
(1975) 12 CAL CK 0012
In the Calcutta High Court
Case No : Civ. Rev. Case No. 1306 of 1974

Hirendra Bhadra

APPELLANT

Vs

Titwn Eng. Co. (P) Ltd.

RESPONDENT

Date of Decision : 23-12-1975

Acts Referred:

Companies Act, 1956 — Section 10, 2(11), 203, 283, 284

Citation : 80 CWN 242

Hon'ble Judges : N.C. Mukherji, J

Bench : Single Bench

Advocate : Tapash Ch. Ray and Manab Banerjee, for the Appellant; Girija Sankar Sengupta and N.N. Chakraborty, for the Respondent

Judgement

N. C. Mukherji, J.—This application is directed against Order 8 dated 26th of March, 1974 passed by Shri P. Jethwani, Munsif, First Court, Durgapur, in Title Suit No. 2 of 1974 rejecting the application of the defendant petitioner dated February 18, 1974 challenging the inherent jurisdiction of the said Court to try the suit.

Facts of the case may briefly be stated as follows : --

On January 4, 1974, the opposite party filed a Title Suit No. 2 of 1974 in the Court of the Munsif, Durgapur against the petitioner on the allegation that keeping in dark the opposite party and/or its other Directors, the petitioner though a permanent Director of the opposite party company carried on business of supply of spare parts and other materials in violation of Section 299 of the Companies Act, 1956, and by reason thereof the petitioner became disqualified to hold the office of the Director of the opposite party company. It was alleged that on December 3, 1973 Shri P. K. Basu, another Director of the opposite party company, learnt the said fact. It was further alleged that the nineteenth meeting of the Board of Directors of the company was held on December 28, 1973 at the registered office of the company at Durgapur and the petitioner came to attend the said meeting, duly accepted the fee of Rs. 50/ - for attending the said

meeting and signed the relevant vouchers. It was further alleged that in the said meeting a resolution was passed, inter alia, resolving that the petitioner has vacated or must be deemed to have vacated the office of the Director of the opposite party company with effect from at least January 29, 1972 u/s 283 of the Companies Act, 1956 read with clause 42 of the opposite party company's Articles of Association for contravention of the provisions of Section 299 of the Companies Act. In the suit it was prayed that a decree be passed declaring (1) that the Resolution dated December 28, 1973, passed by the Board of Directors of the plaintiff company is valid, operative and binding on the defendant; (2) that the defendant has vacated or must be deemed to have vacated the office of the Director of the plaintiff company with effect from January 29, 1972, or from such earlier date as will be found from the evidence to be the date when the defendant first contravened the provisions of section 299 of the Companies Act, 1956 and (3) that the defendant has no manner of right, title and interest to act as Director of the plaintiff company and/or to interfere and intermeddle with the affairs of the plaintiff company. Another prayer was made to the effect that a decree for perpetual injunction be passed restraining the defendant from acting or attempting to acts as Director of the plaintiff company and from interfering, intermeddling with the plaintiff company's affairs. Long after the institution of the suit the petitioner came to know about the filing of such a suit against him, appeared in the suit and filed an application challenging the jurisdiction of the Court. It was submitted that the plaintiff has based its right and/or claim in the suit under the provisions of the Companies Act, 1958. The company and its Directors being creature of the said Companies Act, the plaintiff was not entitled to any relief in the suit on the basis of any common law right. The learned Munsif after hearing both the parties dismissed the application holding that he had jurisdiction to entertain the suit. Being aggrieved by the aforesaid order the defendant has come up in this Court.

Mr. Tapas Chandra Ray, learned Advocate appearing on behalf of the petitioner, submits that the learned Munsif acted illegally and in excess of jurisdiction by rejecting the petitioner's application. It is contended that the learned Munsif failed to appreciate properly the true import of the suit if the opposite party and acted with material irregularity by proceeding on the basis that the plaintiff in the suit did not seek to enforce any of the special rights created by the Companies Act. Mr. Ray argues with much force that the learned Munsif failed to appreciate properly the true scope and import of the various provisions of the Companies Act, 1956, and acted with material irregularity by proceeding on the basis that there is no provision in the Companies Act whereby a company whose Director had acted in contravention of Section 229(1) but continues to hold himself out as a Director can seek the relief of declaration and injunction before the company court as defined in Section 10 of the Act. In this connection, Mr. Ray further submits that the Company is a legal entity distinct and separate from the office of a Director and the affairs of a company are carried out by the Board of Directors acting collectively and a single Director cannot act for and on behalf of

the company unless specifically empowered by the Board of Directors and any unauthorised act of a Director does not bind the company. In the scheme of the Act provision for declaration and permanent injunction against a Director on the ground of breach of Section 299(i) of the Companies Act was wholly unnecessary. Mr. Eay further contends that the learned Munsif ought to have appreciated that whatever remedy and/or steps necessary in case of breach of Section 299(i) of the Companies Act, 1956 have been provided fully and adequately in sections 299 and 203 of the said Act.

2. Mr. Ray first of all refers to Section 299 (1) of the Act which reads as follows :
--

Every director of a company who is in any way whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of Directors.

3. Sub-section (4) of Section 299 provides that "every director who fails to comply with sub-section (1) or (2) shall be punishable with fine which may extend to five thousand rupees. Mr. Ray next refers to Section 283 of the Act which provides "the office of a director shall become vacant if amongst other Acts mentioned in other clauses he acts in contravention of Section 299".

Section 284 is the provision for removal of directors. Mr. Ray contends that if really there was any violation of the provisions of the Companies Act by the petitioner, the plaintiff could very well have taken recourse to the provision of the Companies Act itself. In the facts and circumstances of the case a suit for declaration and permanent injunction is entirely mis-conceived. If already there has been a resolution of the Company dated December 28, 1973, and if that is a valid resolution it must be binding on the petitioner. It is not understood why the plaintiff rushed to the Civil Court for a declaration that such a resolution is binding on, the petitioner. Next, the plaintiff wanted a declaration that the defendant has vacated or must be deemed to have vacated the office of the Director of the company with effect from January 29, 1972, that is exactly the resolution of December 28, 1973. By the said resolution it must be deemed that the defendant has vacated the office of the Director of the company. It is again not understood what was the necessity for the plaintiff to get a declaration from a Civil Court that a resolution passed by the company is binding on the defendant and that on the basis of the said resolution it should be held that the defendant had vacated the office of the Director. The third declaration sought for was that the defendant had no manner or right, title and interest to act as Director of the company. If there was such a resolution and if there was a contravention of Section 299 the office of the Director has automatically been vacated by process of law. To support his contention Mr. Ray first refers to a decision reported in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, . In this case some principles regarding exclusion of jurisdiction of Civil

Court have been laid down, some of which are as follows : --

(i) "Where the statute gives the finality to the orders of special Tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act were not complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(ii) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of a particular Act to find adequacy or sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Mr. Ray next refers to Section 2(11) of the Companies Act which reads as follows :

The Court means (a) with respect of any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company as provided in Section 10; (b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such office.

Mr. Ray also refers to Section 10 of the Act which lays down as to which are the courts which have jurisdiction under the Companies Act. From Section 10 it is seen, that mainly the High Court has jurisdiction with regard to the matters under the companies Act. In certain cases the District Court may have jurisdiction and the Central Government by notification may empower any District Court to exercise all or any of the jurisdiction with regard to certain matters. Mr. Ray also refers to the relevant notification and from that we find that only with regard to certain sections, the District Courts have been empowered but Section 299 has been omitted.

4. Mr. Ray next refer to a decision reported in (Munnial v. Bal-want AIR (1965) P&H 24). In this case it has been held "where a liability not existing in a general law is created by a statute which at the same time gives a special and particular remedy for enforcing it, remedy provided by the Statute must be followed and it is not competent to the party to proceed by action at general law". The next case referred to by Mr. Ray has been reported in Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others, . It has been held "The Courts nominated under the Companies Act have exclusive jurisdiction to take cognizance in the matters covered by the Companies Act, and by necessary implication excludes jurisdiction of other Courts in regard to matters covered by the Companies Act. In connection with the exclusion of jurisdiction of other courts the line of enquiry is not whether there is any provision besides Sec. 10 in the Companies Act giving the Company court exclusive jurisdiction in company matters, but it is whether after having specified the courts having jurisdiction under the Companies Act the

said Act contains an "otherwise" provision excluding the jurisdiction of the courts in matters falling under the Companies Act".

5. The last case referred to by Mr. Ray has been reported in (The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others,). In this case their Lordships had to consider the jurisdiction of Civil Court in relation to industrial dispute. Their Lordships held "that if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court". It was further held that "if the industrial dispute relates to the enforcement of a right or an obligation created under the Act then the only remedy available to the suitor is to get an adjudication under the Act".

6. The learned Advocate appearing on behalf of the opposite party submits that for the alleged acts done by the petitioner there is no remedy under the Companies Act and that being so, it must be held that the Civil Court is quite competent to enter in the suit. Provisions of the Companies Act have already been referred to and the nature of the acts alleged to have been committed by the petitioner have already been mentioned. I disagree with the learned Advocate for the opposite party and hold that for the acts alleged to have been committed there was absolutely no necessity for seeking the declarations as has been sought for by the plaintiff and the matters which have been alleged against the petitioner are all matters under the Companies Act and that being so, it is only the Court which has been mentioned in Section 10 of the Act that has jurisdiction to entertain any suit. The cases referred to by the learned Advocate for the opposite party, namely, The Asansol Electric Supply Co. and Others Vs. Chunnilal Daw, and AIR 1963 S.C. 436 do not lay down any contrary view. For the reasons stated above this application succeeds and the Rule is made absolute. The order passed by the learned Munsif on 26th of March 1974 is set aside. It is held that the learned Munsif has no jurisdiction to entertain the suit. In, the circumstances let the plaint be returned to the learned lawyer for the plaintiff for presentation of the same to the proper Court if he is so advised. There will be no order as to costs.