
(1989) 07 BOM CK 0044
In the Bombay High Court

Rajdhani Roller Flour Mills Pvt. Ltd

APPELLANT

Vs

Mangilal Bagri and others

RESPONDENT

Date of Decision : 07-07-1989

Acts Referred:

Companies Act, 1956 — Section 209, 397, 398

Citation : (1989) 07 BOM CK 0044

Hon'ble Judges : M.C. Jain, J;Arun Kumar, J

Bench : Division Bench

Judgement

M.C. Jain J.

1. This appeal is directed against the order of learned company judge dated July 7, 1989, whereby the learned judge disposal of C.A.No.543 of 1989. The application was allowed and a direction was given that the concerned Assistant Registrar should supply photo copies of the documents, as mentioned in the application at the cost of the petitioners.

2. The short question involved in the present appeal is whether the respondents in this appeal are entitled to photo copies of documents which have already been inspected by them. We have been taken through the orders passed by the learned company judge on various applications and it is not necessary for us to refer to all of them, but it is important to mention here that the learned company judge allowed inspection of the documents and in fact the documents mentioned in the application have already been inspected. The question of supply of copies arose at the stage of evidence while recording the statement of petitioner No.2, Mr.Shankarlal Bagri and, at that stage, photo copies of folios of various books of account were supplied as mentioned at page 40 in the paper book of this appeal.

3. The supply of copies resisted by the appellants on the ground that certain factual errors have been committed by the learned company judge in the impugned order and, as a matter of law, the respondents are not entitled to supply of copies of the documents in question. Besides that, it is also urged on

behalf of the appellants that no prejudice will be caused to the appellants and even on equity, looking at the contumacious conduct of the respondents, the court should refuse the prayer for supply of copies.

4. We have considered the above submissions of learned counsel for the appellant. We are of the opinion that the matter is already at an advanced stage and inspection of documents has already been done. Therefore, it would be in the interest of justice that copies of documents be supplied to the respondents. We may mention that, with regard to production of documents, inspection of document and supply of copies, the matter is to be considered in the light of the provisions contained in the CPC and the power can be exercised by the court even u/s 151, Civil Procedure Code.

5. Admittedly, inspection has already been allowed and inspection has been done and it is on the basis of the inspection that evidence has so far been recorded and documents have been put to the witness in examination-in-chief and the cross examination is yet to begin. As per the statement of learned counsel for the respondent, some more witnesses are to be examined and, for providing certain facts from the books of account, questions have to be put to all the witnesses regarding allegations made in the main petition. It is for the respondent to substantiate the allegations by placing on record necessary evidence in the form of documents and providing the same. It is stated that only relevant entries would be put in evidence which have a bearing on the averments made in the main petition. But then, it does not mean that, for preparation of the whole matter, the respondents may be refused copies of books of account, as prayed for by the respondents in the application.

6. Counsel for the appellant, in support of his contention, placed reliance on some case law and particularly the decision of the Calcutta High Court in *Maharani Lalita Rajya Lakshmi M.P. Vs. Indian Motor Co., (Hazaribagh) Ltd. and Others*, . The judgment refers to the provision regarding right of inspection. Section 209(iv) of the Companies Act permits inspection by the directors, of the books of account. On the basis of section 209, it cannot be argued that, in order to prove the allegations made under sections 397 and 398, shareholders have got no right of inspection to the books of account and other relevant papers of the company. It is true that detailed provisions have been made with regard to inspection of documents by shareholders and directors but, on the basis of such provision, it cannot be argued that, at the time of trial u/s 397,398, the right of the shareholders is, in any way, restricted. The Calcutta case, in our opinion, would not apply in the given situation and we express our disagreement with the view that the right of inspection is limited to the board of directors u/s 209(iv) and that right is not available to shareholders for inspection of the books of account of the Act. It may be mentioned that there are allegations and counter-allegations in the petition regarding misuse of the funds of the company in an arbitrary manner. It is only with the help of books of account that the matter can be investigated and the parties should, in such a case, be at liberty to look into

the books of account and substantiate their case. It is significant to take note of the fact that inspection has already been completed. There could be no valid reason for refusal of the supply of xerox copies. In our opinion, supply of xerox copies would facilitate the trial of the petition. It would be a time-saving device for the court as well as for the lawyers on both the sides. After studying all the documents by supply of xerox copies, evidence can easily be recorded and only relevant questions would be put to the witnesses in view of the fact that the study would be made in advance of all the entries. This court had occasion to consider the question with regard to supply of copies of proxies. Reference may be made to *Swadeshi Polytex Ltd. Vs. V.K. Goel and others*, . It was contended in that case that, in the Companies Act, 1956, there is no provision for any member or shareholder to obtain proxies or the specimen signature of the shareholders maintained by the company. There was a limited right of inspection granted to a shareholder of the company and after issue of 3 day's notice to it and such a right does not entitle any shareholder to obtain copies of the proxies or the signatures of the parties thereon. This submission was negatived and it was observed by this court that the statutory provision makes it clear that the proxies deposited with a company are open to inspection and there is no secrecy either in the signatures or in the other particulars contained in the instrument of proxy. A proxy can, at any time, be revoked. In respect of proxies, the case of the plaintiff was that proxies executed in favour of the respondents had been revoked by execution of later proxies by the same person. The proxies or their certified copies is a vital document for disposal of the suit. It was further observed that the issue of certified copies can cause no prejudice except that the appellant may want to withhold the documentary evidence from the court at the trial. It was also observed that the direction for the issuance of certified copies by the Registrar and upheld by the learned single judge under the orders in appeal makes no decision affecting the merits of the suit. It does not affect any vital or valuable right of the appellant except the procedural irregularity, if any, of issuing certified copies of documents contained in the summoned record of the suit in which the plaintiff is not a party. Reference may also be made to the Single bench decision of the Gujarat High Court in *Jagatbhai Punjabhai Palkhiwala and Others Vs. Vikarambhai Punjabhai Palkhiwala and Others*, . The documents in that case of which inspection was sought were in the custody of court. The documents did not become part of the record of the suit ; still the learned judge observed that the plaintiff will be taking copies to make an effective and detailed study and have proper consultation with their lawyers. That would also enable counsel to render proper assistance to the court. Since the court is not verifying the correctness of the copies, there is no need for the documents becoming part of the record. Since the documents happen to be in the custody of the court, its permission to take xerox copies of the same is required. But that does not mean that the court can refuse such permission only on the ground that they have not become part of the record. No prejudice can occur to the other side if the xerox copies are permitted to be taken. The purpose of inspection will become ineffective and would be frustrated. No harm

or prejudice can be caused to the other side if xerox copies can be taken. It was also observed in that case that if the inspection of the documents is granted by the court, there is no reason why copies of the same cannot be supplied. The purpose of inspection is to know and study the documents. In view of the very large number of documents, the petitioner wanted that they may be permitted to take xerox copies of the same.

7. We are in agreement with the learned judge of the Gujarat High Court. It may be mentioned that the same is the situation in the present case also. It appears that a very large number of documents would be referred to in evidence as stated by learned counsel at the Bar. Inspection of the same has already been done. In such a situation, in our opinion, interests of justice would be served in case the respondents are permitted to have xerox copies of the documents applied for. As regards the question of prejudice, suffice it to say that when inspection is already over, the question of prejudice does not arise as everything has come to the knowledge of the respondents. If xerox copies are supplied, in our opinion, there can be no prejudice.

8. In the above view of the matter, the order of the learned company judge calls for no interference. In the result, this appeal is hereby dismissed. No order as to costs.