

(1981) 08 CAL CK 0013

In the Calcutta High Court

Case No : Appeal No. Nil of 1981, Company Application No. 93 of 1981 and
Company Petition No. 169 of 1981

Piyush Kanti Guha

APPELLANT

Vs

West Bengal Pharmaceutical and Phytochemical Development
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 07-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Companies Act, 1956 — Section 397, 398

Citation : AIR 1982 Cal 94

Hon'ble Judges : Sabyasachi Mukharji, J; C.K. Banerji, J

Bench : Division Bench

Advocate : Sushil Biswas, Radhapa Banerji and Satyajit Banerji, for the
Appellant; Anindya Mitra and S.C. Ukil, for the Respondent

Judgement

1. This is an application asking for admission of an appeal preferred from the order of Roy Chowdhury, J. refusing to stay proceedings under Sections 397 and 398 of the Companies Act, 1956 being Company petition No. 169 of 1981, Company Application No, 93 of 1981. The appellant's case is that the Suit No. 209 of 1981 had been filed prior to the institution of the company petition. The appellant further contends that the matters in controversy are in substance the same and though the parties are not identical the real issue between the parties is the same and the High Court has jurisdiction in both the matters and it would be incorrect, according to the appellant, that the Company Court has exclusive jurisdiction u/s 10 of the Civil P. C. In view of the fact that the suit had been instituted prior to the Institution of the company petition it is submitted that the suit should have been stayed.

2. Without going into the abstract question whether the civil court in any particular situation hearing a suit under CPC can exercise the powers which are exercisable by the Company Court under Sections 397 and 398 of the Companies Act, 1956 it appears to us that in this case the causes of action in essence, in

two matters, are different. There is a case of oppression against the minorities and mismanagement by the Guhas. Looked at from that point of view it appears to us that in this case it would be incorrect to say that the controversy in both the matters is in essence the same.

3. Leaving aside the question that the parties are different we are inclined to the view that Section 397 is a special code by itself as observed by the Supreme Court in the case of *Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others*, . This view has also been expressed by the Division Bench of this Court in the case of *Debijhora Tea Co. Ltd. v. Barendra Krishna Bhowmick*, (1980) 50 Com Cas 771, The learned advocate for the appellant, however, drew our attention to the observations of the Division Bench of the Allahabad High Court in the case of *Smt. Patna Devi v. Harihar prasad Naik*, 1978 TLR 2292 where the Division Bench of the Allahabad High Court was of the view that the civil court could take cognisance of the matter because it possessed jurisdiction to do so u/s 9 of the C. P. C. and not because of anything contained in the Companies Act. The Division Bench was further of the view that it would not be correct to say that the party concerned should first seek his remedy from the Company Court under Sections 155, 397 and 398 of the Act and then he could file a suit only if the Company Court refused to grant any relief. In an appropriate case where the suit is cognisable u/s 9 C. P. C. simply because some of the allegations in that suit also attract the provisions of Section 397 or 398 or Section 155 of the Companies Act, 1956 it may not be obligatory on the party to await an adjudication by the Company Court to institute a proceeding under the Civil P. C. But if a particular type of relief sought for can only be given in an appropriate proceeding under Sections 397 and 398 which, as we have mentioned before, are code by themselves as held by the Supreme Court then it is not possible to circumvent that procedure by instituting proceedings in a civil court. The facts in the context of which the Division Bench of the Allahabad Court made the aforesaid observations are entirely different. Quite apart from any of these theoretical questions we have examined the reliefs that have been asked for in the 397 application in the instant case. The main relief seems to be on the ground of oppression and framing of a scheme and appointment of directors which is distinctly different from the relief asked for in the suit restraining some directors nominated by the Government from functioning.

4. In this view of the matter prima facie we are satisfied that the learned Trial Judge was right in not granting stay u/s 10 of the Civil P. C. In the premises, we are of the opinion that we cannot stay the operation of the order of the learned Trial Judge until the disposal of the appeal. Save the order that we have already made, that is to say, admitting the memorandum of appeal there will be no further order on this application. Save to that extent all interim orders are vacated.

5. Appeal from the orders dated 27th July, 1981 and 15th July, 1981 is to be consolidated and one set of Paper Book cyclostyled or typewritten in both the

appeals is to be filed within one month from date. Notice of appeal is waived. Settlement of index is dispensed with. All papers used in the Court below including the order appealed from and the order admitting the appeal will be included in the Paper Book. In case certified copies of the orders are not available within the time aforesaid, liberty is given to the appellant to file a supplementary Paper Book to include the certified copies of the orders, Department to issue certified copies of the orders expeditiously.

6. Costs of this application will be costs in the appeal.