

(1987) 09 BOM CK 0026
In the Bombay High Court

Khimji M Shah and others

APPELLANT

Vs

Ratilal Damodardas Modi and others

RESPONDENT

Date of Decision : 11-09-1987

Acts Referred:

Companies (Court) Rules, 1959 — Rule 6
Companies Act, 1956 — Section 210, 397, 398

Citation : (1987) 3 BomCR 236 : (1987) 89 BOMLR 607 : (1990) 67 CompCas 185

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Advocate : S.H. Doctor, for the Appellant; J.B. Chinoi and Ms. Naina Dutia, for the Respondent

Judgement

Mrs. Sujata V. Manohar, J.—This is a company application for amendment of the petition by adding respondents Nos. 6,7,8 and 9 in the company application as party respondents to the main petition and for adding paragraphs 30A to 30T as well as several additional prayers as set out in the schedule to the company application. The length of the amendments proposed could have been substantially reduced had the applicants applied themselves to it. But this is no ground for rejecting the application. Hence, I propose to consider the amendments on merits.

2. Company Petition No. 573 of 1984 is a petition under sections 397 and 398 filed by the shareholders representing about 35 per cent. of the shareholding in the fifth respondent company, Reliable Extraction Industries Pvt. Ltd. Respondents Nos. 1 to 4 in the petition hold an aggregate of about 31 per cent. of the equity shares in the said company. Petitioners Nos. 1,2,3 and respondent No. 1 constituted, at the material time, the board of directors of the fifth respondent company. It seems that by reason of events which have transpired subsequent to the filing of the petition, the present amendments are being sought.

3. After the filing of the present petition, at the interim stage, the parties agreed that the ninth respondent would be appointed as the chairman and managing director of the fifth respondent company. Thereupon, certain orders were taken in the company petition. The events which led to the appointment of respondent No. 9 as the chairman and managing director of the fifth respondent company have been set out in the proposed amendments.

4. It is the case of the petitioners that after February-March, 1987, respondent No. 1 and/or the shareholders belonging to his group consisting of his sons and daughters have committed various acts which also amount to oppression and mismanagement. It seems that some of the shareholders belonging to the group of the first respondent issued a notice dated May 11, 1987, for convening an extraordinary general meeting of the shareholders of the fifth respondent company on June 2, 1987, at the registered office of the company. The dispute is as to whether this extraordinary general meeting was at all held and whether this alleged extraordinary general meeting was validly convened as prescribed by law. It is contended by the respondents that at this alleged extraordinary general meeting resolutions were passed removing respondent No. 9 as the chairman and managing director, removing petitioner No. 1 as the executive director of the company and appointing respondents Nos. 6, 7 and 8 as the executive directors of the company with immediate effect. The respondents have also allegedly convened a meeting of the newly constituted board of directors, which is challenged by the amendment.

5. It is also the contention of the petitioners that respondents Nos. 7 and 8, who are allegedly the newly appointed executive directors of the fifth respondent company, have been involved in offences involving moral turpitude inasmuch as these respondents were arrested in connection with offences of criminal conspiracy to abduct, torture and extort money. They have been released on bail and the case is still pending against them. By the amendment, the petitioners want to restrain respondents Nos. 7 and 8 from acting as the directors of the company. Some additional acts of fraud and misappropriation of funds in the year 1984 and thereafter by respondent No. 1 have also been set out in the proposed amendments.

6. Mr. Chinoy, who appeared for respondents Nos. 1, 2 and 4 to oppose the amendments, stated that he had no objection to respondents Nos. 6, 7 and 8 being added as party respondents to Company Petition No. 573 of 1984. He, however, submitted that the rest of the amendments should not be allowed because, according to him, these amendments deal with the events subsequent to the filing of Company Petition No. 573 of 1984. It is his contention that such subsequent events cannot be gone into in deciding the company petition under sections 397 and 398 of the Companies Act. In support, he relied upon a decision in the case of Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, . In this case, the applicants had obtained the consent of not less than 1/10th of the members of the company while filing a

petition under sections 397 and 398 of the Companies Act. After the petition was presented, some of the shareholders withdrew their consent. The court held that this subsequent withdrawal of consent is not relevant if the petition had the support of the requisite number of members at the time when the petition was presented. This case does not support the contention of Mr. Chinoi. The judgment merely states that if a petition is validly filed and complies with all the requirements of sections 397 and 398 of the Companies Act at the date when it is filed, any subsequent withdrawal of consent by some of the shareholders would not invalidate the petition. The decision does not set out that subsequent events cannot be looked into in deciding a petition under sections 397 and 398 on merits.

7. The second case relied upon by Mr. Chinoy was that of Shanti Prasad Jain v. Kalinga Tubes Ltd. (1965) 35 Comp Cas 351. The court there held that it is necessary in a petition under sections 397 and 398 of the Companies Act to show that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events had to be considered not in isolation but as a part of a consecutive story. It said "There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members". Mr. Chinoy emphasised the words "up to the date of petition" and submitted that only conduct up to the date of the petition can be looked into in such a petition. I am unable to agree. The judgment points out that there should be a course of conduct which could be considered as oppressive to some of the members, burdensome, harsh and wrongful and such conduct should continue till the date of the petition. Stray acts which may amount to such burdensome conduct cannot be enough. There should be continuous course of conduct up to the date of petition. The judgment does not deal with the subsequent conduct after the date of filing of the petition. It merely says that if there is no such conduct continuing till the petition, the petition would fail. From this a conclusion cannot be drawn that if there are any subsequent acts of oppression or mismanagement after the date of the filing of the petition, this cannot be incorporated in a petition by way of amendment.

8. Under rule 6 of the Companies (Court) Rules, 1959, the provisions of the CPC so far as applicable shall apply to all proceedings under the Companies Act. The provisions relating to amendment of pleadings would, therefore, apply to amendment of pleadings under the Companies Act. There is no bar to an amendment which incorporates subsequent events if the amendment is otherwise necessary for the proper determination of issues between the parties. In the case of Promode Kumar Mittal v. Southern Steel Ltd. (1980) 50 Comp Cas 555, the Calcutta High Court has observed in a petition under sections 397 and 398 of the Companies Act that the court can take notice of all subsequent events to grant reliefs finally after trial in a company matter and the interim orders passed from time to time by the court in all applications, the meetings held under the chairman appointed by the court, and the resolutions passed by

majority shareholders and directors present therein are all relevant. In the case of *Inder Kumar Jain v. Osra Bottling Co. (P.) Ltd.* (1977) 47 Comp Cas 194, the Delhi High Court has held that on an analogy of Order VI, rule 17 of the Code of Civil Procedure, the High Court has power to grant leave to amend a pleading in a petition u/s 397 or section 398 of the Companies Act, 1956, for relief against mismanagement or oppression in the affairs of a company. In the case of *Bastar Transport and Trading Co. v. Court of Wards, Bastar* (1955) 25 Comp Cas 108 ; AIR 1955 Nag 78, the court has held that the provisions of the Code of Civil Procedure, so far as applicable, would govern proceedings under the Companies Act also. There is thus no provision under the Companies Act which prohibits a court from looking at subsequent events in a petition under sections 397 and 398 of the Companies Act.

9. It is next contended on behalf of the respondent that in a company petition of this nature, only the grievance of the petitioners as shareholders can be enquired into ; if they have any grievance as directors of a company, such grievance cannot form the subject-matter of a petition u/s 397 and/or section 398 of the Companies Act. It is undoubtedly correct that petitions u/s 397 deal with applications by members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. Similarly, section 398 deals with applications by members of the company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company or that a material change has taken place in the management or control of the company and by reason of such change it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company. These are all applications by members. In the case of *Lundie Brothers Ltd., In re* (1965) 2 All ER 692, a petitioner, who was one of three directors and shareholders in a private company, presented a petition for relief u/s 210 of the English Companies Act, 1948, which is equivalent to section 397 of the Companies Act. The petitioner was ousted from the control of the company and was removed as a working director of the company. It was held that no element of lack of probity or fair dealing to the petitioner in his capacity as shareholder in the company had been established, for, his having been ousted as a working director related to his status as director and not as shareholder. It was held that the petitioner was not entitled to relief u/s 210 of the Companies Act. In the present case, however, the amendments do not deal merely with removal of directors of the fifth respondent-company. The acts complained of relate to requisition various shareholders of the fifth respondent company, as a result of which an extraordinary general meeting is purported to have been held and certain new directors appointed. At this meeting, the chairman and managing director was also sought to be removed. The petitioners contend that some of the directors so appointed are involved in charges of criminal conspiracy and if they are appointed as directors of the company, the affairs of the company ;will

be so conducted as to be oppressive to the shareholder especially the petitioners' grievances as directors of the company. The acts complained of affect them as shareholders also. In any case, this is a matter which can be looked into in depth at the hearing of the petition. The amendments cannot be rejected on this ground.

10. In the premises, the judge's summons is made absolute in terms of prayer (a). Amendments to be carried out within one week. Liberty to respondents Nos. 1 to 4 to file an additional affidavit-in-reply in Company Petition No. 573 of 1984 confined to the amendments.

11. Newly added respondents Nos. 6 to 9 to file their affidavit-in-reply within three weeks from being joined as respondents and served.

12. Costs to be costs in the cause.

13. Company Petition No. 573 of 1984 to be on board for hearing after six weeks.