

(1960) 10 AHC CK 0011
In the Allahabad High Court

Case No : Civil Miscellaneous Application in Company Case No. 32 of 1956

J.K. Investment Trust Ltd. and Others	APPELLANT
Vs	
Muir Mills Co. Ltd. and Others	RESPONDENT

Date of Decision : 10-10-1960

Acts Referred:

Companies Act, 1956 — Section 397, 398

Citation : AIR 1961 All 413 : (1961) 31 AWR 120 : (1962) 32 CompCas 893

Hon'ble Judges : W. Broome, J;A.P. Srivastava, J

Bench : Division Bench

Advocate : G.S. Pathak and R.S. Pathak, for the Appellant; J. Swarup, for the Respondent

Final Decision : Dismissed

Judgement

Srivastava, J.—An application was filed under Sections 397 and 398 of the Indian Companies Act of 1956 against the company itself, its managing agents and certain of its directors. There were eight respondents to the petition, One of them, viz. respondent No. 5, was Sri Hari Shankar Bagla. The reliefs prayed in the application were as follows :

- (a) That the existing Managing Agency agreement between the respondent company and the Indian Textile Syndicate (Private) Limited be terminated and the said Indian Textile Syndicate (Private) Limited be removed from their office as Managing Agents of the respondent company.
- (b) That the existing sole selling agency agreement between the respondent company and the Kanpur Agencies (Private) Limited be terminated and that the said Kanpur Agencies (Private) Limited be removed from their office of the sole selling agents of the respondent company.
- (c) That respondents Nos. 2, 3, 4, 5 and 9 be removed from their office as Directors of the respondent company.

(d) That the respondents or one or more of them be ordered to contribute such sum or sums of money to the assets of the respondent company by way of compensation in respect of misapplication, misfeasance and breach of trust committed by them or any of them as this Hon''ble Court may deem fit.

(e) That suitable directions be given for the regulation of the conduct of the respondent company's affairs in future, including the holding and conduct of the meetings of the company.

(f) That the respondent company be directed to rectify the Register of Members by registration of transfer of 5,473 preference and 2,536 Ordinary shares in the name of Bengal and Assam Investors Limited, the registration of which has been wrongly refused.

(g) That for the purpose aforesaid all such directions may be given, inquiries made and accounts taken as this Hon''ble Court may deem fit.

(h) That the respondents or one or more of them be ordered to pay to the applicants costs of this application or that the same be otherwise provided for.

(i) That such further and other reliefs be allowed as the nature of the case may require."

Reliefs (c), (d), (g) and (h) of these reliefs could be said to have been claimed against Sri Bagla personally.

2. During the pendency of this application Sri Hari Shanker Bagla died. The present application has been made on behalf of the applicants for bringing on record in his place five persons who are claimed to be the personal heirs and legal representatives of Sri Hari Shanker Bagla. The application is opposed on behalf of the proposed heirs mainly on the ground that the cause of action giving rise to the application did not survive after the death of Sri Bagla against his heirs and there is, therefore, no question, of the heirs being impleaded in the present proceedings.

3. At one stage a question arose as to whether Sri Bagla had left a will and his estate could on that account be said to be represented by an executor or an administrator. The applicants could not trace out any will and on behalf of the proposed heirs Sri Jagdish Swarup, their learned counsel, has stated that to the best of the knowledge and information of the heirs Sri Hari Shanker Bagla had not left will at his death. In this state of affairs there can be no question of the estate of the deceased being represented by an executor or administrator.

4. The simple question that, therefore, arises is whether in a proceeding like the present instituted under Sections 397 and 398 of the Companies Act it is permissible to implead the heirs of the deceased director and to proceed against them.

5. It has been very fairly conceded on behalf of the applicants by Sri R. S. Pathak that so far as proceedings u/s 543 of the Companies Act are concerned, it is well

established that the proceedings cannot be continued against the heirs and legal representatives of a deceased director. This view was taken by this Court first in *Official Liquidators Vs. Jugal Kishore and Others*, and was later upheld by a Division Bench in *Dwarka Prasad Vakil v. L. Janardan Swarup* L. P. A. No. 3 of 1954, D/- 5-5-1954 (All). To the extent to which the present proceedings can be treated as proceedings against the deceased u/s 543 of the Companies Act, therefore, it is not possible to bring on record his legal representatives and to proceed against them after the death of the deceased.

6. Learned counsel for the applicants, however urged that the words of Section 398 of the Indian Companies Act were very wide and under the general powers conferred by Sub-section (2) of that section it is open to this Court not only to bring on record the heirs of the deceased director but also to pass appropriate orders against them which could have been passed u/s 543 of the Act No authority is cited in support of this proposition but reliance is placed] on the words of Sub-section (2) of Section 398. That sub-section provides as follows:-

"398. (2). If, on any application under Sub-section (1), the Court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."

7. It will be noticed that the intention of the Legislature in enacting the sub-section was to arm the Court with full powers if it was of opinion that the situation mentioned in Sub-section (1) of Section 398 had arisen. But the powers so widely conferred could be utilized only to bring to an end the situation which had already arisen or to prevent the matter complained! of or apprehended continuing in future. If the section stood alone it could not be possible under its provisions to enforce some past liability of a director which may have arisen on account of his act, omission or negligence.

That is why it became necessary to enact Section 406 and to provide in it that even in relation to an application u/s 397 or 398, Sections 539 to 544, both inclusive, shall apply in the form set forth in Schedule XI. As the special excludes the general, this necessarily implies that if in proceedings u/s 397 or 398, it becomes necessary to enforce the past liability of a director recourse must be had to the provisions of Sections 539 to 544 in their amended form and without having recourse to those sections it is not possible under the general powers of Section 398 to enforce that liability.

We are, therefore, thrown back to the provisions of Sections 539 to 544 and it is only by the application of those provisions that the liability of the respondent No. 5 as a director could be enforced in the present proceedings. So far as those sections are concerned, as we have stated above, it is settled that the liability can be enforced only against a living director and not against his heirs or legal

representatives after his death. It is, therefore, not possible to accept the argument of the learned! counsel for the applicant that the heirs of the deceased Sri Hari Shanker Bagla can be brought on record and proceeded against in these proceedings without having recourse to Section 406 or the provisions of the sections mentioned therein.

8. In the result the request of the applicants cannot be accepted and the heirs and legal representatives of Sri Hari Shanker Bagla cannot be brought on record in his place. As Sri Bagla is dead his name will be scored out of the array of respondents in the original application. The application for bringing on record his heirs is rejected with costs.