
(1972) 04 RAJ CK 0010
In the Rajasthan High Court
Case No : Special No. 7 of 1972

Sadul Textiles and Others

APPELLANT

Vs

Raza Textiles and Others

RESPONDENT

Date of Decision : 14-04-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110
COMPANIES ACT, 1956 — Section 397, 398, 400, 402
Constitution of India, 1950 — Article 133, 134

Citation : (1972) WLN 255

Hon'ble Judges : L.N. Chhangani, Acting C.J.;B.P. Beri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L.N. Chhangani, Ag. C.J.

1. This is an appeal u/s 18 of the Rajasthan High Court Ordinance against the judgment of the Company Judge dated December 7, 1971. and has arisen in the following circumstances.

2. M/s. Raza Textiles Limited and M/s J.P. Srivastava and Sons Private Limited who are respondents Nos. 1 & 2 respectively in this appeal (who shall hereinafter be referred to as the petitioners), submitted a petition under Sections 397 and 398 of the Companies Act (I of 1956) (hereinafter referred to as the Act) impleading the appellants who shall hereinafter be referred to as the main contesting respondents) and respondents 2, 3. 6 to 9 and 16 (who shall hereinafter be referred to as the proforma respondents) for appropriate orders. After reply by the respondents and rejoinder, the application came up before the learned Company Judge on February 24, 1971. The Official Liquidator, it is agreed, made an oral request for time to file a representation on behalf of the Central Government and the learned Judge agreed to grant time. The application was heard by the learned Judge on February 24, 25 and 26, 1971. On February 26, 1971, a joint application by the petitioners and two of the proforma

respondents J.K. Srivastava and H.K. Srivastava on the one hand, and main contesting respondents 4, 5 and 10 to 15 on the other, was filed. In that application it was stated that it had been agreed between them that a long term solution of the differences/disputes between them lay in one of those groups selling out its shares in the Company to the others. It was agreed between them that "the manner of sale and offer of the parties in this behalf should be referred to the arbitration of Shri M.C. Chagla" or, failing him, one of the other persons named in the application. It was stated that the arbitrator shall decide which of the two groups was to sell its share in the Company to the other and at what price. It was prayed that an order may be passed in terms of that application which contained some other details as well. The learned Counsel for the other parties had no objection if the arrangement stated in the application dated February 26, 1971, was given effect to. The Company Judge made an order as prayed by the parties in the application and incorporated the terms of the application in his order. Thereafter, some steps were taken to secure the award of Shri M.C. Chagla but could not give any award and eventually, on April 12, 1971 Mr. Dang and Mr. Arora submitted an application before the Company Judge stating the facts and reporting that the arbitration had "proved abortive". When the case eventually came for consideration after a few adjournments on November 30, 1971, a preliminary objection was raised on behalf of the main contesting respondents that the petition could not be sustained and must be dismissed because the Court had granted that particular relief which was stated in its order dated February 26, 1971, and that the relief fell within the purview of Section 402(b) of the Act, and that; the petitioners were themselves to blame if they did not avail of that relief. This application was opposed on behalf of the petitioners on the following grounds:

1. That the petition under Sections 397 and 398 of the Act could not be referred to arbitration and was not actually referred to the arbitration.
2. That the order dated February 26, 1971, merely referred to the dispute between the petitioners and the proforma respondents nos. 2 and 3 on the one hand and the main contesting respondents on the other, for a long term solution of their differences/disputes, and it was therefore futile to contend that the petitioners should not be head on their petition under Sections 397 & 398 of the Act merely because nothing ultimately came out of that attempt at a long term solution.
3. That there were other parties to the petition and they had not been made parties to the application.
4. That u/s 400 of the Act the representation, if any, of the Central Government had to be taken into consideration and that representation was not before the Company Judge, he having allowed time to the Central Government for filing the representation.

The learned Company Judge after hearing the parties recorded the conclusion

that "the attempt to give the order of February 26, 1971 the status of an order on the merits of the controversy, or to show that the court thereby decided to grant only a relief of the nature mentioned in Section 402(b), is therefore an after-thought and is wholly unjustified" and in this view of the matter, he overruled the preliminary objection raised on behalf of the main contesting respondents. The main contesting respondents have therefore filed the present appeal.

3. Mr. Sen appearing for the main contesting respondents raised a preliminary objection as to the maintainability of the appeal. According to him, the order of the learned Company Judge was not a "judgment" within the meaning of Section 18 of the Rajasthan High Court Ordinance. The term "judgment" appears in Sections 109, 110 of the CPC and Articles 133 and 134 of the Constitution and some sections of the Letters Patent.

4. So far as the interpretation of the term "judgment" appearing in Sections 109 and 110 of the CPC and Articles 133 and 134 of the Constitution is concerned, it can have no bearing as observed by the Supreme Court. As to the meaning of the term "judgment" appearing in the Letters Patent, there are decisions expressing divergent opinions. This divergence of opinion was noticed by the Supreme Court in *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, but the Supreme Court did not resolve the conflict of authorities. We consider it unnecessary to review and notice in detail the case-law. It will be sufficient to refer to *Shri Radhey Shyam Vs. Shyam Behari Singh*, In that case their Lordships of the Supreme Court referred with approval to the decision of the Allahabad High Court in *Standard Glass Beads Factory and Another Vs. Shri Dhar and Others*, where the High Court of Allahabad construed the term "judgment" as including a final judgment as also a preliminary and an interlocutory judgment and observed that it did not exclude an order. Referring to *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, relied before them, their Lordships observed:

It will be noticed that the order in question was on an application in the suit as a step-in-aid towards the determination of controversy between the parties in the suit. It was, therefore, that the said observation was made that the order sought to be appealed against did not affect the merits of the controversy in the suit nor did it terminate or dispose of the suit.

Then, their Lordships made the following significant observations:

For an order to be a "judgment" it is not always necessary that it should put an end to the controversy in the suit or should terminate the suit. Even the narrower definition of a "judgment" as given by Couch, C.J. in the *Justices of the Peace for Calcutta*, 8 Bang LR 433= 17 Suth WR 364 was that it must mean a decision which affects the merits, of the question between the parties by determination some right or liability and such a decision might be either final or preliminary or interlocutory.

Then their Lordships referred to the judgment of the Delhi High Court in Begum Aftab Zamani v. Lal Chand Khanna AIR 1969 Delhi 85 where the Delhi High Court held that the expression "judgment" in Clause 10 of the Letters Patent of the Lahore High Court not only meant a judgment having the effect of a decree, but any other which affected the merits of a controversy between the parties by determining some disputed right or liability."

5. Judging the present case in the light of the principle enunciated by the Supreme Court we must observe that the counsel for the main contesting respondents raised a controversy that they had acquired a right to get the petition under Sections 397 and 398 of the Act dismissed on the basis of rights created in their favour by the agreement between the parties as contained in the application dated February 26, 1971. This was opposed by the petitioners before the Company Judge. The learned Company Judge has determined this controversy between the parties and we are inclined to accept the view that the learned Company Judge having determined the controversy as to the rights raised before the parties, the order of the learned Company Judge is a judgment within the meaning of Section 18 of the Rajasthan High Court Ordinance. The preliminary objection, therefore, does not deserve to be accepted. It may also be remarked that Mr. Sen even though he raised a preliminary objection, also desired that there should be consideration of the appeal on merits.

6. Coming to the merits, it was contended by Mr. Ved Vyas that the normal and the principal relief in cases of alleged opposition of mismanagement is by directing sale by one party and purchase by the other co-sharers & that in the present case, the parties agreed in principle to the sale of shares by one party and purchase by the other. The main controversy, between the parties was thus settled and what was left was merely the incidental question as to who should be held competent to purchase the shares and who should be made liable to sell the shares and what should be the price. The non-determination of these incidental and consequential questions should not have any substantial bearing on the principal controversy. Consequently, the Company judge's order dated February 26, 1971, should be treated as one granting relief to the petitioners in the nature of one of the reliefs mentioned in Section 402 of the Act. It follows, therefore, that after the agreement between the parties the petition could not survive and had to be dismissed. We regret, we are unable to accept this contention made on behalf of Mr. Ved Vyas. Section 402 of the Act no doubt contemplates an order requiring one party to sell the share to others but there should be an appropriate order providing as to who should purchase and at what price. A mere agreement between the parties that there should be sale by one to the other cannot be treated as a proper and a valid order in terms of Section 402 of the Act. It must also be mentioned that the jurisdiction of the Company Judge under sections 397 and 398 of the Act is of a regulatory character and it cannot be delegated to, be exercised by any other authority nor can the petitioners the subject matter of a compromise. The Company Judge has also to take into consideration representation, if any, filed by the Central Government for which the company

judge has to give a notice u/s 400 of the Act. it appears to us that the Company Judge referred the differences and disputes between the parties to the arbitrator and contemplated passing of final or appropriate order after receiving the award of the arbitrator. The order passed by the Company Judge on February 26, 1971, cannot in any way be considered as a final order u/s 402 of the Act.

7. It may also be mentioned that the question as to who should sell & who should purchase and at what price, are all very pertinent matters and in the absence of their appropriate determination there could be no final order u/s 402 of the Act. The extreme stand taken on behalf of Mr. Ved Vyas was wholly untenable and was rightly rejected by the Company Judge.

8. Next, it was contended by Mr. Ved Vyas that the parties having agreed in principle to the purchase of shares of one party by the other and the question as to who should be the purchaser and who should be the seller and what should be the price, having been referred to the arbitration, the petitioners made themselves remediless by non-co-operating with the arbitrator and causing to frustrate the arbitration. We are unable to accept this contention also. In the first instance, there are no adequate and sufficient materials before us to reach a positive conclusion that the petitioners can be blamed to the extent of having frustrated the award. Even if the arbitrator could not give any award on account of their non-cooperation that should be hardly a good ground for summarily dismissing the petitioners' petition.

9. Lastly, it was contended that we should record a conclusion that the agreement between the parties that one party should sell the share to the other has become final and must be given effect to and that we should make necessary directions for further steps to be taken in Implementing this agreement and the order. We regret, we cannot adopt this course. This would mean hearing of the petition and its disposal in appeal. The learned Company Judge has not disposed of the petition on merits and we are, therefore, not in a position to bear the application on merits and arrive at a proper decision. It will be certainly open to the contesting respondents to contend before the learned Company Judge the bearing of the agreement between them as recorded in the application dated February 26, 1971 and the order of the same date in passing an appropriate order on the petition.

10. In the light of the above discussions, the appeal fails and is hereby dismissed.... In the circumstances of the case, we leave the parties to bear their own costs.