(2002) 08 DEL CK 0084

In the Delhi High Court

Case No : CA 430/98 and 389 of 2001 in CP 211 of 1986

In Re: RF Wood and Co. Ltd.

Date of Decision : 12-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 151, 397, 398, 402

Citation : (2003) 115 CompCas 539

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : B. Mohan, for the Appellant; S.K. Kalia, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—This application has been filed in CP 211/1986 in which the provision of Section 397 and 398 of the Companies Act had been invoked. The parties in the Petition were Shri Krishna and his wife Smt. Phoola Devi as Petitioners and R.J. Wood & Co., Shri Shiv Shankar and Shri Brij Raj Kumar as Respondents. The Respondents 2 and 3 are the sons of the late Petitioners who had died on 21.1.1996 and 22nd August, 1998 respectively. This has been stated to emphasise that the Respondents in this application were not arrayed in the Petition.

2. The prayer in the main petition are as follows:-

"It is Therefore respectfully prayed that this Hon''ble Court be pleased to order that the:

1. The affairs of the Company shall hereafter be carried on with the active participation of the petitioners and for this purpose direct the Company to amend its articles in the manner provided in Section 265 of the Act and make fresh appointments of directors in pursuance of ''the articles so amended within a time fixed by this Hon''ble Court.

2. Remove respondent No. 2 from the Chairmanship of the Company and appoint

a person as Chairman for the purpose of carrying out of the amendment of the articles and the appointment of directors in accordance with the amended articles as prayed for in (1) above.

3. Direct that the petitioner No. 1 shall be co-opted as an additional director of the Company forthwith so as to provide a watch-dog on the Board of the Company.

4. Appoint a Chartered Accountant to check physically stocks, cash in hand of the Company and take into custody the books of account carry out an internal audit and submit the report of this Hon''ble Court within such time as may be prescribed by this Hon''ble Court.

5. Direct the Company to allow the petitioners to inspect books and other statutory records and permit him to take photo copies thereof.

6. Direct payment of the costs of this petition to petitioner; and

7. Pass orders and directions as may be deemed fit and proper in the circumstances of the case."

3. Reliance has been placed on the detailed orders passed by Y.K. Sabharwal, J., as His Lordship then was on 31.5.1991. Mr. Mohan, Learned Counsel for the Applicants herein, (the Respondents in the original Petition) has drawn my attention to the fact that in this very order the Petition had been listed on 18th September, 1991 for further proceedings.

4. Thereafter on 28.5.1997 when an application for bringing on the record the legal heirs of the Petitioner came up for disposal, Dr. M.K. Sharma, J. has held as follows:-

"In my considered opinion, nothing survives in the petition. There can be no substitution also of the petitioner. The petition stands dismissed as not pressed. The connected petitions, applications as also the contempt petitions also accordingly stand dismissed."

5. Subsequently, CA 430/1998 was allowed since there was no objection from any quarter against it. Thereafter, on 1.4.1998 Anil Dev Singh, J. permitted the release of the amounts deposited till then in favor of Smt. Phoola Devi Petitioner No. 2.

6. In this application the applicants seek an order, for the deposit of "license fee for the period June, 1997 to May, 1998 from M/s. Supreme Enamel and M/s. Faridabad Engineers who according to them are licensees of the Company''s premises". This statement is made by Mr. Mohan predicated on the orders passed by Y.K. Sabharwal, J. There is, however, a subsequent order passed in the presence of the parties in which the non-applicants had stated themselves to be the tenants in the premises. There is no apparent impediment in the path of the parties to change their relationship from that of licensee to that of a tenant and, Therefore, it would not be sufficient, only on a reading of the previous orders

dated 31.5.1991 to state that the non-applicants would remain licensees for all times to come. At this stage, Mr. Mohan states that proceedings have been filed in the Court of Civil Judge, Senior Division, Faridabad. My observations are only prima facie, and a definitive decision will be left to the Learned Civil Judge who seized with that dispute.

7. In order to support his contention Mr. Mohan has relied on a decision of a Single Judge of the Bombay High Court in Mohinidevi Choraria and Anr. v. Apsara Cinema Pvt. Ltd. and Ors. 1990 (69) Bom 233 . This is for the purpose that the similar question had been agitated before that High Court, viz. "whether having regard to the provisions of Section 402 of the Companies Act and the facts of the case, these applications are maintainable." In his detailed judgment, the Learned Judge has clarified that Section 402 can be invoked for seeking clarifications in or implementing the orders passed u/s 398 etc. The Learned Judge however, has not granted the relief as, according to him, it did not flow from the dispute which had originally been made before the Court in the Petition u/s 398. This is exactly the position which prevails in the present case. The dispute which was sought to be resolved through Court intervention, when it was filed in 1986, was between the father and his brother and son, who had apparently ousted the Petitioners from the control of the Company and from its benefits. The non-applicants were not parties to that dispute, and correctly so, since they had no bearing whatsoever on the relief of oppression or mismanagement. Merely because such a petition had been filed, would not keep it alive for eternity that too in respect of claims which were not connected with the original dispute.

8. The view which I am taking is fortified by the orders previously passed by M.K. Sharma, J. on 28.5.1997 when he, likewise, had come to the conclusion that the petition did not survive further consideration.

9. A useful indicator would be whether the relief now claimed could be sought for in a fresh petition. The answer, in my view, is only in the negative. Perhaps the applicants have been motivated to initiate these proceedings since these claims could not and have not been made before the Civil Judge, Faridabad.

10. The matter was argued at some length on 24.7.2002 and was argued for at least one hour today. The application is not maintainable, and in view of the opinion which I had already expressed on the last date of hearing, does not justify the amount of public time expended on this case. The application is, accordingly, dismissed with costs of Rs. 20,000/- to be deposited with the Prime Minister''s National Relief Fund within four weeks from today.

CA 293/2002 and 294/2002

11. These are the applications under Rule 9 of the Company Court Rules read with Section 151 CPC and under Order VI Rule 17 read with Section 151 CPC and Rule 9 of the Company Court Rules for condensation of delay and for amendment respectively. The applications are allowed.