Whether the civil court had any jurisdiction to entertain the suit?

18. Re: Question No. 1:

19. At the outset, we may observe that when a disputed question as regard the right of one partner against the other to file a declaration in terms of the provisions of the Act had arisen for consideration, the High Court was not correct in issuing a subsequent direction in the review petition. Such a jurisdiction the High Court did not have. The conflicting rights of the parties were required to be determined in accordance with law by the statutory authority. Such a dispute, it goes without saying, should be determined as expeditiously as possible inasmuch as the dispute involved rival claims of the parties to the lis to run and manage newspaper business. In any event, while directing the statutory authority to dispose of the matter in accordance with law; it does not stand to any reason as to why a party to the lis was given such liberty so as to file an application for stay of inquiry by the District Magistrate till the disposal of the civil suit particularly when the High Court itself was of the opinion that the suit was not maintainable. We fail to see any reason as to why one part to the lis should be given unfair advantage over another in the matter of enforcement of statutory rights under the said Act. The orders of the High Court are, thus, absolutely contradictory to and inconsistent with each other, and do not stand a moment's scrutiny. The impugned orders are, therefore, set aside with a direction to the Appellate Board to hear out and dispose of the appeal as expeditiously as possible but not later than three months from the date of communication of this order. It would be open to the Appellate Board to consider the question of adequately compensating the appellants herein on monetary terms in the event it comes to the conclusion that the appeal was liable to be dismissed.

20. Re: Question No. 2:

21. Section 9 and 10 of the Companies Act are as under:

"Act to override memorandum, articles etc.

9. Save as otherwise expressly provided in the Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or

resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be."

"Jurisdiction of Courts.

10. (1) The High Court having jurisdiction under this Act shall be -

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of Sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower and District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred -

(a) in respect of companies generally, by Sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (Sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up."

22. A bare perusal of the aforementioned provisions leaves no manner of doubt that thereby the jurisdiction of the civil court has not been ousted. The civil court, in the instant case, was concerned with the rival claims of the parties as to whether one party has illegally been dispossessed by the other or not. Such a suit, apart from the general law, would also be maintainable in terms of Section 6 of the Specific Relief Act, 1963. In such matters the court would not be concerned even with the question as to title/ownership of the property.

23. In India, it is trite, that a person cannot be forcibly dispossessed except in accordance with law. [See Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others, .

24. In Suvvari Sanyasi Apparao and Another Vs. Boddepalli Lakshminarayana and Another, , this Court upon considering the Press and Registration of Books Act, 1867 observed that the matter relating to ownership of the press is a matter of general law and the Court, thus, must follow that law. It was observed that a declared keeper of the press is not necessarily the owner thereof so as to be able

to confer title to the press upon another.

25. The dispute between the parties was eminently a civil dispute and not a dispute under the provisions of the Companies Act. Section 9 of the CPC confers jurisdiction upon the civil courts to determine all dispute of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of civil court requires strict interpretation. The court, it is well-settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who asserts that the civil court's jurisdiction is ousted. [See Sahebgouda (dead) by Lrs. and Others Vs. Ogeppa and Others, . Even otherwise, the civil court's jurisdiction is not completely ousted under the Companies Act, 1956.

26. In R. Prakasam v. Sree Narayana Dharma Paripalana Yogam 1980 (50) CC 611, it has been held that:

"...The purpose of Section 2(11) read with Section 10 is only to enable the shareholders to decide as to which court they should approach for remedy, in respect of that particular matter. It is difficult to construe the definition clause as one conferring jurisdiction, exclusive or otherwise; and even Section 10 refers only to "the court having jurisdiction under this Act", i.e., where such jurisdiction is conferred by the Act, as under Sections 107, 155, 163(2), 237, 397, 425, etc. In other words, the conferment of jurisdiction on "the court" is not u/s 10, but by other provisions of the Act like those enumerated above. If, on the other hand, Sections 2(11) and 10 are construed as not only nominating the courts, but also conferring exclusive jurisdiction on them, the specific provisions in the other sections conferring jurisdiction on the court to deal with the matters covered by them will become redundant. It may be that where the Act specifies the company court as the forum for complaint in respect of a particular matter, the jurisdiction of the civil court would stand ousted to that extent. This depends, as already noticed, on the language of the particular provisions (like Sections 107, 155, 397 and others) and not on Sections 2(11) and 10..."

27. Yet again in Maharaja Exports and Another Vs. Apparels Export Promotion Council, , the Delhi High Court held:

"Under Section 9 of the Code of civil Procedure, 1908, civil courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred. Unlike some statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil courts in matters covered by the provisions of the Act. In certain cases like winding-up of companies, the jurisdiction of civil courts is impliedly barred.

Where a person objects to the election of directors and claims a decree for a declaration that he was one of the directors, there is no provision which bars the

civil court either expressly or by implication from trying such a suit"

In the present suit also, besides other reliefs, the plaintiff has sought a declaration that all the 27 members of the existing executive committee are not entitled to hold the respective offices in view of the judgment of this court and further that the 18 members of the executive committee who have retired by rotation are not entitled to continue in office as members of the executive committee. The judgment, referred to above, fairly and squarely applies to the facts of the present case and there is no reason to oust the jurisdiction of this court to entertain the present suit. Under these circumstances, this issue is decided in favour of the plaintiff and against the defendants."

28. In that view of the matter, we are of the opinion that the civil suit was maintainable. In any event, we fail to understand and rather it is strange as to how the High court while rejecting relief to the original plaintiff, (late Dwarka Prasad Agarwal), granted a similar relief in favour of the first respondent herein.

29. The impugned orders are, therefore, set aside. The matters are remitted to the Collector/High Court for a fresh decision on merits as expeditiously as possible within a period of three months, keeping in view the observations made hereinabove. These appeals are allowed with costs. Counsel's fee assessed at Rs. 25,000/- (Rupees twenty five thousand only).