
(1972) 09 OHC CK 0016
In the Orissa High Court
Case No : M.A. No. 182 of 1969

Orissa State Financial Corporation

APPELLANT

Vs

Kalinga Textiles Limited and Others

RESPONDENT

Date of Decision : 22-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Companies Act, 1956 — Section 10, 101, 107, 141, 2(11)

Citation : (1972) 38 CLT 1279

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R.N. Sinha and S.N. Sinha, for the Appellant; R. Mohanty, G. Rath, J. Das and A. Mukherjee, for the Respondent

Judgement

R.N. Misra, J.—The Appellant is a Corporation set up under the State Financial Corporation Act of 1951. It sued the Defendants - Respondents for recovery of Rs. 3, 77, 541.24 on the ground that the Defendant No. 1 company and the other Defendants - its directors were liable to pay the said amount to the Plaintiff-Appellant. It was alleged that the Defendant No. 1 being in need of funds for expansion of the spinning mill of the company had borrowed from the Plaintiff a sum of Rs. 21, 08, 524.98 under several registered mortgage bonds executed between 1961 and 1963. As the company defaulted to pay the same, separate proceedings had been taken under the Central Act 63 of 1951 before the District Judge of Sundergarh. Subsequently the Defendant No. 1 being in need of further money for the expansion programme decided to issue equity as well as cumulative redeemable preference shares and on 10-6-1963, the company requested and offered to the Plaintiff in writing to under-write its preference shares. The Plaintiff decided to under write 7500 shares with the face value of Re. 7, 50,000/- subject to the following, amongst other, express conditions%.

(a) The Defendant No. 2, a director, should execute an agreement in favour of the plain tiff to purchase back the shares which would be held by the Plaintiff in

pursuance of the under writing commitment within seven years from the date of allotment of shares together with the outstanding dividends;

(b) The share's should be made redeemable immediately after 12 years from the date of issue;

(c) The Defendant No. 1 should be converted into a public limited company and the object clause should clearly specify the undertaking of textile business;

(d) The Defendant No. 1 should make arrangements for enlisting the shares in any stock exchange of India;

(e) The prospectus should be approved by the Plaintiff; (f) The expenses and legal charges would be borne by the Defendant No. 1. Ultimately the Plaintiff upon the Defendant No. 1's agreeing to the terms applied for allotment of 7295 preference shares and sent a crossed cheque for Rs. 3, 64, 750/- representing 50 per cent of the face value of the shares. As the Defendant No. 1 company omitted to enlist the shares in the Calcutta stock exchange and no steps were taken to fulfil one of the express conditions the Plaintiff by notice dated 27.7.1966 demanded refund of the application money amounting to Rs. 3,64,750/- within seven days of receipt of notice. No steps were taken by the Defendant No. 1 company or its directors to make the payment except paying a part of the interest due in terms of the contract. The Plaintiff, therefore, sued for recovery of the amount and prayed for other reliefs. The suit was instituted in the Court of the Subordinate Judge at Cuttack on the ground that cause of action arose within the territorial jurisdiction of that Court.

2. The company and Some of its directors filed a joint written statement. In paragraphs 2, 5, 26 and 29 allegations regarding maintainability of the proceeding and jurisdiction of the Court were made. Issues were struck and on an application made by the contesting Defendants, by order dated 25-9-1969, the learned Trial Judge directed the question of jurisdiction of the Court to be taken up as a preliminary point for jurisdiction.

By the impugned order dated 30.9.1969 the learned Trial Judge came to hold that the ordinary civil Court had no jurisdiction to maintain the action and it was maintainable either before this Court or before the District, Court if authorised. Accordingly he directed return of the plaint to the Plaintiff for presentation in the proper Court. It is this order which is assailed in the present appeal.

3. Mr. Sinha for the Plaintiff-Appellant contends that an ordinary money claim has been raised and the civil Court has fun jurisdiction to take cognizance of the suit. Section 9, CPC provides-

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

It has been laid down in a series of authoritative decisions that the exclusion of

the jurisdiction of the civil Courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied is AIR 1940 105 (Privy Council) , *Magiti Sasamal Vs. Pandab Bissoi* , and *Laxman Purshottam Pimputkar Vs. State of Bombay and Others* , . The House of Lords in *Pyx Granite and Company Ltd. v. Ministry of Housing and Local Government* (1959) 3 All. E.R. 1, referring to this principle stated "It is a principle by no means to be whittled down." That rule that the exclusion of jurisdiction of civil Courts is not to be readily inferred is based on the theory that civil Courts are Courts of general jurisdiction and the people have to right unless expressly or impliedly debarred, to insist for free access to the Courts of general jurisdiction of the State. *Romer, L.J.* in *In Lee v. Showmen's Guild of Great Britain* (1952) 1 All E.R. 1175, in the Court of Appeals stated:

The proper tribunals for determination of legal disputes in this country are the Courts and they are the only tribunals which, by training and experience, and assisted by properly qualified advocates are fitted for the task. The Courts jealously uphold and safeguard the prima facie privilege of every man to resort to them for determination and enforcement of his legal rights.

4. Under the Companies Act of 1956, several provisions have been made which clearly indicate jurisdiction in named matters to vest in the "Court" as defined under the Act. A reference may be made by way of illustration to Section 101 where it has been specifically provided that a company which has passed a resolution for reducing share capital has to apply by petition to Court for confirming the reduction. In Section 107 dissentient share-holders have been given the right to apply to the Court under specified circumstances. In Section 141 power has been vested in the Court to order rectification of the register of charges. Section 243 provides that application for winding up of a company has to be made to the Court. Similarly applications under Sections 397 and 398 dealing with prevention of oppression and mismanagement authorise the Court to deal with such applications. In winding up jurisdiction is vested in the Court. These are some of the instances to show that by specific provisions under the Companies Act particular matters have been set apart to be dealt with by the Court as provided for in Section 10 of the Act. Section 10 provides-

(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.

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It may be pertinent to mention here that under several provisions of the Companies Act criminal liabilities have also been created. In Section 2(11) "the Court" has been defined to mean.

"(a) with respect to any matter relating to B company (other than any offence against this Act), the Court, having jurisdiction under this Act with respect to that matter relating to that company, as provided in Section 10;

(b) with respect to any offence against this Act, the Court of B Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence.

The Companies Act thus provides for situations which can be dealt with by criminal Courts, by civil Courts and by the Courts set up under the Act.

5. In this suit the Plaintiff based its claim upon a breach of the under-writing agreement. It is true the company takes advantage of the statutory provisions u/s 73 of the Act. The liability of paying interest as claimed is in terms of Sub-section (2). The liability of the other Defendants is also raised by virtue of this statutory provision. The question for consideration is merely because the Plaintiff has referred to Section 73 at some places in its plaint and draws assistance from the provisions of the said section in support of its claim, does the present suit for recovery of the amount become a suit cognizable by the "court" as provided for in Section 10 of the Companies Act or is it an ordinary civil action cognizable whereof is available to be taken u/s 9 Code of Civil Procedure?

6. When such difficulties arise the classic dictum of Willes, J. in *Wolverhampton New Water Works Company v. Hawkesford* (1859) 6 C.B. (N.S) is referred to. That century old dictum has on several occasions been quoted with approval by the Supreme Court. It is to the following effect:

There are three classes of cases in which a liability can be established founded upon statute. One is where there was liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there unless the statute contains words which expressly or by necessary implication excludes the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases, is where the statute gives the right to sue merely, but provides no particular form of remedy; there the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and peculiar remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

The facts of this case clearly show that the cause of action is the breach of the under-writing agreement. Reference to the provisions of Section 73 of the Companies Act has been made for lending assurance to the Plaintiff's claim.

Even if we hold that the Companies Act gives the right to sue, we are not in a position to find any special form prescribed by the statute or any particular remedy indicated. Therefore, the present case must come within the second of the three classes of cases mentioned by the learned Judge. Bond "the Plaintiff's action is cognizable by the common law Court, that is the Civil Court.

7. Reliance was placed by the learned Counsel for the Respondents on a single Judge decision of the Punjab High Court in *Muni Lal v. Balwant Rai* AIR 1965 P&H 24, *Falshaw C.J.* was dealing with a case of voluntary winding up. He referred to the test said down by *Willes, J.* and on the facts of the case came to hold that it was a case of the third class. No support is available for the present case from that decision. On the other hand, in *Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others*, , there are some observations which support our present view.

8. On this analysis, our conclusion is that the Civil Court has jurisdiction to deal with the matter in this case. The finding of the learned Trial Judge on the preliminary point is not sustainable. We would accordingly allow the appeal, set aside the said finding and hold that the Civil Court has jurisdiction to entertain the suit. The Appellant shall have his costs. Hearing fee is assessed at Rs. 250/- (two hundred and fifty).

K.B. Paada, J.

9. I agree.