

(2008) 04 DEL CK 0009

In the Delhi High Court

Case No : IAS No. 10925 of 2007 and 12651 of 2007 in CS (OS) No. 1739 of 2007

Paramjit Singh @ Bittoo Duggal and Another

APPELLANT

Vs

Raj Shree Steel Co. Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4

Citation : (2008) 146 CompCas 354

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sunil Malhotra, for the Appellant; Virender Ganda, S.K. Giri, for D 1 to 5 and Rajiv Kataria, for D-6, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this order I shall dispose of two applications, one under Order 39 Rule 1 and 2 CPC and another under Order 39 Rule 4 CPC. plaintiffs have filed this suit for declaration, mandatory injunction, permanent injunction and rendition of accounts claiming that plaintiffs were engaged in the business of development of colonies in Punjab and Haryana. plaintiffs had identified approximately 90 acres of land in Village Rahon at Khanna, District Ludhiana (Punjab). plaintiffs contacted the farmers/owners for purchase of the land for development of residential-cum-commercial colony at Khanna, District Ludhiana (Punjab). Defendant No. 1, a Private Limited Company through its Directors approached the plaintiffs and showed interest in the above land for developing the same into a colony. The Directors of Defendant No. 1 asked plaintiffs to become Directors of Defendant No. 1 Company and work for development of the colony by the Company, to be known as Sunder City, Samrala Road, Opposite Model Town at Khanna, District Ludhiana (Punjab). plaintiffs agreed to this and they were appointed as Directors of Defendant No. 1 Company w.e.f. 1.4.2004 The other Directors of the Company were Defendants

No. 2 to 7. For the purpose of development of "Sunder City", a bank account was opened in name of the firm with HDFC Bank and plaintiff No. 2 and Defendant No. 5 were authorized to operate this account. On 17th April, 2004, an Agreement to Sell in respect of 90 acres of land in the Khanna, District Ludhiana was entered into between Defendant No. 1 Company and the sellers of the land. plaintiffs made efforts and got approval of Chief Town Planner for conversion of land user. A special power of attorney was executed by Defendant No. 1 company giving powers to plaintiff No. 2 and Shri Anil Jindal (Defendant No. 5) to deal with different departments of the Government.

2. It is pleaded by the plaintiffs that both the plaintiffs together invested around 61% share in the total investment made by Defendant No. 1 in the purchase of land from land owners. This amount was arranged by the plaintiffs after taking loans from their relatives, friends and other sources. Defendants No. 2, 3 and 4 made investment of 11%, Defendant No. 5 made investment of 11%, Defendant No. 6 made investment of 6% and Defendant No. 7 made investment of 11%. The Sale Deeds of the land, so purchased. from the farmers were executed by plaintiff No. 2 and Defendant No. 5 on behalf of Defendant No. 1 company.

3. It is further pleaded that from time to time various meetings of the Board of Directors of the Company took place at Delhi and some meetings took place at site office at Khanna (Punjab) and some at Rajpura (Punjab). The Minutes Book was retained under the control of Defendant No. 2. Last meeting of the Board of Directors was held on 30th August, 2006. The plaintiffs made repeated requests to Defendants for holding Board meetings after 30th August, 2006 but no Board Meeting was called thereafter. Defendant No. 2 however, told the plaintiffs sometime in July end 2007 that plaintiffs had been removed from the Directorship of Defendant No. 1 Company. This gave a shock and surprise to the plaintiffs. Defendant No. 2 to 7 had no right to remove plaintiffs from the Directorship of the Company. The plaintiffs were having majority investment in the purchase of the land. plaintiffs also came to know that Defendant No. 7 had also resigned from the Board of Directors of Defendant No. 1 Company. Defendant No. 2, in an illegal manner, got Form 32 under the Indian Companies Act, submitted with the Registrar of Companies showing that plaintiffs had resigned from the company i.e. Defendant No. 1. plaintiffs claimed that they had not resigned from the Directorship of Defendant No. 1 and the act of Defendant No. 2 in submitting Form 32 showing their resignations was an illegal act. plaintiffs asked Defendants No. 2 to 6 to restore them as Directors of the Company but without success. plaintiffs then filed this suit seeking declaration that the Resolution dated 1st December, 2006 whereby the plaintiffs were removed from the Directorship of Defendant No. 1 Company be declared as null and void. It is also submitted that Defendants have illegally sold some plots of land after removing plaintiffs causing loss to the plaintiffs, Therefore, rendition of accounts was also being sought.

4. In the WS filed by the Defendants No. 1 to 5, Defendants denied that plaintiffs

were in the business of developing colonies and stated that plaintiffs were small-time property dealers in the area where Defendant No. 1 company was developing a project. Defendants never approached plaintiffs for associating in the development of land, on the contrary plaintiffs being property dealers/brokers approached Defendant No. 1 to be associated with it as intermediary. Since Defendants were new to the area and plaintiffs were aware of the local market conditions, they were co-opted as Directors implicate without any investment in the share capital of the company or otherwise. The plaintiffs were appointed Directors at the sole discretion of shareholders without any obligation with a view to provide them adequate status so as to enable them to co-ordinate day to day local operations of the company respectfully and responsibly. The plaintiffs were authorized to operate the bank account to manage the site office and to maintain liaison with local authorities etc. under the overall supervision, control and superintendence of the Board of Directors and shareholders of the Company. plaintiffs had not made any investment in the purchase of the land and made no effort to get approval from the Chief Town Planner for conversion of land user. All approvals were obtained by Defendant No. 5. plaintiff No. 2 being a local person was to assist Mr. Anil Jindal (Defendant No. 5) in the operations of Defendant No. 1 Company. The plaintiffs had arranged to sell some plots of the company as well. However plaintiffs were illegally siphoning off the funds of the company inasmuch as the advances received by them from various prospective buyers, were not deposited with the Company. None of plaintiffs was appointed as Chairman of the Company or of any Board meeting. They were not authorized to appear before any authority on behalf of the Company. The Resolution sought to be relied upon by the plaintiffs was a forged document. The Defendants denied the averment that no Board Meeting was held after 30th August, 2006 and stated that on the contrary a number of Board Meetings were held after 30th August, 2006. The plaintiffs on realizing that Defendants had come to know about their illegal acts, gradually withdrew from the affairs of the company and absented themselves continuously from various Board Meetings of the Company in the middle of the year 2006 and onwards, without seeking any leave of absence. The absenteeism of the plaintiffs rendered their offices as Directors of the Company vacant. The plaintiffs accordingly ceased to be Directors of Company by operation of law and not by act of Defendants. The plaintiffs for this reason never applied for Director Identification Number, which had been made compulsory for every person intending to be appointed as Director from the year 2006 onwards. Defendant No. 6 in a separate Written Statement has also taken the same stand.

5. The plaintiffs along with the plaint have filed several documents including Sale Deeds executed by certain parties in favor of Defendant No. 1 showing that plaintiffs acted as Directors of the Company and executed Sale Deeds on behalf of the Company. However, none of these documents shows that the plaintiffs paid consideration to the sellers of the land from their own funds and not from the Company's funds. The plaintiffs claimed that they had invested about 61% of the

sale value of 90 acres of land but during arguments they were asked, if they were the shareholders of the Company to which they stated that they were not shareholders of the Company. It is undisputed that the land was purchased in the name of the Company. The plaintiffs had no reason to invest money in the purchase of the land unless plaintiffs were co- purchasers of the land or they were the shareholders of the Company. The amount to the sellers of the land, even according to the plaintiffs, was paid from the separate account opened for this purpose by Defendant the Company. Keeping in view the fact that plaintiffs claimed having 61% investment in the Company, without being shareholders, plaintiffs were asked to disclose the mode of investment and source of investment on affidavit. plaintiffs have filed affidavits in which plaintiffs have stated different cash amounts having been paid to the farmers, from whom the land was purchased. There is no proof of payment of this cash amount and plaintiffs have not disclosed any source where from they got this cash amount. plaintiffs have not filed their books of accounts, income tax returns or profit and loss account showing that they had these funds available with them, in cash, which they paid to the farmers. It is also not disclosed by the plaintiffs whether these payments were accounted for in the books of accounts or not. In absence of any document showing that plaintiffs had available with them huge funds to the tune of several crores of rupees, which plaintiffs allege to have paid in cash, without any proof to the farmers, the Court cannot consider this averment of the plaintiffs. Even otherwise, the Court cannot recognize the claim of the plaintiffs that plaintiffs invested 61% of the sale consideration. This claim of the plaintiffs is made only in the air without any basis, since plaintiffs were not the shareholders of the Company.

6. The shareholders of the Company have every right to run the Company, even without plaintiffs being there as Directors. The Court cannot interfere in the management of the Company and cannot direct a Company to induct non-shareholders as Directors merely on the basis of allegations that those non-shareholders had invested money from undisclosed sources by undisclosed modes.

7. I view of my discussion above, I find no force in the application. The application under Order 39 Rule 1 and 2 CPC is hereby dismissed. Application under Order 39 Rule 4 CPC also stands disposed of. The status quo order dated 28th September, 2007 granted by this Court is hereby vacated.

CS(OS) No. 1739/2007

List this suit for framing of issues on 27th August, 2008.