
(1992) 03 BOM CK 0019

In the Bombay High Court

Case No : Suit Lodging No. 395 of 1992 in Suit No. of 1992

Santosh Poddar and Another

APPELLANT

Vs

Kamalkumar Poddar and Others

RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Companies Act, 1956 — Section 10, 2(11), 255, 256, 283

Citation : (1992) 3 BomCR 310

Hon'ble Judges : Sujata Manohar, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.S. Rahimtoola and A. Wandrewala, instructed by Law Charter, for the Appellant; R.A. Kapadia, instructed by Mehta and Girdharilal for the defendants 2 and 3, Zia Mody, instructed by Federal and Rashmikanth for defendant No. 1, for the Respondent

Judgement

Sujata Manohar, J.—The plaints in both these suits have been placed before us in somewhat unusual circumstances.

2. The plaintiffs in Plaint Lodging No. 396 of 1992 had filed Suit No. 6975 of 1991 in the City Civil Court at Bombay for a declaration that the first defendant therein had ceased to be a Director of Poddar Tyres Limited, the third defendant therein with effect from 31st December, 1990. They sought a further declaration that all meetings of the Board of Directors of the third defendant Company held after 31st December, 1990 and in particular, the meetings allegedly held on 23rd March, 1991 and 10th June, 1991 are illegal, invalid, non est and the resolutions passed at these meetings are illegal, invalid and non est and not binding on the third defendant Company or the plaintiffs. They sought a further declaration that they continued to be the Directors of the third defendant Company and their purported cessation as such Directors is invalid, illegal, non set and void.

3. The plaintiffs in Plaint Lodging No. 395 of 1992 had filed a suit in the City Civil Court at Bombay, being Short Cause Suit No. 7688 of 1991 in which they have prayed that the first defendant in that suit had ceased to be Director of Poddar

Tyres Limited, the third defendant therein, with effect from the 30th September, 1991. In both these suits each of the prayers dealing with the above declarations had been valued at Rs. 300/- on the ground that the prayers were incapable of monetary valuation and the plaintiffs paid a court fee of Rs. 30/- on that basis u/s 6(iv)(j) of the Bombay Court Fees Act, 1959.

4. In the above two suits the plaintiffs therein had taken out Notice of Motion for interim reliefs. In the affidavits in reply which were filed by the defendants in the City Civil Court in the Notices of Motion, a preliminary objection was taken to the Jurisdiction of the City Civil Court to entertain and try the suits. In view of this objection the learned Judge of the City Civil Court framed a preliminary issue as to jurisdiction in both these proceedings. This was as follows:

Whether this Court has jurisdiction to entertain and try the suit in view of the provisions of section 10 of the Companies Act read with the Notification dated 29-5-1959?"

By a common judgment and order dated 28th November, 1991 the learned Judge of the City Civil Court came to the conclusion that the City Civil Court had no jurisdiction to entertain and try the suit. He therefore directed that the plaint be returned to the plaintiffs for presentation to the Hon"ble High Court on its Original Side under Order VII, Rule 10 of the Civil Procedure Code.

5. From this judgment and Order appeals were preferred in both these suits to the High Court being A.O. No. 111 of 1992 and A.O. No. 112 of 1992. The appeals came up for hearing before a learned Single Judge of this Court (Patankar, J.) who, by his judgment and order dated 3rd February, 1992, dismissed the appeals summarily. The learned Single Judge held that the reliefs claimed in the suit pertained to section 256 and 283 of the Companies Act, 1956 and in view of section 2(11) of the Companies Act read with section 10 of the Companies Act, the High Court alone had jurisdiction to entertain and try the suit. The learned Judge relied upon a decision of another Single Judge of this Court at Nagpur in the case of Vithalrao Narayanrao Patil v. Maharashtra State Seeds Corporation Ltd. and anr., reported in 68 Company Cases P. 608 in this connection.

6. After dismissal of the above two appeals the plaintiffs lodged the plaints under Lodging Nos. 395 and 396 of 1992 in the High Court.

7. Under Rule 131 of the High Court Rules on the Original Side the Prothonotary and Senior Master of the High Court has been delegated certain powers of the Chamber Judge. These include determining the question of admission and rejection of the Plaints. Under the proviso to Rule 131 where any matter appears to the Prothonotary and Senior Master proper for the decision of the Judge, the Prothonotary and Senior Master may refer the same to the Judge in Chambers and the Judge may either dispose of the matter or refer the same back to the Prothonotary and Senior Master with such directions as he thinks fit.

8. In exercise of powers so delegated to him the Prothonotary and Senior Master scrutinised the two Plaints in order to consider whether the plaint should be taken on the record or not. The Prothonotary came to the conclusion that from the jurisdiction clause in both these plaints it could be seen that the subject matter of the suits had been valued by the plaintiffs for the purposes of Court Fees and jurisdiction at Rs. 300/- each u/s 6(iv)(j) of the Bombay Court Fees Act, 1959 as the reliefs were not capable of monetary valuation. u/s 8 of the Suits Valuation Act, 1987 the value for the computation of Court Fees and jurisdiction is required to be the same. As the monetary jurisdiction of the High Court on the Original Side is above Rs. 50,000/- he was of the view that the High Court had no jurisdiction to entertain and try the two suits. However, in view of the decision of the City Civil Court that the plaintiffs should present the plaints in both these suits to the High Court on the Original Side, which was upheld by the learned Single Judge in the Appeals against Orders, he placed the two plaints before the learned Chamber Judge for his consideration. The learned Chamber Judge (Srikrishna, J.) by a detailed speaking order has come to the conclusion that looking to the valuation of the two suits the High Court has no jurisdiction to entertain and try the suits and the competent Court to try the suit is the Bombay City Civil Court at Bombay. He has said that he is unable to agree with the view expressed by the learned Judge of this Court in his judgment of 3rd February, 1992 in A.O. Nos. 111 and 112 of 1992 for reasons which he has set out in his order. In view of this disagreement the matter has been placed before us for consideration under an order of the Hon"ble the Chief Justice.

9. In order to decide the question as to jurisdiction we have to examine the nature of the suit. We have already set out the reliefs which are claimed in the two suits. They relate to a declaration that some of the parties have ceased to be Directors of the Company in question and/or that some of the parties concerned have not ceased to hold office of the Directors of the company in question. The other reliefs relate to a declaration that the meetings of the Board of Directors held on certain dates and (sic) not valid. The submissions in the plaint are based on the provisions of the Companies Act dealing with the holding of office of Directors, namely, sections 255 and 256, as also section 283 which deals inter alia with a Director vacating his office if he remains absent at three consecutive meetings of the Board of Directors. We have to consider whether a suit of this nature is covered by section 2(11) of the Companies Act read with section 10.

10. u/s 2(11) of the Companies Act the term "the Court" is defined to mean as follows:

"2(11) "the Court" means,-

(a) with respect to any relating to a Company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that Company, as provided in section 10;

(b) with respect to any offence against this Act, the Court of a Magistrate of the

First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence",

Section 10 of the Companies Act is as follows:

"10 (1) The Court having jurisdiction under this Act shall be-

(a) the High Court having jurisdiction in relation to the place at which the registered office of the Company concerned is situate except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to the High Court in pursuance of sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of Companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred-

(a) in respect of Companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of Companies with a paid-up share capital of not less than one lakh of rupees, by part VII (sections 425 to 560) and the provisions of this Act relating to the winding up of Companies.

(3) For the purpose of jurisdiction to wind up Companies, the expression "registered office" means the place, which has longest been the registered office of the Company during the six months immediately preceding the presentation of the petition for winding up".

When both these sections are read together it is apparent that whenever in the Companies Act the term "the Court" is used, the Court which is referred to is the Court as set out in section 10. When under the Companies Act a section refers to an application to a Court on any matter relating to a Company other than an offence under the Companies Act, section 10 provides that the Court having jurisdiction under the Act shall be the High Court, except to the extent to which such jurisdiction is conferred on any District Court by a Notification issued by the Central Government u/s 10(2). So that whenever there is any reference under the Companies Act to any proceedings before a Court under that Act, (other than proceedings relating to an offence under the Act) the Court which will have jurisdiction shall be the High Court or, if there is the requisite Notification, the District Court.

12. There are a number of sections under the Companies Act where such mention is made of proceedings before a Court. For example, u/s 391 of the Companies Act, where a compromise or arrangement is proposed between a Company and its creditors or its members, the Court may, on the application of

the company or a creditor or a member of the company, order a meeting of the creditors or members to be called, held and conducted in such manners as the Court directs. The meaning of the word "Court" here is as provided in section 2(11) read with section 10 of the Companies Act. It will therefore be the High Court, in the absence of any Notification u/s 10(2). Similarly u/s 397 of the Companies Act, as it originally stood, where any members of the Company complain that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members, an application can be made to the Court for an order under this section. Once again, the Court would be the High Court in view of section 2(11) read with section 10 of the Companies Act. Therefore, whenever there are proceedings required to be undertaken under the Companies Act before any Court, as prescribed by the Companies Act, these proceedings will have to be taken before the concerned High Court or the District Court if there is any Notification relevant to that application and/or proceedings.

13. It is however, quite clear from a reading of these two sections that there is no ouster of the jurisdiction of a Civil Court in all cases where the provisions of the Companies Act may be attracted. It is only in respect of these proceedings which are expressly contemplated under the Companies Act under any specific provision that the Court which is referred to in that section would be the special Court, namely the High Court or the Notified District Court. In all other cases ordinarily Civil Courts would continue to have jurisdiction. This has been so held by a learned Single Judge of our High Court in the case of Rao Saheb Manilal Gangaram Sindore v. Messrs Western India Theatres Ltd., reported in 64 Bom.L.R. 532.

14. In the case before the learned Judge a suit was filed by the plaintiffs for rectification of the registrar of members alleging that the Company had wrongfully refused to register their names in respect of certain shares which they had submitted to the Company with duly completed transfer forms. The suit was, therefore, governed by section 155 of the Companies Act. It was contended before the learned Single Judge that the remedy u/s 155 of the Companies Act was by an application which was to be made by way of a petition before the Company Judge and the suit was not cognizable by the High Court. The Court said that even for a relief contemplated by section 155 of the Companies Act, a suit would be the primary remedy under the general law. The relief which is contemplated by that section is one which would be available at common law as well, because, after all, relief at common law would be one which would arise by assertion of a right on the part of one party and denial thereof by the order. The provision u/s 155 for a procedure by way of an application is only a provision for a summary procedure. The object of this provision is not to whittle down or abrogate the procedure by way of a suit. The Court further said that it is recognised by a long line of judicial decision that the Court is not bound to give relief under an application u/s 155 if it finds that complicated questions of facts and law are involved. In such a case a suit will have to be filed. Therefore the

suit was maintainable and in order to decide the jurisdiction of the Court in respect of such a suit the relevant provisions of the CPC relating to territorial as well as pecuniary jurisdiction would have to be considered.

15. In the case of *B. Prakasam v. Sree Narayana Dharma Paripalana Yojana*, reported in 50 Company Cases 611, the Kerala High Court was required to consider the provisions of section 2(11) and section 10 of the Companies Act. In the case before the Kerala High Court the validity of a general body meeting of a Company held on a certain date was challenged. The petition was for a declaration that the meeting held on that day was not a duly and validly convened annual general meeting. The petitioner also prayed for other directions. It was contended before the Kerala High Court that the petition u/s 10 was not maintainable. The Court considered the question whether in view of sections 10 and 2(11) of the Companies Act, the High Court alone had jurisdiction or whether these reliefs should be asked for in a civil suit to which the provisions of the CPC regarding jurisdiction would apply. The Court said that the cause of action related to individual rights and not to corporate rights. Hence the Company Court was not invested with jurisdiction, much less exclusive jurisdiction, to grant reliefs in such a matter. The Kerala High Court has made a distinction between the corporate rights and personal rights of members. What is more relevant, it was held that except in cases where the Companies Act confers jurisdiction on the Company Court, either expressly or by necessary implication, all other disputes pertaining to a Company must be resolved through the forum of the Civil Courts. It was held that section 10 of the Companies Act only enumerates or specifies the courts having jurisdiction under the Companies Act where such jurisdiction is conferred on such a Court by the other provisions of the Companies Act. The Kerala High Court relied upon its earlier judgment in the case of *Joseph v. Jos*, reported in (1964) 34 Comp Cas 931 in this connection.

16. A similar view has been taken by the Punjab and Haryana High Court in the case of *Panipat Woollen and General Mills Co. Ltd. v. Kaushik*, reported in (1969) 39 Comp Cas 249. This case deals with a suit for a declaration that the plaintiff continued to be a director of the Company in question. The sole question before the Punjab and Haryana High Court was as to whether the case was triable by a Civil Court. The Court considered the provisions of section 2(11) and section 10 of the Companies Act and Notification issued u/s 10(2). The Court said that these provisions and the Notification only point out that the matters relating to a Company and mentioned in the Act will either be tried by the High Court or in certain cases by the District Courts. These provisions do not show that the jurisdiction of the Civil Courts has been expressly barred.

17. A similar view has been taken by the Madras High Court in the case of *Thiruyalluvar Valanmai Kashagam (P) Ltd. v. M.K. Seethai Achi*, reported in 64 Comp Cas 304, where the Court had to consider a suit filed by a Company against its former Managing Director for rendition of accounts. The Court said that the jurisdiction of the Civil Court was not excluded. In respect of all matters

dealt with under the Companies Act, the Court having jurisdiction is the Court as defined u/s 10 of the Companies Act. But in respect of matters not dealt with by the Companies Act or for which the Companies Act does not provide remedies, the ordinary Civil Court alone will have jurisdiction.

18. The Andhra Pradesh High Court in the case of *Avanthi Explosives P. Ltd. v. Principal Sub ordinary Judge, Tirupathi and anr.*, reported in 62 Company Cases p. 301 dealt with a suit for a declaration that the plaintiff was not disqualified to be a Director or managing Director of the Company in question. The Court said that the Civil Court had jurisdiction to entertain the suit and the section 10 only specifies the Court competent to deal with a matter arising under the Act and does not invest the Company Court with jurisdiction over every matter arising under the Act.

19. Delhi High Court has also taken a similar view in the case of *Maharaja Exports and anr. v. Apparels Exports Promotion Council*, reported in (1986) 60 Comp Cas 353.

20. In the case of *Bhulabhai v. State of Madhya Pradesh and anr.*, reported in AIR 1969 S.C. 70, the Supreme Court has laid down the principles regarding exclusion of jurisdiction of Civil Courts. The Supreme Court has said that where under the scheme of any particular Act, there is no express exclusion of jurisdiction it becomes necessary to examine the scheme of the Act to find out whether it is necessary to spell out intendment to exclude the jurisdiction of the Civil Court. Such exclusion is not readily to be inferred unless the conditions which are laid down in that judgment are fulfilled.

21. From the provisions of the Companies Act we do not find anything by which we can infer that the jurisdiction of the Civil Court is ousted. The very fact that section 2(11) is part of the definition clause under the Companies Act under which a Court is defined to mean the Court as prescribed u/s 10, clearly shows that whenever the term "the Court" is used in any section of the Companies Act, the term "Court" will have to be interpreted with reference to section 10. These sections will have no application where any general civil suit is filed. The definition clause is attracted only when resort is had to a proceeding under the Companies Act under a section which prescribes resort to a Court. Under the Companies Act powers are conferred not only on Courts but also on other authorities like the Company Law Board, the Central Government and the Registrar. Where a power is vested by the Act in a Court, that Court has to be ascertained with reference to section 10. Beyond so specifying the Court competent to deal with such a matter, section 10 cannot be construed as investing the Company Court with jurisdiction over every matter which may arise in respect of a Company or as divesting Civil Courts of their jurisdiction.

22. In the present case although the irregularities in holding meetings or the holding or cessation of the office of a Director may have to be decided with reference to the Companies Act, that Act has not prescribed a forum where such

a relief can be sought. In the absence of such prescription, the ordinary Civil Courts are competent to deal with such disputes. Hence the present suits were correctly filed originally in the City Civil Court.

23. The learned Single Judge, while deciding the appeals from orders however, placed reliance on a judgment of this Court in the case of *Vithalrao Narayanrao Patil v. Maharashtra State Seeds Corporation Ltd., and anr.*, reported in 68 Company Cases 608. In that case the learned Single Judge of this Court (at Nagpur) held that in view of section 10 of the Companies Act only the High Court can entertain any dispute in respect of the affairs of any Company. We do not agree with this interpretation of the learned Single Judge for reasons set out earlier.

24. The learned Single Judge has also relied upon a decision of a Single Judge of the Calcutta High Court in the case of *Hitendra Bhadra v. Triton Eng. Co. (P) Ltd.*, (1975) 80 CWN 242. The learned Single Judge of the Calcutta High Court had also interpreted section 10 to mean that all proceedings relating to any violation of the provisions of the Companies Act must be filed before the Court prescribed u/s 10 of the Companies Act. We do not agree with these findings of the learned Single Judge of the Calcutta High Court for reasons set out earlier. The above two judgments, in our view proceed on a misunderstanding of section 10 which has to be read in conjunction with section 2(11). In our view, therefore, the claims in the two suits before us are not claims which are required to be decided in any special forum prescribed under the Companies Act. Hence they are not governed by section 10 of the Companies Act. Therefore the jurisdiction of the Civil Court to entertain and try these two suits will be governed by the provisions of the CPC read with the Suit Valuation Act and the Bombay Court Fees Act.

25. It was also urged by Mr. R.A. Kapadia who appears for the defendants that under the Bombay City Civil Court Act, 1948, section 3 provides certain exceptions to the cases where suits and other proceedings of a civil nature not exceeding fifty thousand rupees in value and arising within Greater Bombay are required to be filed in the Bombay City Civil Court. One of these exceptions is under sub-section (c). This deals with suits or proceedings which are cognizable by the High Court under any special law other than the Letters Patent. Mr. Kapadia submits that the present suits have to be entertained by the High Court under the Companies Act which is a special law and hence they fall within section 3(c) of the Bombay City Civil Court Act, 1948. This submission has no merit. As pointed out by us earlier, the present suits are not required to be filed in the High Court u/s 10 of the Companies Act. Section 10 of the Companies Act has no application to the suits which are before us. We therefore agree with the view taken by the learned Chamber Judge, that the two suits have to be tried by a Civil Court. It is not in dispute that looking to the valuation of the prayers in the suits, it is the Bombay City Civil Court which will have jurisdiction to entertain and try the suits. The plaints are accordingly returned under Order VII, Rule 10 read with Rule 283 of the High Court Rules on the Original Side, for presentation

to the proper Court.

26. We have no doubt that in the event of it becoming at all necessary for the plaintiffs to approach the learned Single Judge of this Court who passed the orders in A.O. Nos. 111 of 1992 and 112 of 1992 for a review of his orders, the applications will be considered by the learned Judge in the light of our observations above.

Prothonotary to act accordingly.