
(2012) 12 DEL CK 0326
In the Delhi High Court
Case No : C.M. (M) No. 490 of 2012

Greenline Transit System Pvt. Ltd.

APPELLANT

Vs

The Secy. Cum Commissioner Transport and Another

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 80
Companies Act, 1956 — Section 397, 398, 402, 408
Constitution of India, 1950 — Article 227

Citation : (2012) 12 DEL CK 0326

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Vibhu Bakhru with Mr. S. Sharma and Mr. R. Chandrachud, for the Appellant; Vikrant Pachnanda, Proxy for Mr. Najmi Waziri for GNCTD and Mr. Chetan Sharma, with Ms. Neha Gupta, for R2, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—The petitioner in the instant case is Greenline Transit System Pvt. Ltd. ("petitioner company"), a company incorporated under the Companies Act, 1956. Respondent No. 1 is the Department of Transport, NCT, represented by its Secy. Cum Commissioner. Respondent No. 2 is Shiv Kumar appearing in his personal capacity as the Director of Star Bus Services Pvt. Ltd. (SBS), a company incorporated under the Companies Act, 1956. This petition has been filed under Art. 227 of the Constitution, by the petitioner company, who is aggrieved by the orders passed by Ld. Civil judge and the Ld. Senior Civil judge, dated 13.02.2012 and 31.03.2012 respectively. The factual matrix giving rise to the impugned orders is as follows. In the year 2008-09, the Govt. of NCT introduced "Cluster Scheme" by which the Blue Line Buses were to be phased out through the substitution of private bus operators running CNG buses. SBS successfully bid for one of the clusters and the tender was granted to it on 21.09.2009. Admittedly, 48% shareholding in SBS was transferred to the petitioner company for a

consideration, and a shareholders agreement to this effect was signed between the parties on 09.03.2010. Subsequently, as per the shareholders agreement, a bank account for SBS was opened in HDFC bank wherein, the Sh. Ajay Singh, on behalf of the petitioner company and the respondent No. 2, on behalf of SBS, were the joint signatories.

2. The dispute at hand arose when the petitioner company opened a new account in the name of SBS with ICICI bank, wherein Sh. Ajay Singh was the sole signatory. It was alleged by respondent No. 2 that the funds which were being released by respondent No. 1 were being deposited in this new account instead of the erstwhile account with HDFC bank, to which he was a joint signatory. Hence, respondent No. 2 sought an injunction against respondent No. 1 from depositing any monies in the ICICI bank account where he is not a signatory.

3. The petitioner company, who was the defendant before the Ld. Civil Judge argued that the suit for injunction was not maintainable on multiple grounds. Firstly, it was contended that the respondent No. 2 has filed the suit in his personal capacity, whereas the shareholders agreement was signed with his company, SBS. Secondly, it was contended that the dispute was an internal matter between respondent No. 2 and the petitioner company with respect to monies which are being deposited into the company's account. The petitioner company also contended that ICICI bank gave a loan to SBS and thereafter, a tripartite agreement was executed between the bank, SBS and respondent No. 1.

4. It was also argued that the petitioner company was authorized to enter into the tripartite agreement without the consent of respondent No. 2 because an additional 32% shares had been transferred in their favour, which was also allegedly affirmed by this Court. It was also contended that the Ld. Civil Judge did not have jurisdiction over the suit, because such matters were subject to the exclusive jurisdiction of the Company Law Board.

5. The Ld. Civil Judge observed that the dispute was in the nature of an intra-company dispute in which, the promoter group headed by respondent No. 2 was aggrieved because it did not have access to the funds which were deposited in a bank account to which, Sh. Ajay Singh was the sole signatory. In view of the above observation, the Ld. Civil Judge opined that the suit was maintainable. The Ld. Civil Judge has examined the shareholders agreement to determine whether the respondent No. 2 had the right to have an access to the funds of SBS. He has noted that under art. 5.1, the promoter group reserved its right to appoint equal number of directors on the board of the company, as long as it retained more than 30% of the share capital.

6. It was held by the Ld. Civil Judge that the contention of the petitioner company regarding the transfer of an additional 32% of shareholding from the promoter group was not supported by any document on record. He has observed that this Court has merely taken note of the petitioner company's contention regarding the alleged transfer and the same did not amount to an affirmation or

observation by this Court. Based on this observation, the Ld. Civil Judge has given primacy to the shareholders agreement to determine the rights of the parties thereunder.

7. The Ld. Civil Judge has noted that in Cl. 4.2(e) of the shareholders agreement, it has been provided that all bank accounts shall be operated jointly by the representatives of the promoter group i.e. respondent No. 2 and the petitioner company. Moreover, on the basis of the copy of the resolution filed on record, the petitioner company had opened a company account for SBS with the ICICI bank without the knowledge of respondent 2.

8. The Ld. Civil Judge has held that this amounted to a prima facie case. He has also held that the balance of convenience lies in favour of respondent No. 2, due to the large quantum of funds which may be transferred, and that irreparable injury may be caused if respondent No. 2 does not have access to these funds. Based on the above reasoning, he has restrained respondent No. 1 from transferring funds to the ICICI bank account and directed that the funds be transferred to the joint account of Sh. Ajay Singh and Sh. Shiv Kumar, with HDFC bank.

9. Aggrieved by this order, the petitioner company preferred an appeal before the Ld. Senior Civil Judge under Order 43 of CPC. The petitioner company contended that, the impugned order was passed against persons who were not party to the proceedings i.e. SBS and ICICI Bank. Secondly, the impugned order was made without jurisdiction in as much as it sought to exercise the function of the Company Law Board under Companies Act and that the matters concerning disputes inter-se shareholders fall within the exclusive jurisdiction of the Company Law Board. Lastly, the petitioner company also contended that the Ld. Civil Judge also failed to appreciate that the impact of the impugned order was contrary to public interest.

10. In reply to the above contentions, the respondent No. 2 claimed that Sh. Ajay Singh forged his signatures and manipulated various resolutions without calling for the board meetings. It was also contended that subsequent to the alleged resolutions, Sh. Ajay Singh started mismanaging SBS and had been trying to takeover the management of the company. It is in furtherance of this purpose, that the Sh. Ajay Singh had opened the ICICI bank account in the name SBS with himself as the sole signatory along with his brother Sh. Ashish Singh and representative Sh. Manpreet Singh Chaddha to operate the said account.

11. It is also contended that the respondent No. 2 had received a letter dated 17.03.2011 from respondent No. 1 seeking his comments regarding another letter written by an official of ICICI bank directing the respondent No. 1 to deposit all monies of SBS into the new ICICI bank account (A/c. No. 000705035600) in question. It was also contended that the respondent No. 1 entered into a substitution agreement (tripartite agreement) with ICICI bank and Mr. Ajay Singh alone, on behalf of SBS, without any authorization from the

majority shareholders. Consequently, it was contended that the substitution agreement was null and void. Further, it was also alleged that another account was opened with same bank and same branch in the name of Sh. Ajay Singh (A/c. No. 000123705035626).

12. The Ld. Sr. Civil Judge has also placed reliance upon Clause 4.2(e) of the shareholders agreement and held that as per this clause, all the bank accounts shall be operated jointly by the representatives of the petitioner and the respondent No. 2. He also noted that it was not denied by the petitioner company that the ICICI bank accounts in question, was opened without the consent of the promoter group. The Ld. Sr. Civil Judge has also noted that as per the order of an arbitrator dated 07.05.2012, the petitioner company is directed not to take advantage of 32% shares as per the shareholders agreement, unless further orders issued by the arbitral tribunal.

13. Relying upon the decisions of the Apex Court in cases, R.C. Cooper v. Union of India, XXXXXX; 1981 STPL (LE) 10902 SC and Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani & Anr., 2010 STPL(LE) 42896 SC, the Ld. Sr. Civil Judge has held that since the rights of the respondent No. 2 were infringed and hence the suit was maintainable. He also upheld the decision of the trial court declaring a breach of the shareholders agreement. Aggrieved by the orders of the Ld. Civil Judge as well as the Ld. Sr. Civil Judge, the petitioner company has approached this Court under Art. 227 of the Constitution.

14. The principal grounds of challenge being-(i) respondent No. 2 did not have the locus to file the present suit, as a shareholder cannot maintain a suit qua the property of a company; (ii) the suit, as a shareholder was liable to be dismissed for being in contravention of Sec. 80 of CPC; (iii) the impugned orders suffer from jurisdictional error; (iv) respondent No. 2 has indulged in forum shopping; (v) the suit was liable to be dismissed for non-joinder of necessary and proper parties; (vi) respondent No. 2 is guilty of suppression of facts and hence not entitled to any discretionary relief in his favour; (vii) the impugned orders are contrary to principles of granting interim relief; and (viii) the impugned orders came to be passed on a misconception of facts and law.

15. The petitioner company has contended before this Court that the impugned orders are perverse and suffer from jurisdictional infirmities because they have failed to consider that necessary parties were not impleaded and that the matter was subject to the exclusive jurisdiction of the Company Law board which was already looking into the matter. The petitioner company also contended that the plaint before the trial court was liable to be rejected for non-compliance of Sec. 80 of the CPC. Further, the petitioner company has also alleged that respondent No. 2 has indulged in forum shopping with respect to the instant dispute. It has been contended that the respondent No. 2 has instituted parallel proceedings in the Consumer Court, the Company Law Board, the Arbitral Tribunal and the Civil Courts.

16. Before advertng to the submissions of the learned counsel for the petitioner, I may reiterate that power of this court under Article 227 of the Constitution is limited being supervisory in nature and not like an appellate court. It is settled proposition of law that if the discretion exercised by the courts below is not arbitrary, capricious or perverse and the findings are not contrary to the material available on record, this court will refrain from interfering with the same. Keeping the above principle of law in mind, I have heard the Ld. Counsels for the parties and have perused the documents on record.

17. The three issues which arise in this instant petition are as follows:

a. Whether this suit in the present form is maintainable in view of the arbitration clause in the shareholders agreement.

b. Whether this suit in the present form is maintainable in view of the proceedings under Secs. 397, 398 and 402 of the Companies Act, 1956 pending before the Company Law Board.

c. Alternatively, presuming that the suit in the present form is maintainable, can this Court under the scope of Art. 227 alter the concurrent finding of facts by the lower courts.

18. With respect to the maintainability of the suit in view of the arbitration clause in the shareholders agreement, it is pertinent to note that respondent No. 2 has already initiated the arbitration proceeding. Respondent No. 2 only approached the Civil Courts seeking an injunction. Sec. 9 of the Arbitration and Conciliation Act, 1996 makes it amply clear that any party to an arbitration agreement may, before or during arbitral proceedings, or at any time after making of the arbitral award, but before it is enforced, approach a civil court seeking interim relief including an interim injunction; and that the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it. Therefore, I find that the suit is maintainable in the present form.

19. With respect to the maintainability of the suit in view of the pending proceedings before the Company Law Board, it is essential to determine whether the Company Law Board has exclusive jurisdiction over the matter and consequently, the jurisdiction of the Civil Courts are barred with respect to matters falling within the purview of Secs. 397, 398 and 402 of the Companies Act, 1956. The petitioner company have placed reliance on the judgment of this Court in HB Stockholdings Ltd. Vs. DCM Shriram Industries Ltd. and Others, , wherein it has been held on consideration of Secs. 397, 398 and 402 of the Companies Act, the Company Law Board is empowered to pass any order to meet the ends of justice and equity and to bring to an end the matters complained of and hence the jurisdiction of the Civil Court is impliedly barred.

20. In the Case of HB Stockholding (supra), the plaintiff approached this Court seeking a decree of permanent injunction in their favour, restraining the defendants from passing a proposed resolution, amongst other remedies.

Meanwhile, the plaintiffs were agitating issues with regard to mismanagement and oppression of the minority before the Company Law Board, and on issues with regard to the violation of the SEBI Act and Regulations before the Securities Appellate Tribunal. It was also submitted by the plaintiff that the reliefs claimed in the suit have not been claimed elsewhere and were solely within the jurisdiction of the High Court. One of the issues before this Court was to decide whether the Company Law Board has exclusive jurisdiction with respect to matters falling under Secs. 397 and 398 of the Companies Act and if there was an implied bar on the jurisdiction of the Civil Court.

21. The Hon"ble Bombay High Court in the case of Benett Coleman & Co. v. Union of India, 1997 (47) Comp. Cas 92, observed:

Emphasizing that the powers of the Court were wide, given the object that is sought to be achieved by the exercise of such power under Sections 397 and 398, it was explained that clauses (a) to (g) of Section 402 "indicate the widest amplitude of the Court's power.

22. Further, in the case of M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others, ; the Hon"ble Supreme Court has held:

Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right civil court would have jurisdiction. There is nothing under the Companies Act expressly barring the jurisdiction of the civil court, but the jurisdiction of the "court" as defined under the Act exercising its powers under various sections where it has been invested with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred.

23. Placing reliance on these two decisions, this Court in the Case of HB Stockholding (supra), has held that the grounds on which the relief was being sought before this Court were more or less similar to what was sought before the Company Law Board. Consequently, rejecting the plaint, this Court found that there is an implied bar upon the Civil Court to entertain matters which are under the purview of Secs. 397, 398 and 402 of the Companies Act.

24. I find that the decision of this Court in the HB Stockholding case is not applicable to the facts of the instant dispute. While it is admitted by both the parties that appropriate proceedings have been initiated under the Companies Act by respondent No. 2, it is pertinent to note that that reliefs claimed before the Company Law Board and the Civil Court are with respect to two different parties. Respondent No. 2 has sought a permanent injunction only against respondent No. 1. It is also important to note, that no relief whatsoever was sought or claimed against the petitioner company before the Civil Courts, keeping in mind that appropriate proceedings for mismanagement of the company were being pursued before the Company Law Board. In such circumstances, it cannot be held that respondent No. 2 is seeking the same remedy before the Company Law Board, as well as the Civil Courts.

25. There are numerous precedents which have held that a shareholder of a company can assert his common law right by applying to the Civil Courts. In the case of *CDS Financial Series v. BPL Communications*, 2004 (121) Comp. Cas 374 Bom., the Hon''ble Bombay High Court held:

It is clear that when there is no express provision excluding jurisdiction of the civil courts, such exclusion can be implied only in cases where a right itself is created and the machinery for enforcement of such right is also provided by the statute. If the right is traceable to general law of contract or it is a common law right, it can be enforced through civil court, even though the forum under the statute also will have jurisdiction to enforce that right. There is a plethora of decisions of various High Courts including the decisions of the High Courts of Kerala, Andhra Pradesh, Madras, Punjab and Haryana, and Calcutta in favour of the view that these sections, 397, 398 and 408 do not confer exclusive jurisdiction on the Company Court to grant relief against oppression and mismanagement. The scope of these sections is to provide a convenient remedy for minority shareholders under certain conditions and the provisions therein are not intended to exclude all other remedies.

26. The Hon''ble Bombay High Court placed reliance upon the decision of the Apex Court in *Dhulabhai vs. State of Madhya Pradesh*, wherein a five judge Bench of the Supreme Court considered the earlier decisions on this aspect and laid down the following propositions:

(1). Where the statute gives finality to the orders of the special tribunals, the civil courts jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil courts would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (2) Where there is an express bar of jurisdiction of the court an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary if the statute creates a special right or liability and provides for the determination of the right or liability and further lays downs that all questions about the said right or liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with action in civil courts are prescribed by the said statute or not. An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set out apply.

27. The Hon''ble Bombay High Court also relied upon the decision of the Apex Court in *Raja Ram Kumar Bhargava vs. Union of India*, the principle regarding implied exclusion of jurisdiction has been explained as follows:

Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts jurisdiction, then both the common law and the statutory remedies might become a concurrent remedies leaving open an element of election to the persons of inherence.

28. In the present context, it is also necessary to take note of the proposed amendments to the Companies Act vide the Companies Bill 2009. Section 391 of the Companies Bill, 2009 is extracted below:

391. No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force by the Tribunal or the Appellate Tribunal.

29. The object of section 391 in the proposed Companies Act is to exclude the Civil Courts in entertaining company disputes and to avoid the jurisdictional ambiguity. This clearly means that under the existing Companies Act, 1956, shareholders who are qualified to approach the Company Law Board u/s 397/398 and may choose to approach the Civil Court rather the Company Law Board. Therefore, it is settled that there is no express bar on the jurisdiction of the Civil Courts in matters pertaining intra-company disputes.

30. The Ld. Civil Judge as well as the Ld. Sr. Civil Judge have both primary relied upon the shareholders agreement to determine the rights of the parties thereunder. It is amply clear that as per Clause 4.2(e) of the shareholders agreement, it has been provided that all bank accounts shall be operated jointly by the representatives of the promoter group i.e. respondent No. 2 and the petitioner company. Moreover, on the basis of the copy of the resolution filed on record, the petitioner company had opened a company account for SBS with the ICICI bank without the knowledge of respondent 2. Therefore, Respondent No. 2 is well within his rights under the shareholders agreement to approach the Civil Court seeking an injunction.

31. It is important to keep in mind that the power of this Court under Art. 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature and in the normal circumstance, it is exercised where there is want of jurisdiction, error of

law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Reference in this regard can be made to the decisions of the Supreme Court in Waryam Singh and Another Vs. Amarnath and Another, and Mohammed Yusuf Vs. Faij Mohammad and Ors., (2009) 1 CLT 153(SC). Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Art. 227. In view of my above discussion, I do not see any infirmity or illegality in the impugned orders of Id. Civil Judge as well as the Ld. Sr. Civil Judge. The Petition is hereby dismissed.