

(1996) 12 DEL CK 0058

In the Delhi High Court

Case No : Interim Application No's. 2784 and 2786 of 1994 and 1873 of 1996 and Suit No. 636 of 1994

Malvika Madan Sehgal and Another

APPELLANT

Vs

M.M. Sehgal Limited and Others

RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 2

Citation : (1997) 1 AD 512 : (1998) 91 CompCas 133 : (1997) 65 DLT 381

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajeev Sawhney, Arjun Pant, K.N. Bhat, Yakesh Anand, Mamta Mehra, Kajal Chandra and Gaurav Duggal, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is an application (CA No. 2784/94) filed by the plaintiffs praying, inter alia, that R restraint order be passed against defendant Nos. 1 to 28 from alienating, transferring, selling, mortgaging or parting with the possession of the property situated at 3, Friends Colony, New Delhi. It seems that on 3.2.1995 an ex parte order was passed in favor of plaintiffs directing the defendants to maintain status-quo with regard to its fixed assets. The defendants have vehemently contended that suit itself is not maintainable and ex parte stay be vacated.

(2) Mr. Rajiv Sawhney, learned Counsel appearing for the plaintiffs, has vehemently argued that a Trust was created in favor of the plaintiffs, who are the daughters of defendant Nos. 2 and 3, by defendant No. 29, Mrs. Prabha Sehgal, Sister-in-law of defendant No. 2, with defendant Nos. 2 and 3 appointed as Trustees. It has further been contended that defendant Nos. 2 and 3 transferred the entire issued share capital of the defendant No. 1 Company to the Trust. That entire issued share capital, which was transferred by the defendant Nos. 2 and 3, was two shares of Rs. 10.00 each. It has been argued that defendant No. 2

executed a Transfer Deed transferring the one share held by him in his personal capacity to himself as the Trustee under the Trust. Likewise, defendant No. 3 also transferred the one share held by her in her personal capacity to herself as the Trustee under the Trust. plaintiffs have also contended that pursuant to the aforesaid transfer of shares, necessary entries were recorded in the relevant statutory record of the Company and the Register of Members. Mr. Sawhney has further contended that the said defendant Nos. 2 and 3, acting as Trustees, also executed separate declarations declaring that the beneficial interest in the shares in question had been transferred to the M.M. Sehgal Family Trust and the said two shares were being held in the said Trust. He has contended that the purpose and object of transferring the entire share capital to the Trust was for the benefit of the plaintiffs and defendant No. 29 with the further object of the beneficial enjoyment of the property held by the Company. He has also contended that in total breach and violation of their fiduciary duties as Directors and Trustees, defendant Nos. 2 and 3 for collateral purposes and for their personal gains entered into an arrangement and evolved a scheme to deprive the Trust of all its benefits and entered into wrongful acts regarding the property situated at 3 Friends Colony, New Delhi. Mr. Sawhney has challenged the minutes of the Board of Directors held on 24th November, 1982, whereby defendant Nos. 5,6 and 7 were co-opted as Additional Directors of defendant No. 1, on the ground that it was merely a paper transaction and no meeting of the Board of Directors took place on the said date. He has also challenged the Resolution dated 24th November, 1982 whereby defendant Nos. 5,6 and 7 were co-opted as Additional Directors. He has argued that merely blank papers were obtained by defendant No. 5 by creating false records. Learned Counsel appearing for the plaintiff has contended that at the first instance, there could not have been any allotment of shares as it violated the Articles of Association and more over, no such meeting of the Board was held to approve the said allotment. He has also contended that the said allotment was against public policy and on the basis of the said argument, he has argued that same being a paper transaction was wholly unlawful and illegal for unlawful consideration. Mr. Sawhney has further contended that all the aforesaid irregularities and illegalities have come to the notice of the plaintiffs on 8th March, 1994 when defendant Nos. 2 and 3 transferred the shares in question as Trustees by executing and handing over the Share Transfer Deed to the plaintiffs as beneficiaries under the aforesaid Trust. He has further contended that there has been no valid meeting held since the year 1982 and no duly constituted Board exists, Therefore, plaintiffs were unable to get the shares registered in their names. On the basis of these prayers, suit has been filed by the plaintiffs with the prayer for passing a decree of declaration declaring the allotment of 49,998 equity shares of the face value of Rs. 10.00 each to defendant Nos. 5 to 20, pursuant to the meeting of the Board held on 15th/28th December, 1982 or on any other date, illegal and with the further prayer that all issues and allotments of shares made over and above the said two shares be also declared illegal. plaintiffs have sought further declaration that it should be declared that the plaintiffs are the holders of the entire shares of

defendant No. 1 Company and direction be passed for rectification of the Register of Members in terms of Section 115 of the Companies Act and the plaintiffs alone are entitled to be appointed as Directors of defendant No. 1. It is further prayed by the plaintiffs in the plaint that the Deed dated 8th December, 1982 and subsequent deeds regarding the property at 3 Friends Colony, New Delhi be declared bad in law.

(3) Mr. Sawhney has argued that in these circumstances, as the transaction was sham and bogus, this Court should lift the veil as the corporate character is employed for the purpose of committing illegality and for defrauding others and in support of his contention, he has cited the case of Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, . He has further contended that facts of this case that when defendant Nos. 2 and 3 in connivance with others defendants have acted negligently to the detriment of the interest of the minority share-holders, the action of the plaintiffs is maintainable. In support of his contention, he has cited Daniels and Ors. v. Daniels and Ors. (1978) 2 All E R 89. Mr. Sawhney has also contended that Section 17 of the Limitation Act prescribes no limit when the suit and application is based upon fraud of the defendants.

(4) On the other hand, Mr. K.N. Bhat, learned Counsel appearing for the defendant Nos. 1, 5 to 7, raised certain preliminary objections regarding the maintainability of the suit. Mr. Bhat has vehemently contended that the plaintiffs cannot challenge the events and transactions, which occurred during the year 1979-1982, in the year 1994. He has further contended that the alleged Trust was created by defendant No. 29 on 14th November, 1979 for the benefit of plaintiffs and defendant No. 29, was a private discretionary Trust and the Trust stood expired on 13th November, 1990 when the plaintiff No. 1 had attained majority as per disclosure made in para-1 of the plaint. He has further contended that plaintiffs live in the same house with their parents, i.e., defendant Nos. 2 and 3. The present suit has been filed in March, 1994, i.e., much after three years from the date of the youngest daughter, a beneficiary under the Trust, attained majority on 13th November, 1990. He has contended that the date, i.e., 8th March, 1994, when it is alleged that plaintiffs came to know about alleged transfer of shares, is concoction to bring and maintain the cause of action within limitation. He has contended that if defendant Nos. 2 and 3 were sincere in transferring their shares then they would not have waited to transfer the share till 8th March, 1994, but would have done so when plaintiff No. 1 attained the age of majority in the year 1990 or even prior to that when plaintiff No.2 attained majority in the year 1987. He has contended that the suit is barred by limitation. He has also contended that plaintiff has no locus standi to call in question the transaction as they are neither shareholders nor have any other dealings with the Company. The plaintiffs are claiming their rights through the Trust and have no legal rights or cause of action against the Company.

(5) Mr. Bhat has further contended that it is strange that a transaction, which

took place in 1982, defendant Nos. 2 and 3 took one share of Rs. 10.00 each involving a total investment of Rs. 20.00 and admittedly neither defendant Nos. 2 and 3 nor the plaintiffs nor defendant No. 29 invested any other amount whatsoever apart from Rs. 20.00 and on the other hand, defendant Nos. 8 to 20 invested on 28th December, 1988 in the share capital of the Company to the extent of Rs. 4,99,980.00 by purchasing 49,998 shares of defendant No. 1 Company. In addition to this, defendants have also provided substantial funds by way of loan and share capital to pay off in full the liabilities of defendant No. 1 Company to Reliance International Corporation Private Limited, another Company of Sehgal, defendant Nos. 2 and 3.

(6) Mr. Bhat has contended that suit claim is fraudulent and the grievances of the plaintiffs are fictitious as the plaintiffs are the daughters of defendant Nos. 2 and 3 and have been and are continuing to live in the same house. The allegations of fraud against the parents of the plaintiffs, i.e., defendant Nos. 2 and 3, relate to the year 1979-1982. The second plaintiff attained the age of majority on 11.10.1987 whereas defendant Nos. 2 and 3 continued to be the Directors of the defendant No. 1 Company till 5th March, 1988. Mr. Bhat has further contended that present suit is a device to over-reach the Court and an abuse of the process of law. The present suit was filed by the plaintiff when an application for amalgamation of defendant No. 1 Company with M/s. Sanmati Trading and Investment Company Limited was filed before this Court in March, 1992. Defendant Nos. 2 and 3 were served with notice of the said application in April, 1992. Defendant Nos. 2 and 3 filed their objections to the said application (C.A. No. 180/92) and at a second thought, the suit was filed by the plaintiff on 18th March, 1994. On the basis of this argument, Mr. Bhat has contended that the suit is collusive and fraudulent. Even otherwise, Mr. Bhat has contended that though the allegations of fraud have been made, but no particulars have been given in the pleadings in terms of Order 6 Rule 4 of the CPC and on this ground alone, the plaint should be rejected. In support of this contention, Mr. Bhat has cited the case of Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, . He has also cited Mulla CPC Vol. 111983:

"Where fraud is charged against the defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges. It is not enough to use such general words as "fraud", "deceit", or "machinations". "General allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice".

(7) Mr. Bhat has contended that from a bare reading of the plaint, it would be manifestly clear that the same is vexatious and meritless and does not give any right to sue to the plaintiffs and in support of this contention, he has cited the cases of T. Arivandandam Vs. T.V. Satyapal and Another, and Azhar Hussain Vs. Rajiv Gandhi, . Mr. Bhat has also contended that status-quo order granted by this Court was not justified in law when the suit itself was not maintainable and the

plaintiffs have not come to this Court with clean hands. Mr. Bhat has contended that from the bare reading of the plaint and documents filed Along with the plaint, it is clear that the plaintiffs have hopelessly failed to make out a prima facie case, there is no balance of convenience in favor of the plaintiffs and plaintiffs would not suffer any irreparable loss if their prayer for interlocutory relief was disallowed. In support of his contention, he has cited M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, , Morgan Stanley Mutual Fund v. Kartick Das and Morgan Stanley Mutual Fund Vs. Kartick Das, .

(8) Controverting the arguments advanced by the learned Counsel for the plaintiffs, Mr. Bhat has contended that the allegation of fraud has been made by the plaintiffs against their own parents, i.e., defendant Nos. 2 and 3, and not against the defendant No. 1 Company and in any event of the matter, plaintiffs cannot take the aid of Sub-section (b) of Section 17 of the Limitation Act.

(9) I have given my careful consideration to the arguments advanced by the learned Counsel appearing for the parties. There is an obvious fallacy in the arguments advanced by the plaintiffs. The Trust was created by defendant No. 29, in favor of plaintiffs and herself. Defendant Nos. 2 and 3 had transferred their one share each of Rs. 10.00 to the Trust. By Executing a transfer deed, transferring one share held by defendant Nos. 2 and 3, the plaintiffs did not become the shareholder of the Company and even if it is assumed that the plaintiffs were shareholders of the Company they were shareholders to the extent of one share each of Rs. 10.00 held by defendant Nos. 2 and 3. The creation of beneficial interest to the extent of two shares will not give any right to the plaintiffs to claim that the total assets of the Company belong to the plaintiffs on account of these two shares.

(10) The argument advanced by the plaintiffs that article of association did not provide for issuance of more shares than the original two shares held by defendant Nos. 2 and 3 is neither here nor there. As a matter of fact, article of association does not put any impediment in increasing the share capital by the Company. In terms of Sections 291 and 292 of the Companies Act, this power vests in the Board of Directors of the Company. The power, which is not vested in Board of Directors, has been prescribed u/s 293 of the Companies Act and it certainly does not include power to issue shares. I have perused the article of association and I find no restriction of transfer or allotment of shares by the Board. Defendant Nos. 2 and 3 ceased to be the Directors since 5.3.1988. No grievance has been made by defendant Nos. 2 and 3 about the Board meeting which took place in 1982 when the said defendants had ample opportunity to do so. Even in written statement filed in this suit, defendant Nos. 2 and 3 have nowhere stated that no meeting took place in 1982 where additional shares were issued and other defendants were made directors.

(11) One of the plaintiff, i.e., plaintiff No. 2, admittedly attained the age of

majority on 11.10.1987 while plaintiff No. 1 attained the age of majority on 13.11.1990. The mala fides of the plaintiffs writ large on record, the present suit has been filed in March"1994, when a Scheme of Amalgamation was filed by the Company in 1992. In any event of the matter what plaintiffs have contended against their own father and mother, even if it is assumed that certain fraud has been perpetuated against plaintiffs by defendant Nos. 2 and 3, then the plaintiffs had cause of action against defendant Nos. 2 and 3 but no action has been taken by the plaintiffs against defendant Nos. 2 and 3 till date. No allegation of fraud has been made by the plaintiffs against Company, i.e., defendant No. 1. As a matter of fact, no cause of action has accrued against other defendants. The total investment of defendant Nos. 2 and 3 was only Rs. 20.00, i.e., one share each of Rs. 10.00 held by them. The defendant Nos. 8 to 20 made an investment on 28.12.1992 in the share capital of the Company to the extent of Rs. 4,99,980.00 by purchasing 49988 shares of defendant No. 1-Company. The defendants further provided loans to pay off in full the liability of defendant No. 1-Company to Reliance International Corporation Private .Limited. The allegation of fraud made by the plaintiffs against defendant Nos. 2 and 3 relate to the year 1979-1982. Therefore, the suit of the plaintiffs is highly belated. The plaintiff Nos. 1 and 2 attained the age of majority, as observed by me earlier in 1990 and 1987 respectively. Defendant Nos. 2 and 3 remained Directors of the defendant No. 1-Company till 5.3.1988. The fact that the addresses of the plaintiffs and defendant Nos. 2 and 3, as mentioned in the plaint, are same and during the course of hearing, it was not denied by the Counsel for the plaintiffs that the plaintiffs are residing with their parents at the same address, speaks volume of the present litigation, which has been filed by the plaintiffs against other defendants. There is a considerable force in the argument of defendants that this suit was filed to pressurise the defendants for ulterior motives as a Scheme for Amalgamation of the defendant No. 1-Company with M/s Sanmati Trading Investments Limited (CP 109/92) was filed before this Court in March"1992 where the defendant Nos. 2 and 3 were served with the notice in April"1992, they got this suit filed on 18.3.1994 and filed their objections to the said Scheme of Amalgamation on 14.5.1993, which objections were withdrawn in August"1996 by defendant Nos. 2 and 3. It seems that the whole dispute is raised on account of property owned by defendant No. 1-Company bearing No. 3, Friends Colony West, New Delhi and the value of the property has increased manifolds in Delhi, defendant Nos. 2 and 3, after having sold their interest in the Company in question through their daughters, are trying to extract their pound of flesh. In Para-6 (e-ii) of the written statement filed by defendant No. 1, defendant No. 1 has pleaded that even before the allotment of shares to defendant Nos. 8 to 20, the answering defendant No. 1-Company had seriously negotiated for sale of shares to which defendant Nos. 2 was also a party. In addition to the amount spent by the defendant on the shares, as mentioned hereinabove, the amount of Rs. 16.90 lakhs was duly paid and discharged by the Company out of money so received from the new shareholders, the details of which has been given in the written statement in sub-para (k). It is strange that

the plaintiffs do not assert any dispute with their parents. They are materially assisted by defendant Nos. 2 and 3 and for the sake of exerting pressure on the defendants, the suit has been filed by the plaintiffs. Defendant Nos. 2 to 4, i.e., M.M. Sehgal, Anjali Sehgal and M.M. Sehgal Family Trust, have filed their written statement. Nowhere they have taken a definite stand to the averments made by their daughters, i.e., plaintiff Nos. 1 and 2, and have neither controverted nor admitted the allegations of fraud and collusion. Instead of doing so, they have altogether raised new pleas, which are totally irrelevant for the purpose of determining the question in controversy.

(12) Taking into consideration the totality of circumstances, the stand taken by the plaintiffs that they came to know about the irregularities and illegalities on 8.3.1994 when defendant Nos. 2 and 3 transferred their shares in quest" on as trustees by executing and handing over the share transfer deed to the plaintiffs as beneficiary under the aforesaid Trust, does not inspire confidence. When plaintiff No. 2 attained the age of majority in 1987 and plaintiff No. 1 in 1990, what stopped the defendant Nos. 2 to 4 to transfer the shares in 1987 or in 1990 has neither been explained by the plaintiffs nor the defendant Nos. 2 to 4 in their reply. That gives credence to the arguments advanced by the Counsel for the defendants that the present suit filed by the plaintiffs is not bona fide and it is simply to put pressure on the defendant No. 1-Company to part with money and delay the sanction of the Scheme of Amalgamation, which is also pending along with this suit in this Court. No efforts were made by the defendant Nos. 2 and 3 to lodge the shares with the defendant No. 1-Company for transfer in the names of plaintiffs. A question was put to the learned Counsel for the plaintiffs in this regard, the answer of the plaintiffs was that they do not recognise the board of directors of defendant No. 1-Company, Therefore, the share transfer deed has not been lodged for transfer in the names of the plaintiffs in the Register of Members. This defense hardly inspires any confidence. The authority, i.e., D.D.A. v. Skipper Construction (supra) cited by Mr. Sawhney, learned Counsel for the plaintiffs, has no relevance in the facts and circumstances of the present case. The transaction was between defendant Nos. 2 to 4 and the plaintiffs, for which the plaintiffs had been negligent and had taken no action whatsoever for all these years. The defendant Nos. 2 and 3, as a matter of fact, were on the Board of Directors till 1988, plaintiff No. 2 attained majority in 1987, yet no transfer deed was lodged with the defendant No. 1-Company. Defendant No. 1-Company is not involved and, Therefore, the ratio of the aforesaid authority has no application to the facts of the present case. The authority, Daniels and Ors. v. Daniels and Ors. (supra), cited by Mr. Sawhney is not applicable as the plaintiffs are not the shareholders of defendant No. 1-Company. Their names do not appear on the Register of, Members, as discussed above. The transfer of beneficial interest by defendant Nos. 2 and 3 in favor of plaintiffs would not make them automatically a member of Company. The mere fact that the plaintiffs and defendant Nos. 2 and 3 are residing in the same premises, no disputes or differences have arisen between them. During the course of hearing, I had asked

question to the Counsel for the plaintiff as to whether there is a single mess from which the plaintiffs and defendant Nos. 2 and 3 are sharing meals, the answer was in the affirmative. The present suit is a device to delay the Scheme of Amalgamation, which is pending consideration before this Court and the suit is hopelessly time barred as the events, which are questioned, relate back to the year 1979-1982. In the circumstances, after carefully considering all the facts and circumstances of the case and documents on record, plaintiffs have failed to prove a prima fade case in their favour, the balance convenience is also not in favor of granting an injunction as the plaintiffs have no prima fade case, they are questioning a transaction of the years 1979-1982 in the year 1994, their names are not on the Register of Members of defendant No. 1 -Company, no bar is there in the article or association of the Company to increase the share holding, no action has been taken by the plaintiffs against the defendant Nos. 2 and 3 after the plaintiffs attained the age of majority in the year 1987 and 1990, present suit having been filed only in the year 1994 when a Scheme of Amalgamation was filed by the defendant No. 1-Company in the year 1992, would disentitle the plaintiffs from the discretionary relief of grant of an injunction. In the circumstances, the argument of the plaintiffs that they will prove fraud by leading evidence does not hold any ground as no cause of action has been shown and no case has been made out for maintaining the suit. When the suit itself is not maintainable, no injunction can be granted in favor of the plaintiffs.

(13) For the reasons stated above, I vacate the injunction order granted earlier on 3.2.1995. In view of the above observations, the applications are dismissed.

(14) Suit No. 636/1994 The present suit is a device to over-reach the Court and is an abuse of the process of law. The conduct of defendant Nos. 2 and 3 withdrawing its objections from Company Petition bearing Ca No. 109/1992 would also demonstrate that defendants found it difficult to defend their action in maintaining a cause of action in view of the stand of the plaintiffs alleging fraud and collusion against their own parents. I see considerable force in the arguments of the learned Counsel for the defendants that the suit is vague, vexatious and meritless and does not give any right to sue to the defendants. In such circumstances, when suit is highly belated, the declaration sought for by the plaintiffs in the year 1994 of transaction, which took place in 1982 is hopelessly time barred. Even according to their own averments, plaintiffs are not the shareholders of the defendant No. 1-Company. In the absence of any averment that any efforts were made by the plaintiffs to get the share transferred in their names with the Company, only speaks that the plaintiffs are not interested in getting the shares transferred in their names but to use the device and process of Court for their ulterior motives. In such circumstances when the suit is hopelessly time barred and no cause of action has accrued against the defendants, the Court, in exercising its powers under Order 7 Rule 11 of the CPC , should reject the plaint so that bogus litigation can be shot down at the earliest stage. The relief sought for by the plaintiffs in the backdrop of the discussions above, would show that the plaint is hopelessly time barred, vague

and vexatious allegations have been made, it does not show any cause of action and the filing of the suit is collusive act of defendant Nos. 2 to 4 and the plaintiffs. The ratio laid down by the Supreme Court in T. Arivandandam Vs. T.V. Satyapal and Another, is relevant :

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, CPC taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist Judge is the answer to irresponsible law suits. The Trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi - "It is dangerous to be too good." The Trial Court in this case will remind itself of Section 35-A, CPC and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned."

(15) The present case is one of the cases where the plaintiffs have abused the process of the Court by filing a frivolous litigation and this kind of vexatious and frivolous litigation has to be nipped in the bud.

(16) With the above observations, complaint is rejected and the suit is dismissed with costs quantified at Rs. 10,000.00.