

(2003) 06 OHC CK 0022

In the Orissa High Court

Case No : Civil Revision No. 475 of 1999

Manpreet Kaur

APPELLANT

Vs

Sri Balwinder Singh Gogia and Another

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Companies Act, 1956 — Section 10, 10

Citation : (2003) 06 OHC CK 0022

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : G. Mukherjee, P. Mukherjee, J. Rath, A.S. Walia, S. Pattnaik and M.K. Majumdar, for the Appellant; J.R. Dash and K.L. Dash, Op-1, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard.

2. This Civil Revision is directed against the order passed by learned Civil Judge (Senior Division), Balasore on 6.12.1999 in Title Suit No. 804 of 1999-I. Vide the impugned order, learned Civil Judge returned the plaint to the Plaintiff on the ground that the suit is not maintainable in the Civil Court in view of the provision in Section 10 of the Companies Act 1956 (in short, "the Act"). Plaintiff is the Petitioner against that order. Defendant No. 1, i.e., the contesting Defendant, is the opposite party No. 1 in this revision.

3. Substance of the argument of learned Counsel for the Petitioner is that facts pleaded and the relief claimed in the plaint are substantially relating to rendition of account and recovery of the amount from Defendant No. 1, and such a dispute being not cognizable by the Court constituted u/s 10 of the Act, therefore, the Court below was absolutely incorrect and illegal in this approach by excluding the jurisdiction of the Civil Court notwithstanding the provision in Section 9 of the Code of Civil Procedure, 1908 (in short "the Code"). Mr. Mukherjee, learned Counsel for the Petitioner argues that according to the accepted judicial norm

there must be clear provision either explicitly or impliedly excluding the jurisdiction of the Civil Court. According to him the facts involved, the relief claimed and the position of law in Section 10 of the Act do not imply for exclusion of the jurisdiction of the Civil Court. Accordingly, he prays to set aside the impugned order. In support of that contention learned Counsel for the Petitioner relies on the case of Thiruvalluvar Velanmai Kazhagam (P) Ltd. v. M.K. Seethai Achi (1987) 3 CLJ 129 (Mad) .

4. Though a written note of submission has been filed by the opposite party mentioning about various provision of law from the Act and several reported decisions, but at the time of argument Mr. J.R. Dash, learned Counsel for the opposite party confines his contention to the factual aspect available from the plaint and the provision of law in Sections 10, 397 and 399 of the Act. He argues that on a bare reading of the plaint and the provision in Section 397 of the Act there cannot be any controversy that the relief which the Plaintiff claims are cognizable by the Court mentioned in Section 10 of the Act, and therefore the decision of the Court below does not suffer from any illegality or erroneous approach.

5. It appears from the plaint that husband of the Petitioner along with Defendant No. 2 having limited share constituted the Company in the name and style of M/s. Gagan Castings (P) Ltd. According to the allegation in the plaint, Defendant No. 1 being a close relative of the husband of the Plaintiff, was given an employment in the Company and due to sudden demise of the husband of the Plaintiff and the other share-holder, i.e., Defendant No. 2 being residing at a distant place, i.e., at Bhubaneswar, Defendant No. 1 was entrusted to look after the day-to-day management of the Company. According to the further allegations in the plaint, taking advantage of his relationship with the Plaintiff's family Defendant No. 1 manipulated documents and secured the position of Managing Director and acted in such manner so as to cause a loss to the Company by huge amount of money. After recovery from the shock and sorrow when the Plaintiff started taking interest in the Company affairs with the aid and assistance of his brother, she could know about the misappropriation, mismanagement, etc. having been committed by Defendant No. 1. According to the further allegation in the plaint, the matter was taken to the Caste Panchayati of the Sikh Community at the locality and ultimately Defendant No. 1 having agreed to account for the company's affairs, assets and business, submitted his resignation from the post of Managing Director. Therefore, in his absence (alleged as wilful absence) Plaintiff was made the Managing Director of the Company and thereafter she has filed the suit claiming the following reliefs.

a. Let a preliminary decree be passed directing the Defendant No. 1, to render full and complete accounts of the company within a specified date and in case Defendant No. 1 fails to comply with the order, as commissioner be appointed for preparing such accounts, in the final decree proceeding.

b. Let Defendant No. 1 be directed to hand over the books of accounts and all

other records of the company as detailed in schedule-"B", below.

c. Let a decree for recovery of such amount as may be found to have been misappropriated by Defendant No. 1, be passed.

d. Let an order of injunction be passed against Defendant No. 1 restraining him from interfering with the day-to-day running of the factory.

e. Let any other relief/reliefs to which the Plaintiff may be found entitled, be decreed in her favour.

f. Let the cost of the suit be decreed in Plaintiff's favour.

6. In the case of Thiruvalluvar (supra), Hon"ble Judge of Madras High Court while in seisin of a similar matter, has been pleased to set aside the order of the Subordinate Judge on the ground that he could not find any provision in the Companies Act which provides for the provision for Company Law Board to issue a direction for rendition of account. Accordingly, his Lordship held that keeping in view the settled principle of law of non-exclusion of the jurisdiction of the Civil Court in the absence of any clear provision the suit would be maintainable.

7. For ready reference it is appropriate to quote below Sections 10 and 397 of the Act, so also Section 9 of the Code.

Jurisdiction of Courts.

10.(1) The Court having jurisdiction under this Act shall be-

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of Sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred-

(a) in respect of companies generally, by Sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (Sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office

of the company during the six months immediately preceding the presentation of the petition for winding up.

Section 397(1) Any 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 (including any one or more of themselves) may apply to the (Company Law Board) for an order under this Section, provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under Sub-section (1), the Company Law Board is of opinion-

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up;

the Company Law Board may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

Section 9 of the Code: Courts to try all civil suits unless barred-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

(Explanation I).- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of question as to religious rites or ceremonies.

(Explanation II).- For the purposes of this Section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.)

8. As Mr. Mukherji rightly argues exclusion of jurisdiction of the Civil Court cannot be readily inferred, such exclusion either be explicitly expressed or clearly implied. Precisely that is the provision in Section 9 of the Code.

9. Section 10 of the Act provides for jurisdiction of Courts and it is readable from the above quoted provision that except to the extent to which any jurisdiction is expressly conferred on the District Court either by the Act or by the Central Govt. by notification in the Official Gazette all residuary jurisdiction under the Act is vested only in the concerned High Courts. Section 397 is quoted to indicate that the dispute at hand is covered by that provision so as to exclude the jurisdiction of the Civil Court and Section 9 of the Code does not protect maintainability of the suit. Incidentally it be indicated here that after the Companies Amendment Act, 1988 the Company Law Board constituted in accordance with Section 10-E of the Act has been conferred with jurisdiction over certain matters. However,

that is not a matter for deliberation or discussion in this revision. Fact remains that jurisdiction of Civil Court is barred and to that extent the impugned order is correct.

Hence, the Civil Revision is dismissed.