

(2002) 05 MP CK 0091
In the Madhya Pradesh High Court
Case No : M.A. No. 250 of 2002 (G)

(Sir) J.P. Srivastava and Sons, (Rampur) Pvt. Ltd. and Others	APPELLANT
Vs	
M/s Gwalior Sugar Co. Ltd. and Another	RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Companies Act, 1956 — Section 257, 284

Citation : (2002) 2 MPJR 587

Hon'ble Judges : Subhash Samvatsar, J

Bench : Single Bench

Advocate : Tasneem Ahmadi with Mr. N.K. Mody, for the Appellant; Sanjay Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

Subhash Samvatsar, J.

The matter is finally heard at motion stage with the consent of both the parties.

This appeal is filed by the plaintiff against an order whereby the suit c.o.s. no. 1/2002 filed by the plaintiff/appellant is returned by the First Additional District Judge, Dabra, District Gwalior under order 7 Rule 10 C.P.C. vide order dt. 27.3.02.

Brief facts giving rise to this appeal are as under:

The respondent Company which is a Company incorporated under the provisions of Companies Act, 1956 has issued a notice for holding its 61st Annual General Meeting. The said meeting was to be held on 28.3.02. After getting the notice of the said meeting the appellant/plaintiff moved a resolution dated 13.3.02 wherein it was proposed as under:

Resolved that pursuant to the provisions of Section 284 of the Companies Act, 1956, that Shri Vikram K. Srivastava be and is hereby removed from the Office

of the Director of the company".

Resolved further that Shri Vijay K. Srivastava be and is hereby appointed a Director of the Company in place of Shri Vikram K. Srivastava, to hold Office for the unexpired period of time due to be held by the removed Director.

This notice was issued under the provisions of section 257 and 284 of the Companies Act. Section 257 deals with a right of a person other than retiring Director to stand for Directorship while section 284 deals with removal of Directors. Similar notices were issued by some other persons. Alongwith the said notice an amount of Rs. 500/- was tendered to the respondent Company as per section 257 (1) of the Act. On receipt of this notice the Company informed the appellant that the above notices are not in accordance with law and, therefore, the same are being returned alongwith the demand draft of Rs. 500/-. The said letter does not reflect the reasons how the notice issued by the appellant and other persons are not in accordance with law and, therefore, the appellant filed a civil suit before the First Additional District Judge, Dabra which is registered as c.o.s. no. 1/2002. Alongwith the plaint the appellant/plaintiff has also moved an application under order XXXIX Rule 1 and 2 C.P.C. whereby the appellant/plaintiff has prayed for an injunction restraining the respondent from holding meeting without circulating the resolutions proposed by the plaintiff in its notice dated 13.3.02. The respondent in reply to the said notice have raised the question of jurisdiction of civil court to try the matter and the trial court after hearing both the parties on the question of jurisdiction has passed the impugned order. Being aggrieved by the said order the plaintiff has preferred this appeal.

The submission of the learned counsel for the appellant is that the civil court has jurisdiction to decide the present suit and the trial court while holding that the civil court has no jurisdiction to try the suit has acted illegally and contrary to law and erroneously returned the plaint for want of jurisdiction.

So far as the jurisdiction of civil court is concerned, the same is governed by section 9 of the Code of Civil Procedure. It is a well settled principle of law that exclusion of jurisdiction of civil court is not to be readily inferred and in case of doubt as to jurisdiction, court should lean towards assumption of jurisdiction (*Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others*,). The jurisdiction of the civil court to deal with the civil causes can be excluded by the Legislature by special Acts to deal with special subject matters, but the statutory provision must expressly provided for such exclusion or must necessary and inevitably lead to that inference. One test is whether special statute which excludes such jurisdiction has used clear and unambiguous word indicating that intention; another test is the said statute provides for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions as has been held by the Supreme Court in the case of *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, . Thus, the jurisdiction of the civil court can either expressly barred or by necessary implication.

The trial court for reaching the conclusion that the civil court had no jurisdiction to try the suit has relied upon a division bench judgment of this court in the case of Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others, . The trial court has heavily relied on paras 8, 17, 18, and 19 of the above judgment. After perusing the, said judgment it is clear that in the aforesaid case this court was dealing with a writ petition filed u/s 227 of the Constitution of India and section 115 and 151 of the Code of Civil Procedure. In the said judgment the order passed by the Central Government u/s 89 (4) of the Act exempting the Company permanently from requirements of sub section 1, 2 and 3 of section 89 of the Act was in question. In paragraph 17, 18 and 19 of the judgment the division bench has dealt with the question as to the jurisdiction of the civil court to deal with all the matters relating to the Company.

In para 17 of the judgment the division bench has observed that the Company Judge had no exclusive jurisdiction with respect to all company matters and that, in particular, he had no jurisdiction to deal with any such matter for which the special provisions of that Act did not provide any remedy. In para 18 of the judgment, the division bench has laid down that as provided by section 9 of the CPC the civil court has jurisdiction to try all suits of a civil nature except those of which the cognizance is expressly or impliedly barred. It follows from this that the civil court will have jurisdiction with respect to all matters relating a company involving rights of a civil nature in regard to which no express provision has been made in the Act. In para 19 of the judgment the court has further observed that whether the Company Court has, or does not have, exclusive jurisdiction with respect to those matters relating to a company which are required by the provisions of the Act to be dealt with by that Court. There is no provision in the Act which excludes the jurisdiction of the Civil Court in regard to any of those matters. Even so, it does not necessarily follow from this that the Civil Court has concurrent jurisdiction in regard to all those matters. The rule, therefore, is that the remedy provided by the provisions of the Act is the exclusive remedy in regard to a right or liability specially created by those provisions only where they give a special remedy for enforcing it. In all other cases, the jurisdiction of the Civil Court is not excluded. So long as a right of suit cannot be said to have been taken away expressly or by necessary implication the suit must be held to be maintainable. Thus, there is no doubt that the civil courts can and do decide the rights of parties on many matters arising out of the provisions of the Act.

Now, I have to examine whether the Act provides for any remedy to the plaintiff against non-compliance of statutory provisions of section 257 and 284 of the Act. Learned counsel for the petitioner in support of his contentions has relied upon the judgment of Kerala High Court in the case of R.R. Rajendra Menon V. Cochin Exchange Ltd. and another, reported in (1990) 69 Comp Cases 231. In this case company petition was filed u/s 398 read with section 10 of the Companies Act and a preliminary objection was raised about the maintainability of the Company petition on the ground that section 257 of the Companies Act imposes certain duties on the Company and violation of the said provision will not attract the

jurisdiction of the Company Court and section 10 of the Act does not invest the Company Court with the jurisdiction of the aforesaid violation. The Kerala High Court relying on its earlier judgment reported in (1980) 50 Comp Cases 611, has held that the Company petition is not maintainable and the petitioner has a remedy before the civil court. The company petition was, thus dismissed.

Against the said judgment an appeal was preferred to the division bench of the Kerala High Court and the said judgment is reported in (1990) 69 Comp Cases 256, R.R. Rajendra Menon V. Cochin Stock Exchange Ltd. and another. Division bench after considering the division bench judgment of this court in Nava Samaj Ltd. V. Civil Judge (supra) held that the jurisdiction of the civil court must be deemed to have been excluded by necessary implications embodied in section 9 of the Code of Civil Procedure. The relief sought in that suit was such as could be obtained by filing a petition under article 398 of the Act, hence it was found that the civil court has no concurrent jurisdiction. The division bench further said that the decision in Nava Samaj Ltd. (supra) is no authority in support of contention that all the matters referred in the Companies Act, an application can be entertained by the Company Court. The Kerala High Court, therefore, concluded that the single judge has rightly found that the Company petition was not maintainable and the only remedy available to the petitioner in that case was to file a civil suit.

Another judgment on which the counsel for the appellant relied upon is the judgment of Karnataka High Court in the case of Prakash Roadlines Ltd. and another V. Vijaya Kumar Narang, (1995) 83 Com Cases 569. In this case the petitioner filed a civil suit complaining violation of section 257 and 284 of the Companies Act. In that case plaintiff after taking steps u/s 257 and 284 of the Companies Act by issuing notice moved the civil court alleging that the Respondent Company is holding its meeting in violation of the mandate of section 257 and 284 of the Act. The defendant in that case raised objections about the maintainability of the suit. According to the defendant the plaintiff could have invoked forum created under the provisions of Company Act for redressal of his grievances. The defendant further alleged that the rights and liabilities of the parties are governed by the Companies Act and, therefore, the same shall have to be considered only by the court on which the jurisdiction has been conferred by the Act. The Karnataka High Court in the aforesaid judgment has held that both the sections 257 and 284 are self-contained and there is no other provision in the Act requiring in further compliance by the person invoking those provisions. Section 188 provides for the circulation of resolution but the said provision has nothing to do with section 257 and 284 of the Companies Act. The court has further held that section 397 is not an effective forum to grant any relief to an individual member under all circumstances. Similar has a situation u/s 398 also. Being a constituent of a Company a shareholder has several individual rights and those rights can be enforced by invoking civil jurisdiction of the courts. Further the Act nowhere specifically excludes the jurisdiction of the civil court. The Kerala High Court further relying on the judgment of the Apex

Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, has laid down that the civil court has jurisdiction to try the suit in question.

The learned counsel for the respondent has urged that in the present case the jurisdiction of the civil court is barred. To support his argument he heavily relied upon the judgment of Bombay High Court reported in Khetan Industries Pvt. Ltd. and others Vs. Manju Ravindraprasad Khetan, , Khetan Industries Pvt. Ltd. and others V. Manju Ravindra prasad Khetan. In this case a civil suit was filed by the respondent claiming relief of removal of Directors i.e. Defendant no. 2 to 5 and an error was made in appointing some other person as Directors. The objection about the maintainability of the civil suit was raised and the Bombay High Court has held that the civil suits are not maintainable as the plaintiff in that suit has moved the civil court without availing the remedy provided u/s 257 and 284 of the Act and directly approached the civil court by filing a civil suit praying for removal of Directors. In this context Bombay High Court has held as under:

So far as the jurisdiction of the civil court to entertain a suit for removal of the directors of a limited company is concerned, it may be observed that Part VI of the Companies Act contains detailed provisions for the management and administration of companies. Chapter II thereof deals with constitution of the Board of Directors, disqualification of directors, vacation of office by directors and matters connected therewith. Section 283 deals with the vacation of office by directors. Section 284 deals with the removal of directors. The procedure for removal of directors is laid down in the said section. From a careful perusal of the scheme of the Companies Act, particularly Chapter II of Part VI thereof, it is clear that the appointment of directors, their working, their removal etc. are all provided for by the Companies Act itself. Under S. 284 a director of a company may be removed by ordinary resolution.

After quoting section 284 of the Companies Act the Bombay High Court has held that the rights of a shareholder to remove Director is thus created by Companies Act and the Act also lays down the procedure for exercise of such right From the Act it is clear that the detailed procedure is provided for in the Act itself. Besides; there are matters of internal management of the Act which should be dealt with in accordance with the procedure laid down in the Companies Act Thus, it is clear that as per the judgment of Bombay High Court the share holders had a right to move u/s 257 and 284 of the Companies Act. The suit was filed without issuing notices u/s 257 and 284 of the Act and thus, the procedure provided by the Act was not complied with before approaching the civil court. This is not a situation in the present case. The appellant in the present case had admittedly issued notices u/s 257 and 284 of the Companies Act but the Company, as per the plaint allegations, has failed to carry out the mandate of section 257 and 284 of the Act and, therefore, the present suit was filed. Thus, the judgment of the Bombay High Court is clearly distinguishable from the present case.

Shri Dwivedi, learned counsel for the respondent has further urged that the

notices of the appellant/plaintiff are not in accordance with section 188 of the Companies Act which provides as under:

Section 188: Circulation of member's resolutions: 1. Subject to the provisions of this section, a company shall, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists-

(a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect the matter referred to in any proposed resolution, or any business to be dealt with at that meeting.

The number of members necessary for a requisition under sub-section (1) shall be-

(a) Such number of members as represent not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which the requisition relates; or

(b) Not less than one hundred members having the right aforesaid and holding shares in the company on which there has been paid-up an aggregate sum of not less than one lakh of rupees in all.

According to Shri Dwivedi, learned counsel for the respondent the notices issued by the appellant did not fulfil the requirements of section 188 of the Companies Act and, therefore, the respondent Company was not bound to circulate the resolution passed by the plaintiff. Shri Dwivedi, learned counsel for the respondent further urged that in absence of notification issued u/s 10 of the Companies Act, conferring jurisdiction on the District Court, the Civil Court does not get any jurisdiction to try the matter. This argument of Shri Dwivedi, Advocate is devoid of any merit. The notification u/s 10 is required only in those cases in which the jurisdiction conferred on the High Court is delegated to the District Court. In the present case remedy against non-compliance of provisions of section 257 and 284 of the Companies Act is not provided anywhere. Thus, this argument has no force.

After perusing the impugned judgment I find that the trial court has not decided the question about the illegality of the notices and has returned the plaint merely on the ground that the civil suit is not maintainable. Therefore, at this stage I am not required to go in the merits of the case and decide the illegality of the notices served by the plaintiff. The only question before me is regarding the jurisdiction of the civil court. After going through the various judgments referred by the parties I am of the view that there is no provision under the Act which provides for an effective machinery for redressal of grievances complaining the

violation of sections 257 and 284 of the Act and, therefore, a civil suit for that remedy is maintainable. Thus, the impugned order is set aside and I hold that the civil suit was very much maintainable in the light of the aforesaid judgments.

As regards merits of the case, the application filed by the plaintiff under order XXXIX Rule 1 & 2 C.P.C. is not decided on merits by the trial court I, therefore, direct the plaintiff to present the suit again before the civil court and on presenting the suit against the trial court shall decide the application under order XXXIX Rule 1 & 2 C.P.C. on merits. While deciding the said application the court shall decide whether the notices issued by the plaintiff u/s 257 and 284 of the Act are in accordance with section 188 or not because that will decide whether the plaintiff has a prima facie case to grant injunction or not. The court will also apply its mind to the question that whether by granting the interim injunction prayed for the plaintiff is getting a final decree without full trial or not and, if so, whether such injunction can be granted which will amount to passing of the decree without full trial. The trial court shall pass appropriate orders on the application under order XXXIX Rule 1 & 2 C.P.C. Keeping in mind all the legal objections which can be taken on behalf of respondents for opposing the application under order XXXIX Rule 1 & C.P.C. and then proceed with the matter in accordance with law.

With these observations, this appeal stands allowed. The impugned order is set aside with no orders as to costs.