

(1924) 04 CAL CK 0009
In the Calcutta High Court

Sarat Chandra Chuckerbutty and Another	APPELLANT
Vs	
Tarak Chandra Chatterjee and Others	RESPONDENT

Date of Decision : 08-04-1924

Acts Referred:

Citation : 82 Ind. Cas. 405

Hon'ble Judges : Newbould, J;B.B. Ghose, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought by four persons as plaintiffs against defendants Nos. 1 to 5. who are stated to be acting as Directors of the Company which was joined as defendant No. 6 on the ground that one of the plaintiffs had been prevented from acting as Director. The facts shortly stated are that at a meeting of the shareholders of the Company which was held on the 32nd Ashar 1329, the plaintiff No. 2 and defendants Nos. 1, 2 and 3 were elected Directors. The meeting was subsequently adjourned and the adjourned meeting was held on the 7th Sraban following. On that date on account of certain proceedings which we need not state in detail the election of the Directors held on the previous date was re-considered and a new election took place, the result of which was that defendants Nos. 1, 2, 3 and 4 were elected Directors and plaintiff No. 2 was not elected. There was also some other alteration as regards the election of the Assistant Managing Director. Several issues were framed, but the suit was dismissed by the Munsif on the last issue that is, on the ground that the Court had no jurisdiction to try the suit. The plaintiffs appealed against that decree and the learned Judge on appeal held that the Court had jurisdiction to entertain the suit and remanded the case for the trial of certain issues to the First Court.

2. The defendants Nos. 2 and 3 have appealed to this Court and on their behalf the contention has been made that the Civil Court has no jurisdiction to entertain such a suit as this. It was also argued that having regard to the facts stated in the judgment of the Court of Appeal below the Court ought not to interfere in

this matter.

3. With regard to the second question, we have only to observe that the learned Judge in the lower Appellate Court took the matter into his consideration as a question distinct from one of jurisdiction, and as we understand his judgment he has left the question open for decision by the Trial Court, that is to say, whether having regard to the circumstances of the case the Court will, in the exercise of its proper discretion, grant the relief claimed by the plaintiffs. That discretion is a judicial discretion to be exercised by the Court in consideration of all the circumstances of the case and it is liable to be reviewed on appeal by the Appellate Court. That matter is not properly before us now and we need not express any opinion on the question. The only question that is properly before us is whether the Civil Court has jurisdiction to entertain the suit. It is contended on behalf of the appellants that although there is no direct provision in the law that the Civil Court has no jurisdiction to entertain such a suit it is a matter of internal management of a Company with which the Court has no jurisdiction to interfere, and he cites in support of his contention the case of *Mozley v. Alston* (1847) 1 P 790; 16 L.J. Ch. 217; 65 R.R. 520 : 41 E.R. 833 and certain other cases following that case. In that case, however, there were various reasons on which the Lord Chancellor sustained the demurrer of the defendant Company and we need not go into the reasons of the judgment in detail. The concluding remark in the judgment shows that the Court did not exercise its equitable jurisdiction on a consideration of the facts of the case. As a matter of fact an injunction may be granted on the application of a Director restraining the plaintiff's co-Directors from wrongfully excluding him from acting as a Director and we think that there is nothing, which can be urged as excluding the jurisdiction of the Court from entertaining the suit. As we have said this question of jurisdiction is quite different from the question whether the Court will exercise its discretionary jurisdiction having regard to the circumstances of a particular case.

4. We hold that the Court has jurisdiction to entertain the suit as framed, and the appeal must be dismissed, with costs. We assess the hearing, fee at five gold mohurs.

5. Let the record be sent down without delay.