(1983) 03 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 12 of 1980

Sh. Rakesh Kumar Malik and Others APPELLANT

Vs

Rohtak Ashoka Theatres Private Limited Rohtak and Others RESPONDENT

Date of Decision : 31-03-1983

Acts Referred:
Companies Act, 1956 — Section 299

Citation : (1983) 03 P&H CK 0081

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Chanchal Singh with Mr. Lakhwinder Singh, for the Appellant; Laxmi Grover with Mr. H.S. Sawhney, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.—By this judgment, I shall dispose of a preliminary objection in C.P. Nos. 11, 12 and 29 of 1980. The facts in the judgment are being given from C P. No. 12 of 1980

2. Briefly, the case of the Petitioners is that Rohtak Ashoka Theatre Private Limited (hereinafter referred to as the company) was incorporated on 1st August, 1966. Its principal business was to run a cinema at Rohtak. Its authorised capital was three lakh rupees which was fully subscribed. The annual general meeting of the shareholders of the company was held on 1st July, 1974, in which Gurdeep Singh, Shanti Parkash Malik, Smt Kamrtla Malik, Hira Nand Pahwa, Daljit Singh, Smt Mridula Nagpal. Smt. Promilla Chabbra, Smt. Inderjeet Kaur, Ashok Kumar Malik, Miss Jasmeen Chug and Smt. Harmohinder Kaur were reaffirmed as Directors and Shanti Parkash Malik was re-elected as Chairman of the company. The cinema of the company was being run by M/s Golden Movies, M/s Sheet Pictures and M/s Haneet Films Exchange upto 27th March, 1975, and some other firms for subsequent period. Smt. Harmohinder Kaur is the wife and Jasmeen Chug Saveen Chug and Paveen Gyani are the daughters of Gurdeep Singh, and Smt. Inderjeet Kaur is the wife of Daljit Singh Gurdeep Singh, Daljit Singh, Smt

Harmohinder Kaur, Smt. Inderjeet Kaur and Miss Jasmeen Chug were directly or indirectly interested in the theatre hire agreements with M/s Harneet Film Exchange but they did not disclose their direct or indirect interest in the meeting of the Board of Directors on 16th September. 1974. As such, due to contravention of the provisions of Section 299 of the Companies Act (hereinafter called the Act), their offices stood automatically vacated from 16th September, 1974, onwards.

3. Rakesh Malik Petitioner and Ors. filed suit No. 336 of 1976 in the Court of the Subordinate Judge, Rohtak, after they came to know about the above-said facts against Gurdeep Singh, Daljit Singh, Smt Harmohinder Kaur and some others on 31st July, 1976, claiming a decree for permanent injunction restraining them from acting and functioning as directors of the company. They also claimed as interim injunction which was granted to them and later confirmed on 23rd September, 1976. Similarly, in another suit filed by Smt Kamla Malik against Smt Inderjeet Kaur, Jasmeen Chug and Ors. the Defendants were restrained to act as Directors during the pendency of the suit.

4. Ashok Malik and Smt Kamla Malik two of the Directors, summoned a meeting of the Board of Directors for 3rd July, 1976, to fill up the vacancies in the Board of Directors It was, however, adjourned to 10th July, 1976, for want of quorum. On that date, the Board appointed Smt. Krishna Devi, Anil Malik and Rakesh Malik as Additional Directors to fill up the vacancies caused due to the alleged vacation of the office Directors by Gurdeep Singh, Daljit Singh and Smt. Harmohinder Kaur It was also resolved that the gift by S.P. Malik of 500 equily shares of the company out of 1.670 shares to his sons Anil Malik and Rakesh Malik be approved.

5. In a meeting of the Board of Directors alleged to have been held on 2nd November, 1976, the gifts by Smt. Kamla Malik of 500 share of the company to her sons, namely, Anil Malik (125 shares), Rakesh Malik (125 shares) and Sunil Malik (250 shares) were approved It was further resolved that the share scripts of Smt. Kamla Malik be split up and the register of members be amended On 8th December, 1976, S P. Malik and Smt. Kamla Malik wrote a joint letter to the company, with a copy to the Registrar of Companies, regarding the aforesaid gifts.

6. It is further averred that with a view t" put an end to the civil and criminal litigation between the Petitioners and Gurdeep Singh and Ors. it was agreed between the parties that Petitioners Nos. 1 to 3 would sell their shares numbering 271. 271 and 336, respectively, to Gurdeep Singh or his nominee(s) at the rate of Rs. 40/- per share It is then stated that some other decisions were also taken and the Petitioners executed receipts in favour of Respondents Nos. 2 and 3, acknowledging payment of the price of shares told by them at the rate of Rs 40/- per share in favour of Gurdeep Singh.

7. The case of the Petitioners further ii that they came to know that Gurdeep

Singh and his family members had started to hold out soon after 2nd January, 1977 that the Petitioners bad ceased to be members of the company and also its Directors Consequently, they Sled a suit in the Court of Senior Subordinate Judge, Rohtak, praying that a decree for permanent injunction restraining Gurdeep Singh, Smt. Harmohinder Kaur, Daljit Singh, Smt. Inderjeet Kaur, Miss Jasmeen Chug and the company, Defendants, from holding meetings or election of the office bearer of the company without inviting the Petitioners and permitting them to participate in such meetings be granted They further prayed the above persons be restrained from acting as. Directors of the company.

8. In the written statement, it is averred, the allegations of the Petitioners were controverted by the said defendarts The inter alia pleaded that Gurdeep Singh, Daljit Singh, Smt. Inderjeet Kaur, Smt. Harmohinder Kaur and Ors. had been elected as Directors, and that the Petitioners had sold their shares of the company and, therefore, they had not been invited to attend the meeting held on 2nd January, 1977.

9. In view of the written statement, the Petitioners filed another suit on 2nd February, 1977, seeking a declaration to tie effect that the proceedings dated 2nd January. 1977, of the extraordinary general meeting were illegal, invalid, void and ineffective vis-a-vis the right of the Petitioners. They further claimed certain other reliefs.

10. The above suits, it is alleged, were dismissed under Order 9, Rule 3 of the Code of Civil Procedure, after service had been effected and the Defendants had put in appearance.

11. The Petitioners then filed three suits for declaration that they were the shareholders of the company and it be directed to incorporate their names in the company register of its members. In the written statement, the company raised an objection that the Civil Court had the jurisdiction to do so u/s 155 of the Act.

12. The Petitioners have challenged the above (aid acts of the Respondents and inter alia prayed that 336 shares bearing Nos. 9732 to 10067, 271 shares bearing Nos. 29730 to 30000 and 271 shares bearing Nos. 9461 to 9731 be restored in the names of the Petitioners in the register of members of the company.

13. The petition has been contested by Respondents Nos. 1,2, 3, 6 and 7 who controverted the allegations of the Petitioners and inter alia pleaded that the Petitioners executed the instrument of transfer in their favour. Gurdeep Singh and his family members made applications in accordance with law which were duly stamped as permitted by Section 108 of the Companies Act and were handed over to the company along with allotment letters. The transfers were duly sanctioned by the Board of Directors in favour of the Respondents on 12th January, 1977. At the time of signing the instrument of transfer, S.P. Malik, who is the head of Malik Group, represented that the share certificate were not traceable and that they would be surrendered when available. In view of the

urgency of the matter, the allotment letters were handed over to Gurdeep Singh. They then pleaded that in the situation, the transfer could validly be made without the share certificates.

14. On the pleadings of the parties, several issues were framed and evidence recorded, While the evidence was being recorded, an application (C.A. No. 317 of 1981) was moved by Mr. Grover to the effect that the Respondents be allowed to amend the written statement to include the preliminary objection there in that the case involved complicated questions of law and fact and, therefore, the petition u/s 155 of the Act was not maintainable. The Learned Counsel for the Petitioners agreed that he had no objection if the Respondents were allowed to raise the question at the time of arguments even in the absence of plea. In view of the aforesaid statement, the Respondents were allowed to argue on this question in the first instance and it is being decided as a preliminary issue.

15. The contention of the Learned Counsel for the Respondents is that the petition contains various questions of law and fact which cannot be decided in summary proceedings u/s 155 of the Act. He urges that the proper remedy for the Petitioners is to get the matter decided from a Civil Court.

16. On the other hand, Mr. Chanchil Singh, counsel for the Petitioners, has strenuously urged that the question involved is whether the Respondents transferred the shares in breach of the provisions objection 108 of the Act and to decide that question, the proper forum is the High Court.

17. I have heard the Learned Counsel at a considerable length and given my thoughtful consideration to their arguments. Section 155 inter alia provides that if the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register is, without sufficient cause, omitted therefrom, the person aggrieved or any member of the company, or the company, may apply to the Court for rectification of the register. This section was interpreted by this High Court in S. Bhagat Singh and Another Vs. The Piar Bus Service Ltd., Amritsar and Others, , wherein Tek Chand J. observed that if there is controversy in a case and the several allegations made by the Petitioners are being questioned and in order to arrive at a correct conclusion, a regular and detailed investigation is desirable, in that eventuality, the Petitioner should be directed to proceed by a regular suit. The relevant observations are as follows:

The object of enacting Section 38 of the Indian Companies Act of 1913, which is analogous to Section 155 of the Companies Act of 1956, was to provide a summary remedy in non-controversial matters or in matters where a quick decision was necessary in order to obviate an irreparable injury to a party. This provision was not intended for settling controversies under several heads necessitating a regular investigation. When serious disputes are involved as in this case the proper forum for their adjudication is a civil Court.

It is no longer admits of controversy that the jurisdiction of a Court in matter of rectification of register u/s 38 of the Indian Companies Act 1913, now u/s 155 of the new Act, is unrestricted though the Petitioner is not entitled to relief ex debito fusthiae. This remedy is not available to the litigent as of right without the Court having discretion to refuse it.

This view was followed by this Court in Smt. Soma Vati Devi Chand Vs. Krishna Sugar Mills Ltd. and Others, The learned Judge held that although the power conferred by the section on Courts is very vide, the law seems to be well settled that the remedy provided by the section is summary. It can be invoked in non-controversial matters requiring quick decision. Section 155 is not meant to be used for deciding disputes requiring investigation. It is further held that in the case of a dispute of complicated nature involving controversy under several heads and necessitating a regular investigation, the section ought not to be allowed to be used and the party concerned should be directed to proceed by way of regular suit. A similar view was expressed by the Supreme Court in The Public Passenger Service Limited Vs. M.A. Khader and Others, . R.S. Bachawat, J., speaking for the Court, held that where by reason of its complexity or otherwise the matter can more conveniently be decided in a suit, the Court may refuse relief u/s 155 in exercise of the desoretionary jurisdiction and relegate the parties to a suit.

18. It is not necessary to multiply the authorities at it is n"w well-settled that the scope of Section 155 is restricted and the proceedings thereunder are of a summary nature. If the care involves complicated questions, the proper course is to direct the parties to have recourse to a suit.

19. Mr. Chanchll Singh made a reference to Peoples Insurance Co. Ltd. Vs. C.R.E. Wood and Co. Ltd. and Others, , Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, and Shrl Gulabrai Kalidas Naik end others v. Shri Laxmidas Lallubhai Patel of Bareda (1979) 48 Comp. Case 438. People''s Insurance Company Ltd''s case (supra), was also decided by Tek Chand J. Who, after referring to his earlier judgment in S. Bhagat Singh''s case (supra) and some other cases, said that be had expressed the view that the summary remedy u/s 155 of the Companies Act, 1956, was not available to the litigant as of right without the Court having discretion to refuse it. He then said that in determining whether judicial discretion should be exercised by the Court for purposes of directing or refusing rectification of register of members, depends on the facts of each particular case Thus, the learned Judge did not deviate from the earlier view and observed that each case has to be decided after considering the facts of the case and the points involved therein. The point involved in Mannalal Khetan''s case (supra) was not regarding interpretation of Section 155 of the Act. On the other hand, the question was whether the provisions of Section 108 of the Act were mandatory or directory. Therefore, the observations of their Lordships in that case are of no benefit to the Petitioners. The view expressed by Gujarat High Court in Gulabrai Kalidas Naik''s case (supra) is contrary to the view of this Court in S Bhagat Singh''s and Smt. Soma Devi Chandrs cases (supra). The

learned Judge even did not follow the rule laid down in Public Passenger Service Ltd''s case (supra) and observed that the form in which contention raised before him was not canvassed before the Supreme Court In these circumstances, with great respect to the learned Judge, I have not been able to persuade myself to agree with the view expressed by him.

20. Now, adverting to the facts of the present case it is to be seen whether it is a case which should be decided u/s 155 or the parties be relegated to a Civil Court. The facts of the case have been given in some detail above Besides the litigations already mentioned, there were some other litigations between the parties It is evident from the litigations that there are various disputes between the parties and the present dispute is connected with them. The Petitioners also filed a suit with a similar prayer as has been made by them in the present proceedings The counsel for the Petitioners, brought to my notice that an objection was taken in the suit by the Respondents that the Civil Court had no jurisdiction to try the suit and the proper remedy for the Petitioners was to file a petition u/s 155 of the Act That objection has since been given up by the Respondents. Thus a Civil Court has already taken cognizant e of this matter and the suit is still pending. The decision in that suit shall be bidding on the parties

21. Even otherwise, after going through the facts of the case, it is evident that several controversies arise in it which require detailed investigation. It may be highlighted that the Petitioners have alleged that Shri Gurdeep Singh, Shri Daljit Singh, Smt. Inderjit Kaur, Smt. Harmohinder Kaur and Miss Jasmeen, Directors, ceased to be so as they violated the provisions of Section 299 of the Act. Thereafter, a meeting was convened by Ashok Malik and Kamla Malik Directors of the Company, for 3rd July, 1976, to fill up the vacancies on account of the vacation of office by the above said Directors and Smt. Krishna Devi, Anil Malik and Rakesh Malik were unanimously appointed as Directors. Thus, there came into existence two Boards of Directors. The shares were transferred by the Board in which Sh. Gurdeep Singh etc. were the Directors. The Petitioners have challenged the transfer of shares Inter alia on the ground that the meeting of the Board of Directors had not been convened by the persons legally entitled to convene the same. Therefore, for deciding the application, one of the matters to be determined is whether the meeting was a properly convened meeting The Petitioners have also raised a question that in the absence of share certificates, the shares could not be transferred by the Board of Directors. The Respondents stated that the Petitioners represented that the certificates had been lost. The terms of the agreement on the basis of which the shares were agreed to be transferred by the Petitioners to the Respondents are also disputed. However, the consideration of the shares at the rate of Rs. 40/- per share has been paid by the Respondents. All the above said circumstances show that there are various complexities in the case for the determination of which the proper forum is a Civil Court.

22. The other two petitions, that is, C P. Nos. 11 and 29 of 1980 have been filed

on similar facts. Niraj Kanta Smt. Krishna Devi and Ashok Kumar Malik are the Petitioner in C.P. No. 11 of 1980. Ashok Kumar Malik, out of the said Petitioners, filed a similar suit as had been tiled by Rakesh Malik, Anil Malik and Sunil Malik who are the Petitioners in C.P. No. 12 of 1980 That suit is still pending. The objection regarding maintainability of the suit in a civil Court was given up by the Defendants in the suit. It is true that the other two Petitioners have not filed the suit Still there are various complicated questions involved in the case which require detailed investigation and that can be done in a Civil Suit. In C.P. No. 29 of 1980, Shanti Parkash Malik and Smt. Kamla Malik have not filed any similar civil suit. However, a fortiori the proper forum for getting the relief is the Civil Court.

23. For the aforesaid reasons, I uphold the preliminary objection and dismiss the petitions with the observation that the Petitioners may get the matter decided from a Civil Court, if so advised. No order as to costs.

Petition dismissed.

