

(2008) 12 MP CK 0030
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 406 of 2007

Mediavest India Pvt. Ltd., Mumbai

APPELLANT

Vs

Sayed Mahmood Alichishti and Others

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2009) 1 MPLJ 423

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Advocate : S.C. Bagadiya and Kapil Jain, for the Appellant; J.K. Verma for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

R.S. Jha, J.

Shri S.C. Bagadiya, learned Senior Counsel with Shri Kapil Jain for the petitioner. Shri J.K. Verma, learned counsel for the respondent Nos. 1 and 2.

This revision has been filed by the petitioner against the order passed by the District Judge, Harda in Civil Suit No. 39-A/06 dated 10-10-2007 whereby the application filed by the petitioner under Order 7, Rule 11 of the CPC (hereinafter referred to as CPC) for dismissing the plaint has been rejected.

It is submitted by the learned Senior Counsel for the petitioner that pursuant to the recommendation of the Sub Committee of the United News of India Ltd., respondent No. 3, dated 2-9-2006 in respect of the offers submitted by the petitioner. Respondent No. 7 and respondent No. 8, the Board of Directors of respondent No. 3 approved the recommendations on 2-9-2006 itself and by order dated 25-9-2006 shares worth Rs. 32.04 Crores were allotted to the petitioner and on 26-9-2006 new Directors were inducted in the Board of Directors of respondent No. 3 who were nominees of the petitioner. It is submitted that all these proceedings took place in Delhi and therefore the

respondent No. 7, being aggrieved, took up proceedings before the Company Board under the provisions of the Companies Act and thereafter in the High Court of Delhi which are pending adjudication and similarly respondent No. 8 filed a suit in the High Court of Delhi which is also pending adjudication.

It is submitted by the learned Senior Counsel for the petitioner that the respondent Nos. 1 and 2, claiming themselves to be a Journalist and the State President of the M.P. Shram Jivi Patrakar Sangh (hereinafter referred to as the "Sangh"), filed a suit before the District Judge, Harda against the aforesaid allotment of shares to the petitioner alleging therein that the suit was filed in a representative capacity on behalf of its members some of whom were employees of respondent No. 3 whose service conditions were adversely effected and, therefore, the respondent Nos. 1 and 2 had a right to file a suit at Harda. The petitioner, in response, filed an application under Order 7, Rule 11 of the CPC assailing the maintainability of the suit on the ground that the respondents had no cause of action to file the suit and on the ground of territorial jurisdiction. The petitioner also raised a ground to the effect that the suit, as filed by respondent No. 2, was not maintainable in view of the provisions of Order 1, Rule 8 and Order 7, Rule 4 of the Civil Procedure Code.

The Court below, by the impugned order, has rejected the objections filed by the petitioner on the ground that the suit has been filed by the respondent Nos. 1 and 2 in a representative capacity and, therefore, the objections of the petitioner are misconceived.

It is submitted by the learned Senior Counsel appearing for the petitioner that the Court below has committed gross error in law in not adjudicating the issue of maintainability of the suit due to lack of territorial jurisdiction in spite of the fact that the petitioner has specifically raised the grounds to this effect in his application. The learned Senior Counsel further submits that the Courts below, having clearly recorded a finding in para-11 to the effect that the plaintiffs had no personal interest in the suit, could not have rejected the application filed by the petitioner on the ground that the suit was in a representative capacity as Order 1, Rule 8 of the CPC specifically requires that a representative suit can be filed by an individual on behalf of several persons only if all of them have the same interest in the suit.

The learned counsel appearing for the respondent Nos. 1 and 2 per contra submits that the respondent Nos. 1 and 2 had filed a suit in a representative capacity on behalf of some of its members who were also employees of respondent No. 3 and, therefore, no fault can be found with the order of the Court below that the suit was a representative suit and could not be dismissed as not maintainable.

I have heard the learned counsel appearing for the parties at length. From a perusal of the impugned order as well as the documents filed by the petitioner, it is apparent that the suit has been filed by respondent Nos. 1 and 2 in their

individual capacity as they have not stated that the suit is being filed for or on behalf of the Sangh nor is the Sangh a plaintiff in the suit. It is also apparent from a perusal of the finding, recorded by the Court below in para-11 of the impugned order, that no personal interest of the plaintiffs is involved. From a perusal of the plaint filed by the plaintiffs it is also not evident as to whether the respondent No. 2 has in any way adversely altered the service conditions of any of its employees who have been specifically named or identified and who are members of the Sangh and are also employees of respondent No. 3.

The provision of Order 1, Rule 8 of the CPC are to the following effect:-

R. 8. One person may sue or defend on behalf of all in same interest.- (1) Where there are numerous persons having the same interest in one suit, -

(a) one or more of such persons may, with the permission of the Court sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested, either by personal service, or; where by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), or Rule 1 of Order XXIII and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiffs expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf; or for whose benefit, the suit is instituted, or defended as the case may be.

A bare perusal of the aforesaid provision makes it clear that where several persons have the same interest in one suit, one or more such persons may be permitted by the Court to sue or to be sued or defend the suit on behalf of all for the benefit of all the persons so interested. This necessarily means that for a

person to be entitled to file a suit in a representative capacity, he must have same common personal interest in the suit along with several other persons. Admittedly, the respondent Nos. 1 and 2 are neither employees of respondent No. 3 nor are they in any manner connected with respondent No. 3 and have no personal common interest with the alleged employees of respondent No. 3 and in such circumstances could not have been permitted to file a suit in a representative capacity under Order 1, Rule 8 of the Civil Procedure Code.

Quite apart, from the above it is also not disputed that respondent Nos. 7 and 8 have taken up proceedings, in respect of the allotment of shares to the petitioner, which are pending adjudication before the Delhi High Court. It is also an admitted fact that none of the proceedings for allotment of shares to the petitioner took place within the territorial jurisdiction of the District Court at Harda nor does the consequence of the allotment of such shares have any connection with or give any cause of action to respondents 1 and 2 to file a suit at Harda as there is averment in the plaint that any of their rights are directly affected by the allotment of shares to the petitioner. In fact admittedly the affected parties have already taken up proceedings which are pending in the Delhi High Court.

In view of the aforesaid admitted facts as the plaint fails to disclose any cause of action arising within the territorial jurisdiction of District Court, Harda, it could not have entertained the suit filed by the respondent Nos. 1 and 2 against the petitioner and respondent No. 3 whose Head Office is at Mumbai.

In view of the aforesaid, I am of the considered opinion that the impugned order suffers from perversity and material irregularity as the Court below has exercised its jurisdiction illegally and contrary to law in dismissing the application filed by the petitioner. The impugned order is, accordingly, set aside, the application filed by the petitioner under Order 7, Rule 11 of the CPC stands allowed and consequently the suit filed by the respondents 1 and 2 stands dismissed. The revision filed by the petitioner is accordingly allowed.

In the facts and circumstances of the case there shall be no order as to the costs.

C.C. as per rules.