

(1971) 08 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 57 of 1970

Narinder Singh and Others

APPELLANT

Vs

Randhawa Transport Co. Private Ltd. and Others

RESPONDENT

Date of Decision : 12-08-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15
Companies (Court) Rules, 1959 — Rule 11, 21
Companies Act, 1956 — Section 397, 398

Citation : (1973) 43 CompCas 341

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Harnam Singh Wasu and L.S. Wasu, for the Appellant; Des Raj Nanda, for the Respondent

Judgement

Narula, J.—In this petition under Sections 397 and 398 of the Companies Act 1956 (1 of 1956) (hereinafter called " the Act "), preliminary objections have been taken in the written statement of the company to the effect that, (1) the petition is liable to be dismissed as consent in writing of the petitioners required under Sub-section (3) of Section 399 of the Act has not been filed as the filing of such a written consent is the condition precedent to the maintainability of the petition ; and (2) the petition merits dismissal as it has not been signed by the petitioners in accordance with the requirement of Order 6, Rule 14, of the Code of Civil Procedure. In connection with the first objection it has further been stated that the schedule required to be attached to the petition according to the prescribed Form No. 43 not having been annexed in this case, the petition is defective and merits no consideration. These pleas were controverted by the counsel for the petitioners. The above-mentioned preliminary objections gave raise to the following preliminary issues (framed by me on May 6, 1971):

"(1) Whether the petition has not been signed and verified by the petitioners in accordance with the requirements of Order 6, Rule 15, of the Code of Civil Procedure. If so, what is its effect ?

(2) Has the petition not been filed in the prescribed form ? If not what is its effect ? "

2. Rule 11 of the Companies (Court) Rules, 1959, enumerates the applications which have to be made by petition. Applications u/s 397 and applications u/s 398 of the Act are mentioned at Serial Nos. 12 and 13 in that rule. The manner in which a petition has to be verified is indicated in Rule 21. It is stated therein that " every petition shall be verified by an affidavit made by the petitioner or by one of the petitioners, where there are more than one ". The present petition has been filed by eight petitioners. The petition is accompanied by the affidavit of Hazara Singh, petitioner No. 7. He has deposed about all the allegations made in the petition and has verified on solemn affirmation that the facts stated in his affidavit are true and correct and no part thereof is false, and nothing has been concealed. It appears to me that this satisfies the requirements of Rule 21, and it cannot be said that the petition has not been verified in the prescribed manner. Mr. Des Raj Nanda has not been able to point out to me any rule in the Companies (Court) Rules which requires the petition to be signed as required by Order 6, Rule 14, or which may require a petition to be verified like a plaint under Order 6, Rule 15, of the Civil Procedure Code. The petition has been signed by the advocate for the petitioners in whose favour a vakalatnama has been signed and placed on the record. There is no objection in the written statement about the genuineness of the signatures or thumb impressions of the petitioners on the vakalatnama. I, therefore, hold that the petition has been duly signed and verified as required by law, and that a petition under Sections 397 and 398 of the Act need not be verified in the manner prescribed by Order 6, Rule 15, of the Code. The decision on the first issue is accordingly given in favour of the petitioners.

3. So far as the second issue is concerned, the objection is two-fold. Firstly, it is stated that Form No. 43, which is the prescribed form for filing a petition under Sections 397 and 398 of the Act, requires a schedule being attached to the petition wherein the names and addresses of the members who have given their consent to the petition being presented on their behalf have to be incorporated. A note under the prescribed form itself shows that it is not necessary to give such a schedule in every petition u/s 397 or Section 398 of the Act, and the necessity of attaching such a schedule arises only in such cases where the petitioners claim that they are filing the petition with the consent of some other members of the company who are not themselves joining the petition as petitioners. The note under the prescribed form says that where the petition is presented on behalf of the members set out in the schedule, the letter of consent given by them should be annexed to the petition. I have gone through the petition. It does not even purport to have been filed on behalf of any member on the basis of his consent. The petitioners who have joined in filing the petition directly have alone filed the petition. The question of attaching the schedule to the petition does not, therefore, arise. For the same reason I hold that this is not a case covered by Sub-section (3) of Section 399 of the Act, and the question of

obtaining or filing the consent of any one does not arise in this case. According to Mr. Nanda, signed letters of consent of the petitioners themselves should have been filed as the petitioners have not signed the petition, but only their advocate has appended his signature thereto. I find no force in this contention. The second issue is also, therefore, decided against the respondents.

4. Both the preliminary objections are, therefore, rejected with costs; counsel's fee Rs. 100.

5. To come up for the framing of issues on merits on August 26, 1971.