
(1950) 08 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 319 of 1948

Karnal Distillery Co. Ltd.

APPELLANT

Vs

L.P. Jaswal

RESPONDENT

Date of Decision : 17-08-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 11, 35A

Citation : (1950) 08 SHI CK 0001

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : H.L. Sarin, for the Appellant; Krishan Lal Mehra, for the Respondent

Judgement

Harnam Singh, J.—To appreciate the point arising in this case the facts must be set out in some detail.

2. On 18-12-1946, Mr. Ladli Parshad Jaiswal instituted Civil Suit No. 374 of 1946 for declaration to the effect that the meeting and the proceedings of the Board of Directors of the Karnal Distillery Co. Ltd. Karnal held on 3-3-1946, and the extraordinary general meeting held on 28-3-1946, and all meetings of directors held after 28-3-1946, were ultra vires, illegal, ineffective and a fraud on the company and that the unanimous resolutions of the extraordinary general meeting dated 16-10-1945, continue to be in force and for a permanent injunction restraining the Defendants from acting upon or carrying into effect the resolutions passed in the meeting of the Board of Directors held on 3-3-1946, in the extraordinary general meeting held on 28-3-1946, and in other meetings of the Board of Directors held after 28-3-1948. In that suit the trial Court fixed the following issues:

(1) Whether the resolutions mentioned in para. 6 of the plaint and passed at the extraordinary general meeting dated 16-10-1945, are ineffective as having been passed under coercion or undue influence?

(2) Whether the resolutions mentioned in issue 1 are invalid either because they

amount to veto or result in creating a deadlock or being in contravention of the statutory provisions of the Companies Act?

(3) If issues 1 and 2 are not proved or proved respecting some of the resolutions, does the non-compliance with such resolutions amount to a more irregularity and what is its effect on the subsequent impugned meetings?

(4) Whether a notice for the impugned meeting of 3-3-1946, was necessary under the Articles of Association?

(5) If issue 4 is proved, what is the effect of noncompliance on that meeting?

(6) If issues 1 or 2 are proved and issue 4 is not proved, was the meeting of 3-3-1946, illegal or ultra vires?

(7) Did not the Plaintiff receive a notice of the meeting of 28-3-1946?

(8) If issue 7 is decided against the Plaintiff, was the notice sent in proper form and what is its effect?

(9) If issue 7 is decided in Plaintiff's favour, was the meeting of 28-3-1946 valid for any reason?

(10) If the meeting dated 3-3-1946 is found to be illegal or ultra vires, is the meeting dated 28-3-1940, valid and binding?

(11) Do the resolutions passed at the meeting dated 28-3-1946, amount to fraud on the minority members or are otherwise (for reasons given in the plaint) illegal or ultra vires?

(12) Does the matter agitated in the plaint relate to the internal management of the company and what is its effect?

(13) Whether the relief of injunction in effect amounts to reinstatement of the Plaintiff as Chairman and director of the company ? If so, is the Plaintiff entitled to injunction to that extent?

(14) Whether the Plaintiff is entitled to injunction as prayed for?

(15) Are the Defendants entitled to special costs u/s 35A, CPC , and how much?

(16) Relief?

3. On 28-3-1947, the Karnal Distillery Co. Ltd. Karnal, instituted a civil Suit No. 99 of 1947 for the recovery of Rs. 44,070-13-0 from Mr. Ladli Parshad and from M/s. L.P. Jaiswal and Co., Karnal. Mr. L.P. Jaiswal is the sole proprietor of Defendant 2.

4. In Civil Suit No. 99 of 1947, the trial Court fixed the following preliminary issues:

(1) Whether the description of the Plaintiff as given in the plaint is correct?

(2) Whether the description of the Defendant as given in the plaint is correct?

(3) Whether the suit is liable to be stayed u/s 10, Code of Civil Procedure?

5. Now, Civil Suit No. 99 of 1947 proceeds upon the allegation that Mr. L.P. Jaiswal, Defendant 1, was the managing director of the Karnal Distillery Co. Ltd. Karnal between April 1941 and October, 1945. The case then states that between 31-3-1944 and 3-7-1944, Mr. L.P. Jaiswal, acting as the Managing Director of the Plaintiff-corporation fraudulently and with a view to derive personal benefit sold to M/s. L.P. Jaiswal and Co., Karnal, 25,146 gallons of methylated spirit at the rate of Rs. 1-1-0 per gallon while the market value of methylated spirit on the relevant dates was Rs. 2-8-0 per gallon thereby causing loss to the Plaintiff-corporation in a sum of Rs. 36,147-8-(sic). Adding interest at the rate of 6 per cent, per annum the Plaintiff-corporation has instituted the suit for the recovery of Rs. 44,070-13-0 from Defendants 1 and 2.

6. The trial Court has found issues I and (sic) against the Defendants and there is no contro-vorsy about those issues in these proceedings. Issue 3 proceeds upon the objections that Mr. S.P. Jaiswal, the person signing and verifying the plaint has no authority to do so, that the suit has not been filed with the authority of the Plaintiff-corporation and that Mr. S.P. Jaiswal who has signed and verified the plaint is not the Managing Director of the company and has no right to institute the suit on behalf of the company.

7. Clearly, any person acquainted with the facts of the case can verify the plaint and there is no doubt that it was open to the Plaintiff corporation to authorise any person to institute the suit. The argument raised is that Mr. S.P. Jaiswal has instituted the suit purporting to act as the Managing Director of the Plaintiff-corporation and that the status of Mr. S.P. Jaiswal is in dispute in Civil Suit No. 374 of 1946.

8. In deciding issue 3, the real question is whether the matter in issue in Civil Suit No. 99 of 1947 is also directly and substantially in issue in Civil Suit No. 374 of 1946 within the meaning of Section 10, Code of Civil Procedure., 1908.

9. Now, to bring the case within Section. 10 of the Code it is necessary that every matter in dispute should be directly and substantially in issue in the two suits. Indeed, the object of the rule contained in Section 10 of the Code is to prevent Courts of concurrent jurisdiction from simultaneously trying and adjudicating upon two parallel litigations in respect of the same subject-matter. A comparison of Sections 10 with Section 11 of the Code shows that Section 10 bars the trial of a suit whereas Section. 11 bars the trial of a suit and of an issue provided the conditions specified in Sections 10 and 11 are satisfied. In plain English the words "matter in issue" occurring in Section 10 mean "the entire matter in, controversy between the parties" and not one, of several issues in the case. Authority for this view is to be found in Gargi Din Misra Vs. Debi Charan and Mt. Nasiban Bi v. Mt. Iqbal Begum AIR 1935 Lah. 816 : 160 I.C. 305.

10. Applying the test stated in the preceding paragraph to the present case I feel no doubt that the matter in issue in Civil Suit No. 99 of 1947 is not directly and substantially in issue in Civil Suit No. 374 of 1946.

11. For the foregoing reasons, I allow Civil Revn. No. 319 of 1948 with costs, set aside the order under revision and remit the case to the trial Court for trial in accordance with law.

12. Considering then that the suit was instituted on 28-3-1947, and the amount involved is Rs. 44,070-13-0 I have no doubt that the trial Court will proceed with the trial of Civil Suit No. 99 of 1947 with expedition.

13. Parties are directed to appear in the trial Court on 9-10-1950.