(2000) 03 BOM CK 0101

In the Bombay High Court

Case No : Civil Revision Application No. 32 of 1999

Shri Arjun Tukaram Shetgaonkar and others — APPELLANT

Vs

Smt. Urmila Vaikunth Dessai (deceased) and others — RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1, Order 22 Rule 3
Companies Act, 1956 — Section 397, 398

Citation : (2000) 4 BomCR 406 : (2000) 3 MhLj 830

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : S.M. Usgaonkar, for the Appellant; D. Pangam, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—This revision application arises from order dated 18-1-1999 passed in Special Civil Suit No. 141/1992/II by the IInd Additional Civil Judge, Senior Division, Mapusa. By the impugned order, the trial Court has allowed the application filed by the respondent to bring them on record as the legal representatives of the deceased plaintiff in the suit.

2. The impugned order is sought to be challenged on the ground that the suit having been instituted by the Director of Company founded on cause of action based on the proceedings of the meeting of the Board of Directors and the resolution passed therein, to declare the same to be null and void, the right to sue in such suit does not survive on the death of the plaintiff who had filed the suit in her capacity as the Director of the Company.

3. The contention of Shri S. Usgaonkar, the learned Advocate appearing for the petitioners is that the cause of action to institute the suit by the original plaintiff arose in the Board of Directors meeting held on 30-6-92 and if the plaintiff was not a Director, she could not have attended the meeting and hence there would have been no cause for filing the suit. It was a personal action by the Director of the Company which came to an end on the death of the said Director, as the office of the Director cannot be inherited. The cause of action in the suit does not

survive to the respondents who could not have participated in the meetings of the Board of Directors. In support of his contention, he sought to rely upon the decision of the Apex Court in the matter of Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia, , that of this High Court in Sitabai Ramchandra Jaltare and Others Vs. Masjid Nurun Mohalla Jingerwadi, as well as that of the Calcutta High Court in the matter of Murarka Paint and Varnish Works Ltd. v. Mohanlal Murarka and others, reported in AIR 1961 Cal 252.

4. On the other hand, learned Advocate Shri D. Pangam appearing on behalf of the respondents submitted that the suit was filed on the ground that the alleged resolution was not at all passed in the meeting and that on account of the alleged resolution, the share capital was sought to be increased resulting in the decrease of share holding of the respondents in the company. According to the learned Advocate, the right to sue in the suit survives in favour of the respondents. He has sought to rely upon the decisions in the matter of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, and World Wide Agencies P. Ltd. and another v. Mrs. Margaret T. Desor and others, reported in 1990 67 Comp Cas 607.

5. The point which arises for consideration in the present revision application is whether in the facts and circumstances of the case the right to sue survives in favour of the respondents upon the death of the original plaintiff? It is undisputed fact that the original plaintiff was the wife of the respondent No. 1 herein and the mother of the respondent Nos. 2, 3 and 4. It is also undisputed that the deceased plaintiff was the holder of 50% shareholding in the petitioner No. 3 Company prior to the resolution under challenge in the suit.

6. The Apex Court in Life Insurance case (supra) while considering the various provisions of the Companies Act, 1956 in relation to the rights of the shareholder has clearly held that the share is a moveable property, with all the attributes of such property. The rights of a shareholder are to elect directors and to participate in the management through them, to apply to the Court for relief in the case of mismanagement. The Apex Court in the case of World Wide Agencies case (supra) while considering the issue as to whether the legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition under sections 397 and 398 of the Companies Act, 1956 has held that the view taken by the High Court of Delhi to the effect that the legal representatives of the deceased member represents the estate of that member whose name is on the register of members was correct and in that respect observed thus :

"When a member dies, his estate is entrusted in the legal representatives. When, therefore, these vesting are illegally or wrongfully affected, the estate through the legal representatives must be enabled to petition in respect of oppression and mismanagement and it is as if the estate stands in the shoes of the deceased member."

7. It is, therefore, clear that the shareholder has right to participate in the management through the elected Director and apply to the Court in case of mismanagement. When such a shareholder dies, his estate which includes the shares, devolve upon his legal representatives and consequently the legal representatives of a shareholder acquire right to approach the competent Court for appropriate relief in case of mismanagement of the Company.

8. In the case in hand undisputedly, prior to the alleged resolution, the deceased plaintiff had 50% shareholding in the share capital of the petitioner No. 3 Company. On the death of the original plaintiff, the said share holding became the part of the estate left behind by the deceased plaintiff. Being so, applying the test laid down by the Apex Court in the above two decisions, the respondents being the legal representative of the deceased plaintiff acquired right to the said 50% share holding in the said company. Consequently the right to sue in the case in hand survived upon the representatives. Therefore, it cannot be said that the relief which has been prayed in the suit and the grievance for which the suit has been filed are not available to the respondent herein.

9. The decisions relied upon by the learned Advocate for the petitioner are of no assistance to the case in hand. In the matter of Smt. Phool Rani and others (supra) it was held that the legal representatives of the deceased landlord had no right to continue the proceedings as initiated by the landlord for ejectment of the tenant from the suit premises on the ground of bona fide need of the premises for personal residence. The grievance in the case in hand and the relief claimed was not for personal benefit of the deceased plaintiff. As already seen above, it was consequent to the death of the deceased plaintiff that the respondents have acquired the right by inheritance in the said shareholding of the petitioner No. 3 Company.

10. In Sitabai Ramchandra Jaltare''s case (supra) the Division Bench of this Court was dealing with the matter pertaining to the right of the heirs of a trustee to the trust property. Referring to the provisions of Bombay Public Trust Act and in the facts and circumstances of the case, it was held that only the trustee who is elected or appointed under the scheme of the trust can step in the shoes of the deceased trustee and continue the suit and therefore the right of the deceased trustee could not pass on to his legal representatives.

11. As regards the decision in Murarka Paint and Varnish Works Ltd. case (supra) the same has no bearing on the issue in question in the case in hand. In the said decision it was held the only way in which the general body of the share holders can control the exercise of the powers vested by the Articles in the directors is by altering the Articles, or, if opportunity arises under the Articles by refusing to re-elect the directors of whose action they disapprove. It cannot be inferred from the said decision that there is any bar for filing any suit by any shareholder for the mismanagement of the Company by its Directors and for the same reason it cannot be said that such right will not survive to the legal representatives of the deceased shareholder in such suit.

12. Considering the law laid down by the Apex Court in the above referred Life Insurance Company''s case (supra) and World Wide Agencies'' case (supra) above relied upon by the learned Advocate for the respondents, and considering the facts of the case in hand, there is no case made out for interference in the impugned order allowing the respondents to be brought on record as the legal representatives of the deceased plaintiff and being entitled to pursue the suit.

13. In the result, the petition fails. Rule is discharged, with no order as to costs. Interim order stands vacated.

14. Petition fails.

