

(2009) 02 DEL CK 0103
In the Delhi High Court
Case No : CS (OS) No. 1944 of 2003

Ravi Raj Gupta and Others	Vs	APPELLANT
Hans Raj Gupta and Co. (P) Ltd. and Others		RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) 151 CompCas 502

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

Bench : Single Bench

Advocate : G.K. Mishra, for the Appellant; Vikas Dhawan and Abhimanyu Mahajan for D-3, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The plaintiff has filed this suit seeking a declaration that the Board resolution dated 12.1.2002 passed by the Board of Directors of defendant No. 1 Company was null and void. plaintiff also sought permanent injunction that defendants be restrained from acting on above resolution of the Board of Directors and Court should restrain defendant No. 5 from taking any steps pursuant to directions issued by other defendants in accordance to the Board's resolution. Prayer is also made that defendants be restrained from dispossessing the plaintiffs from the premises.

2. On the very day of presentation of this suit on 12.11.2003 the Court had asked the plaintiffs to address the arguments on the maintainability of the suit however, the matter remained pending for considering the maintainability of the suit for such a long time.

3. Brief facts relevant for the purpose of deciding this issue are that the defendant No. 1 company was a tenant in property No. 3 Amrita Shergill Marg, New Delhi. This property was leased by defendant No. 5 M/s H.G. Gupta and Sons (HUF) to defendant No. 1 Company for residence of its officers. The company by a resolution in the meeting of Board of Directors held on 27.2.1974

allotted this property to late Lala Hansraj Gupta in his capacity as CEO/Chairman of the company. Late Lala Hansraj Gupta was father of plaintiff No. 2 and defendants No. 2-4 and grandfather of plaintiff No. 1. Late Lala Hansraj Gupta passed away on 3.7.1985. At the time of death of Lala Hansraj Gupta his widow Smt. Angira Devi was living in the premises and plaintiffs No. 1 and 2 were living with her. These three persons continued to occupy the property leased out to the company without any formal allotment from the company. However, plaintiff No. 1 at one point of time was Chief Executive Officer of the defendant No. 1 company. For this reason, no objection seemed to have raised by Board of Directors against plaintiff No. 1 and his father occupying the property. The Board of Directors of defendant No. 1 in their meeting held on 9.10.2000 removed plaintiff No. 1 from the post of Chief Executive Officer of defendant No. 1 Company. plaintiff did not vacate the property even thereafter. Defendant No. 1 Company filed a criminal complaint under the Companies Act before the Court of Additional Chief Metropolitan Magistrate in this respect regarding unauthorized occupation of the company property. Thereafter, a resolution was passed by the company on 12.1.2002 surrendering this property to the HUF i.e. defendant No. 5.

4. The plaintiffs have filed this suit challenging the validity of this board resolution on the ground that the resolution was in contravention of Section 299 of the Companies Act, since the Directors, who passed the resolution had not disclosed their interests. It is submitted that defendants No. 2-4 being Directors of defendant No. 1 Company had also interest in the property, in question, being co-parceners of the HUF (defendant No. 5) and since they did not disclose their interests u/s 299 of the Companies Act, the resolution was bad in the eyes of law. The other ground taken is that defendant No. 1 Company had taken this property on lease from defendant No. 5 HUF vide its special resolution passed in an extraordinary General Meeting of shareholders held on 27.1.1974 for use and occupation of company officers, the plaintiffs have been residing in the premises during lifetime of late Lala Hansraj Gupta, who was occupying the premises as Chairman/Chief EO and after death of Lala Hansraj Gupta plaintiffs have been in continuous, uninterrupted and peaceful enjoyment of the premises till date. The defendant No. 1 company has been holding leasehold rights for more than 25 years and there was no reason for defendant No. 1 Company, surrendering the leasehold rights by passing the impugned resolution. The defendants were acting to further their own interest and misuse their capacity as Directors to cause grievance to the plaintiffs.

5. plaintiff No. 1 is a Director of the defendant No. 1 company. Defendant No. 1 Company is a family company in which all Directors are related to each other; they are all also members of HUF and all the Directors know each others' interests. The question of non-disclosure of interest of by any of the Directors therefore does not arise. The term "disclosure" as used in Section 299 of the Companies Act means - to make others aware of something, which they are not aware. Since the relationship between the plaintiffs and the defendants is such

that they were all aware that the property was HUF property and the co-parceners had interest in the property, there was no question of making others aware of this interest and the plea taken by the plaintiffs is a baseless plea. Even otherwise, plaintiff No. 1 is a Director of the Company; he himself had ratified this resolution at the subsequent meeting of the Board of Directors as a Director. He has no right to challenge the resolution of the company of surrendering the tenancy before a Civil Court. Even if, he was living in the premises with the permission of the Company or without the permission of the company, he has no locus standi to challenge the resolution of the company on the ground of violation of Section 299 of the Companies Act since he and other Directors were aware of the interests of all the Directors. Similarly, plaintiff No. 2, who is only a shareholder of defendant No. 1 company has no right to challenge the resolution passed by Board of Directors of Company. A shareholder has a right only to the dividend and of participation in the Annual General Meetings and to vote there. A shareholder has no "say" in the management unless and until he becomes part of the management.

6. The Counsel for the plaintiff has relied upon *Avanthi Explosives P. Ltd. v. Principal Subordinate Judge Tirupathi and Anr.* 1987 62 Comp Cas 301 wherein Andhra Pradesh High Court had held that the obligation of a Director to disclose his interest in a contract entered into or to be entered into is an obligation similar to that of a Trustee and Directors are in the position of Trustees according to common law and they have a fiduciary relation towards the shareholders. Trustees become disqualified if they have any interest adverse to that of the beneficiaries and that they have to account for any secret profit made by them. The Director of a company could therefore maintain a suit before the Civil Court challenging the validity of resolution passed by its Board of Directors to the effect that he has been disqualified from company as a Director as he has not disclosed his interest as required u/s 283 and 299 of the Companies Act. I consider this case is of no help to the plaintiff. As already observed, all the Directors including plaintiff No. 1 are closely related to each other and their status of a co-parcener in HUF property was well known to all concerned.

7. The plaintiffs in this case are motivated by their self-interests. The plaintiffs want to continue in possession of company's property without any right. A property leased out to the company, can be allotted by the company to any of the officials. The plaintiffs have no prerogative to live in a company's property without the permission of the company. It is not the case of the plaintiffs that they have any exclusive or special right to live in the property. They have approached the Court with an ulterior motive of retaining the property illegally. The excuse of Board's resolution having been void has been just taken as a facade plaintiff No. 1 has already been proceeded against by defendant No. 1 company under appropriate provisions of Company law for illegally remaining in possession of the property. In fact it is he, who is interested in retaining the property to the exclusion of other co-parceners and has raised a baseless plea of a Board of Directors resolution being void.

8. Board of Directors of defendant No. 1 Company knew each others" interests and therefore there was no violation of Section 299 of the Companies Act. In A. Sivasailam v. Registrar of Companies 1995 83 Comp Cas 141 the Company Law Board has considered this issue of disclosure of interest and had observed that "disclosure of interest" has to be in the meeting of Board and the object of the provision in the section is not that a Director should not have any personal interest in a contract or arrangement but only stipulates that the same should be disclosed and if the Directors already know the interest of each other the question of further disclosure does not arise.

9. I consider that the suit filed by the plaintiffs is not maintainable being a frivolous suit and the plaintiffs have been dragging this frivolous suit for all these years. The suit is liable to be dismissed with heavy costs and is hereby dismissed with costs of Rs. 50,000/- to be paid to the defendants equally.