

(1994) 04 GUJ CK 0028

In the Gujarat High Court

Case No : Civil Revision Application No's. 553 and 586 of 1989

Kaushiklal Nanalal Parikh and etc.

APPELLANT

Vs

Mafatlal Industries Ltd. and Others

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 21
Companies Act, 1956 — Section 397, 398

Citation : AIR 1995 Guj 115 : (1995) 84 CompCas 752 : (1995) 1 GLR 557

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : J.V. Desai and S.N. Shelat, for the Appellant; S.B. Vakil and A.C. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

A.P. Ravani, J.—Both these civil revision applications arise out of common order dated 9th September, 1988 passed by learned City Civil

Court Judge in Civil Suit No. 3181 of 1987 and Civil Suit No. 3182 of 1987. By this order the learned Judge directed to frame the following issue

:

Does this court have jurisdiction to try this suit?

The trial court also directed that the preliminary issue be heard first.

2. Petitioners-original plaintiffs are share holders of defendant No. 1 Company. As it appears from the order of the learned trial court Judge, the

case of the plaintiffs in both the suits is described in the para 2 of the order. As regards this description, there is no dispute. Hence the relevant part

is reproduced hereinbelow:

The plaintiff have filed Civil Suit No. 3181 of 1987 challenging purchase of certain equity shares of NOCIL in 1983-84, 1984-85 and 1985-86,

the purchase of certain non-convertible debentures of NOCIL in 1982-83, resolutions Nos. 11, 12 and 13 purported to have been passed at the

Annual General Meeting of defendant No. 1-Company held on 23rd August, 1986, the resolution of the Board of Directors of defendant No. 1-

Company in accepting the proposal of Standard Mills Company Limited for the sale of 2,25,000 equity shares of NOCIL at a price of Rs. 550/-

per share plus the transfer fee and incidental charges (hereinafter referred, to as the "NOCIL Deal" for the sake of convenience), the resolution of

the Board of Directors of defendant No. 1-Company stated to have been passed on 13th November, 1986 making a rights issue of 8,10,000

equity shares of the face value of Rs. 100/- each for cash at a premium of Rs. 200/- per share to the existing shareholders on the rights basis

(hereinafter referred to as the "rights issue" for the sake of convenience), the proposed investment of Rs. 7,29,46,400/- of defendant No. 1-Com-

pany in subscribing for certain equity shares of Mafatlal Fine Spinning & Manufacturing Co. Ltd., at a premium of Rs. 100/- per share, the

proposed investment in the purchase of debentures of Mafatlal Engineering Industries Ltd., and of giving loans to it, and the notice dated 23rd

April, 1987 calling the Extraordinary General Meeting of defendant No. 1 on 24th June, 1987 and for a permanent injunction restraining the

defendants to inter alia from allotting any shares from the rights issue and from proceeding further with the NOCIL Deal. The plaintiff in Civil Suit

No. 3182 of 1987 has filed this suit against the same defendants challenging the legality and validity of the rights issue as also that of NOCIL Deal.

3. The defendants appealed in the suit and resisted the suit on facts as well as on law points. It was inter alia contended that the Court had no

jurisdiction to try the suit. The defendants took out chamber summons Exh. 47 and 48 in Civil Suit No. 3181/87 and chamber summons Exh. 40

and 41 in civil Suit No. 3182/87. The defendants prayed that preliminary issue as to jurisdiction be raised and be, ordered to be decided as

preliminary issue. By order dated February 17, 1988 the learned trial court Judge rejected the applications by detailed order.

4. The order passed by the trial Court rejecting the applications filed by the, defendant-Company was challenged by way of civil revision

applications No. 252/88 and 253/88 before this High Court. Learned single Judge who heard the revision applications found that the trial court

had discussed the merits of the suit and hence the decision was required to be quashed and set aside, and ordered to remand the matter to the trial

court. The relevant part of the judgment and order passed by this court on April 15, 1988 in the aforesaid revision application reads as follows:

The grievance made by Mr. Vaikl, learned counsel for the petitioners at the outset, is that while deciding the question in both these suits, whether

the concerned issues should be heard as preliminary issues under Order 14(2) or not, the learned Judge, has gone on the merits of the issues and

has observed on the merits of the issues. It is found that the judgment of the learned Judge is a very comprehensive one and while deciding the

question whether the issues should be tried as preliminary issues, the learned Judge has also discussed various aspects on the merits of the case. It

was not necessary for the learned Judge to go into the merits of the issues to find out whether there was any substance in them. That stage would

have reached after the learned Judge decided to try concerned issues as preliminary issues. Consequently only on the short ground of procedural

error, these orders under Revision will have to be quashed and set aside.

Thereafter this Court made it clear that it would be open to the trial court to decide the question with regard to framing of preliminary issue and, as

to whether the same should be decided as preliminary issue or not in

accordance with law.

5. After the aforesaid order the matter was remanded and heard again by the learned trial court Judge. The trial court, after hearing the parties,

allowed the application as per order dated September 9, 1988 and gave direction to raise preliminary issue regarding jurisdiction of the Court to

hear and decide the suits. It is against this order passed by the trial court that these revision applications have been filed.

6. The trial court has committed jurisdictional error in holding that the decision of this Court rendered in the case of Mohanlal Ganpatram v. Sayaji

Jubilee Cotton and Jute Mills Co. Ltd., reported in , was not required to be considered at this stage. In para 49 of the reported decision (Coram:

P. N. Bhagwati, J. (as he then was)) it is inter alia observed that a resolution may be passed by the Directors which may be perfectly legal in the

sense that it does not contravene any provision of law and yet it may be oppressive to the minority shareholders or prejudicial to the interests of the

Company. Such a resolution can certainly be struck down by the Court u/s 397 or 398 of the Companies Act, 1956, Equally a converse case can

happen. A resolution may be passed by the Board of Directors which may in the passing contravene a provision of law, but it may be very much

in the interests of the Company and of the shareholders. Thereafter it is observed as follows (at pp. 103 and 104 of AIR):

Such a resolution may be attacked as invalid in a suit or other appropriate proceeding but not being oppressive to the minority shareholders or

prejudicial to the interest of the Company, it cannot be challenged in a petition u/s 397 or 398. I do not subscribe to the proposition that every

action of the Directors which is in contravention of a provision of law must necessarily be prejudicial to the interests of the company. These two

represent different angles of view and one may exist without the other.

As to whether such a situation as envisaged by this Court in the aforesaid decision exists in the present proceedings or not and as to whether the

case put forth by the petitioner-plaintiff may be even out of purview of Sections 397 or 398 of the Companies Act, 1956 would require recording

of evidence. Without recording evidence this question could not have been decided. The trial court has committed jurisdictional error in not

following the binding decision of this Court.

7. Moreover, it is settled principle of law that all the issues be decided together: In this connection reference may be made to a decision of learned

single Judge of this Court in the case of Saurashtra Cement & Chemical Industries Ltd. v. Esma Industries Pvt. Ltd., reported in 1989 (2) 30 GLR

1263. In para 17 of the decision, after referring to Order 14, Rule 2 of Code of Civil Procedure, it is observed as follows :

After the amendment in this provision in 1976, it becomes clear that the legislature, has frowned upon trial of suits piece-meal. The reason is

obvious. If on a preliminary issue, the suit is tried and if the issue is decided one way or the other, it would lead to further proceedings by way of

appeal or revision. Number of years would lapse and ultimately when the highest Court which is approached in hierarchy decides the matter one

way or the other a stage may be reached where the suit has to be tried further

and that would involve lot of delay and the parties would be tried further and that would involve lot of delay and the parties would get completely exhausted and exasperated by passage of time underlying such piece-meal trial of suits. With" a view to avoiding such delay and exasperation to the litigating public, this provision of Order 14, Rule 2 in the amended form has, been brought in the statute book. Consequently, underlying principle of this provision is laudable and beneficial one. As per this provision, it is indicated by the legislature that suit must be tried as a whole in all issues.

In view of this settled legal position, the order passed by the trial court is required to be quashed and set aside. The application submitted by defendant No. 1 is required to be dismissed.

8. In the result the revision applications arc allowed, The order dated September 9, 1988 passed by the trial Court below Exh. 47-48 in Civil Suit

No. 3181 of 1987 and below Exh. 40-41 in Civil Suit No. 3182 of 1987 is quashed and set aside. The chamber summons taken out by Exh. 41-

42 in Civil Suit No. 3182 of 1987 and by Exh. 47-48 in Civil Suit No. 3181 of 1987 are ordered to be dismissed. The trial court is directed to

proceed further with the suit in accordance with law as expeditiously as possible. Rule made absolute accordingly in both the revision applications

with no order as to costs.

9. At this stage learned counsel for the opponents requests that the operation and implementation of the aforesaid order be stayed so as to enable

the opponent-original defendants to challenge the legality and validity of the aforesaid order before the Supreme Court. In facts of the case the

request is refused.