

(1964) 11 CAL CK 0017
In the Calcutta High Court
Case No : Suit No. 1171 of 1948

Sri Gopal Jalan and Co.

APPELLANT

Vs

Singhania Bros. and Another

RESPONDENT

Date of Decision : 10-11-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1965 Cal 531

Hon'ble Judges : U.C. Law, J

Bench : Single Bench

Advocate : J.C. Moitra and C.K. Banerji, for the Appellant; A.C. Mitra, Subrata Roy Chowdhury and P.N. Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

U.C. Law, J.—This is a suit for a declaration that the decision and resolution of the defendant association and/or its Committee dated 1st April 1948 is void and of no legal effect and does not bind the plaintiff in any way and also for an injunction restraining the defendant association, their servants and agents from enforcing or giving effect to the said decision and resolution in any way. The case made out in the plaint is as follows:

2. The plaintiff and the defendant No. 1 are members of the Calcutta Stock Exchange Association Ltd. (the defendant No. 2) to be referred to hereafter as the said association. The plaintiff's case is that on 24 November 1943 Sri Gopal Jalan a member of the plaintiff firm in his individual capacity sold 4,000 shares in Indian Iron and Steel Co. Ltd. to the defendant No. 1 at Rs. 35/12/- per share and a further 4,000 shares in the said company at Rs. 35/11/-per share. On 19th March 1944 out of the said 8,000 shares Sri Gopal Jalan bought back 6,000 shares at Rs. 38/6/- per share and the remaining 2,000 shares at Rs. 38/11/-per share. Thereafter on 18th March 1944 the plaintiff firm sent a letter to the defendant association intimating that it was stopping business from that date and giving notice that any member of the association doing business with any of

the members of the plaintiff firm would do so at his own risk until further notice to the contrary, and requested the Secretary of the defendant association to put up the said letter on the notice board for the information of members. In paragraphs 4, 5 and 6 of the plaint certain other transactions in different shares with the defendant No. 1 are mentioned and it is stated that all these transactions were also entered into by Sri Gopal Jalan in his personal capacity and the plaintiff firm was in no way concerned with them. By its letter dated 18th February 1946 the defendant No. 1 filed a complaint with the Secretary of the defendant association claiming Rs. 21,885/- and Rs. 5,150/ for difference from the plaintiff in respect of the transactions mentioned hereinbefore and requested the defendant association to take steps for the immediate realisation of its dues with interest. Copies of two original bills and a cheque for Rs. 16/- as committee fee was enclosed with this letter. On 27th February 1946 the plaintiff wrote to the Secretary of the defendant association stating that there was no transaction between the defendant No. 1 and the plaintiff in their records,--these transactions were the personal private transactions of Sri Gopal Jalan with which the defendant association could not deal. On 27th May 1947 the plaintiff wrote to the Secretary of the defendant association requesting that Sagarmal Nathuni one of the members of the defendant association should not sit on the sub-committee to be constituted for decision of the dispute between the plaintiff and the defendant No. 1, as he was on bad terms with the members of the plaintiff firm. On 16th March 1948 the sub-committee of the defendant association disallowed the claim of the defendant No. 1 against the plaintiff and the next day communicated the said decision to the parties. On 23rd March 1948 the defendant No. 1 preferred an appeal against the said decision of the subcommittee dated 16th March 1948. On 1st April 1948 the committee of the defendant association allowed the appeal of the defendant No. 1 and set aside the order of the sub-committee dated 16th March 1948. This decision was also duly communicated to the parties the next day the 2nd of April 1948. The plaintiff states that the decision of the 1st April 1948 is illegal, invalid and not binding on the following grounds:--

- (a) Sagarmal Nathuni should not have sat on the committee which purported to allow the appeal of the defendant No. 1 as he was a very influential person and the other members of the committee were considerably influenced by him in their decision.
- (b) The defendant association did not give any hearing to the plaintiff before making its decision.
- (c) The defendant association acted with bias and partiality.
- (d) The decisions dated 1st April were not given honestly and in good faith or in conformity with the principle of natural justice.
- (e) The defendant association had no jurisdiction to decide dispute which was not one between the members of the said association but which was personal and

private affair of the said Sri Gopal Jalan.

3. Upon these facts the plaintiff has brought this action for declaration and injunction as stated before.

4. There are two written statements. The defendant No. 1 has categorically denied that the transactions mentioned in paragraphs 2, 4, 5 and 6 of the plaint are personal transactions of Sri Gopal Jalan. These transactions were with Sri Gopal Jalan and Co. i.e. the plaintiff. According to this defendant the outstanding transactions of November 1913 mentioned in paragraph 2 of the plaint were closed by the plaintiff firm and as a result a sum of Rs. 21,876/- became due and payable by the plaintiff firm to the defendant No. 1. There were further dealings and transactions between the plaintiff and defendant No. 1 in June 1944 as are mentioned in paragraphs 4, 5 and 6 and as a result thereof a further sum of Rs. 5,150/- became due and payable by the plaintiff to the defendant No. 1. Two bills in respect of the said sums were presented by the defendant to the plaintiff and were duly accepted as correct by the plaintiff and signed by Sri Gopal Jalan the senior partner of the plaintiff firm as correct, and in accordance with the rules, bye-laws and practice of the defendant association the plaintiff firm thus became liable to pay the said sums to the defendant No. 1 and the plaintiff firm failed and neglected to pay the said dues, such claims of the defendant firm were liable to be dealt with by the defendant association in accordance with its articles, rules and bye-laws. It is further stated by this defendant that in spite of the notice dated 18th March 1944 which was put up by the Secretary on the notice board of the defendant association the plaintiff firm continued to deal in the Stock Exchange as before and did not in any way act upon the said notice. In any event, the plaintiff waived the said notice and as a matter of fact not only did the plaintiff continue after 18th March 1944 to deal in the share market as before, it also represented to the defendant No. 1 that they were doing so and also ratified and adopted whatever was done by the senior partner Sri Gopal Jalan and actually implemented the same. The defendant No. 1 has denied that the transactions mentioned in paragraphs 2, 4, 5 and 6 of the plaint were personal transactions of Sri Gopal Jalan and states that none of those transactions could under the bye-laws, rules and practice of the defendant association be personal transactions of Sri Gopal Jalan. This defendant denies that the decision of the committee dated 1-4-1948 is illegal, invalid and not binding on the plaintiff on any of the grounds alleged in the sub-paragraphs of paragraph 14 of the plaint. Lastly it is stated that every member of the defendant association is bound to comply with the decision of the committee of the defendant association and in default it is obligatory on the defendant association to enforce such decision in the manner provided for in the articles and bye-laws of the association. The plaintiff has not suffered or is likely to suffer any damage and the suit is not maintainable and should be dismissed with costs.

5. The association (the defendant No. 2) in its written statement does not admit any of the allegations in the plaint. It is stated that in spite of the notice dated

18th March 1944 the plaintiff continued to deal in the Stock Exchange Market as before and did not in any way act upon the said notice and in any event waived the same. It further states that under the bye-laws, rules and practice of the defendant association in respect of transactions done by any individual member of the association are binding on the firm of which he is either a partner or a representative. As regards Sagarmal Natlumi the defendant association states that it is not aware of any difference between him and the firm of Sri Gopal Jalan and states that under the rules, bye-laws and practice of the association no member is entitled to raise any objection with regard to the name of any of the committee members. It denies that the decision of 1st April 1948 was illegal, invalid and not binding on any of the grounds alleged in sub-paragraphs a, b, c, d and e of paragraph 14 of the plaint or at all. The defendant states that every member is bound to comply with the decision of the committee of the defendant association and in default it is obligatory on the defendant association to enforce such decision in the manner provided for in the articles and by-laws of the association, otherwise other members of the association will be greatly prejudiced in case the association is prevented from taking any steps provided in the constitution of the association. The suit is not maintainable as the plaint does not disclose any cause of action. Lastly it is stated that this Court has no jurisdiction to entertain this suit inasmuch as the same will amount to interference with the internal management of the defendant association. This is the gist of the pleadings upon which the following issues were raised:

Issues:

1. Is the suit maintainable?
2. (a) Were the transactions mentioned in paragraphs 2, 4, 5 and 6 of the plaint entered into by Sri Gopal Jalan in his capacity and not by the firm of Sri Gopal Jalan and Co. through Sri Gopal Jalan as its senior partner?
- 2(b) Is Sri Gopal Jalan and Co. bound by the transactions mentioned in the said paragraphs 2, 4, 5 and 6 of the plaint?
3. Did the plaintiff ratify, adopt and implement the transactions put through by Sri Gopal Jalan as alleged in paragraph 3 of the written statement of the defendant No. 1 ?
- 4(a) What was the effect of the notice dated March 18, 1944 mentioned in paragraph 8 of the plaint?
- (b) Did the plaintiff waive the said notice dated March 18, 1944 and did not act upon the said notice?
5. Did Sri Gopal Jalan act as a senior partner of the plaintiff firm and/or was allowed to act as such by its partners as alleged in paragraphs 1 and 4 of the written statement or defendant No. 1?
6. Is the decision of the full committee of the defendant No. 2 dated April 1,

1948 illegal or invalid and not binding upon the plaintiff for the reasons alleged in paragraph 14 of the plaint or any of them?

7. Is the plaintiff entitled to raise any objection alleged in paragraph 14 of the plaint?

8. Has this Court jurisdiction to entertain and try this suit?

9. Does the plaint disclose any cause of action?

10. To what relief, if any, is the plaintiff entitled?

6. Nandkishore Jalan was examined on behalf of the plaintiff. On behalf of the defendant No. 1, Nandlal Singhania was examined. Dharendra Nath Chakraborty the Secretary of the Calcutta Stock Exchange Association was examined on behalf of the defendant No. 2. There is also an admitted brief of correspondence-marked Ext, A.

7. Issue No. 1: I answer this issue in the negative for the following reasons:

It cannot be controverted that the members of the association are bound by its articles and the bye-laws. Under the articles and the bye-laws or the association the members are bound by the decision of the full committee. Chapter IX (settlement of disputes) of the Rules and Bye-laws page 21, Bye-laws of the association, clearly provide that the decision of the committee shall be final. Ext. A page 32 sets out the decision of the committee dated 1st of April 1948 passed in Appeal Case No. 48471 (Singhanias Bros. v. Sri Gopal Jalan and Co.) The decision reads as follows: "Appeal allowed. The order of the complaints sub-committed dated 16 March .1948 is set aside. Messrs Sri Gopal Jalan and Co. must pay the claim of M/s. Singhanias Bros, with committee fee." This decision of the committee dated 1st of April 1948 is challenged by the plaintiff. Question is "Is the challenge tenable?"

8. It appears that on 18th February 1946 the defendant No. 1 filed a claim or complaint against the plaintiff with the defendant association with copies of two original bills for difference for Rs. 21,875/- and for Rs. 5,150/- respectively and also sent a cheque for Rs. 16/- as committee fee. This claim was numbered as Case No. 42606 (Singhanias Bros. v. Sri Gopal Jalan and Co.) The plaintiff did not take any objection to the filing of this case but submitted to the jurisdiction of the complaints sub-committee of the defendant Association and asked for an adjournment by their letter of 26th February 1946. By its letter dated 27th May 1947 the plaintiff wrote to the Secretary" to the defendant association that any of the cases relating to the plaintiff firm and particularly the Case No. 42606 should not be tried by Mr. Sagarmal Nathani and Babu Chotelal Haridas. This letter is signed by Sri Gopal Jalan and Co. by the hand of the senior partner Sri Gopal Jalan, the father or the witness N.K. Jalan. In my judgment this letter clearly amounts to an admission by Sri Gopal Jalan the father that the subject matter of the Case No. 42606 are transactions of the plaintiff firm. Ext. 1 clearly shows that the bill was drawn in the firm name of M/s Sri Gopal Jalan and was

accepted by Sri Gopal Jalan the senior partner and signed by him as Sri Gopal Jalan and Co. Ext. 2 also shows that the transactions were of the plaintiff firm. N.K. Jalan in his testimony (Q. 687-696) admitted that the subcommittee of the association had jurisdiction to entertain the claim and he had no grievance against the decision of the sub-committee dated 16th March 1948 being Ext. 04. Now it cannot be disputed that if the sub-committee of the association had jurisdiction to entertain the dispute which is admitted, the full committee must necessarily have had jurisdiction. As a matter of fact in Q. 985-988, N.K. Jalan admitted the jurisdiction of the full committee. Such being the case, in my judgment the decision of the full committee dated 1st of April 1948 is final under Ch. IX (settlement of disputes) of the Bye-laws of the association. Thus I hold that the suit is not maintainable and answer issue No. 1 in the negative.

Issue No. 2 (a) : The onus of proof of this issue is no doubt on the plaintiff. There is no documentary evidence in support of this issue. The only evidence is the oral evidence of N.K. Jalan which really has no evidentiary value, as admittedly he had no personal knowledge of the transactions in question. N.K. Jalan is in my opinion, an untrustworthy witness and as such no reliance can be placed on his evidence. He had told lies throughout his testimony which was fairly obvious from his demeanour and the nature of his answers. I reject his evidence entirely. As against this there is evidence on record of both N. Singhanian and D. Chakraborty that all the transactions in suit were entered into by the defendant No. 1 with the plaintiff firm within the ring of the hall of the association. D. Chakraborty has further stated in his testimony that only members of the association or their representative can only enter into a transaction within the ring of the hall of the association. This evidence not being challenged is in my opinion conclusive. Further there is positive evidence of N. Singhanian that the transactions were with the plaintiff firm and no transaction was entered into with Sri Gopal Jalan personally. This evidence of N. Singhanian is supported by Ext. M I, Party Ledger, where the entry for 8,000 shares in Indian Iron and Steel Co. appears. This evidence is also supported by Exts. 1 and 2 which were signed by Sri Gopal Jalan the senior member of the plaintiff firm. These bills Exts. 1 and 2 are made out in the name of M/s Sri Gopal Jalan. According to N. Singhanian's evidence M/s Sri Gopal Jalan means Sri Gopal Jalan and Co. D Chakraborty the Secretary has also corroborated this evidence. I accept this evidence that M/s. Sri Gopal Jalan means Sri Gopal Jalan and Co. The letter of Singhanian Bros, dated 18th February 1948 (Ext. A at page 13) shows that a payment of Rs. 500/- was made against the bills (Exts. 1 and 2) but this fact was not denied by the plaintiff in their reply to the complaint of defendant No. 1 contained in their letter dated 27 February 19 46 (Ext. J). This correspondence is a contemporaneous document when the facts were no doubt fresh in the minds of parties, yet curiously enough the part-payment of Rs. 500/- was not denied. The only explanation of N.K. Jalan was that perhaps this payment of Rs. 500/- was in respect of other transactions but what the other transactions were he could not say. He was merely guessing. I reject this evidence of N.K. Jalan. Further it

appears that the positive evidence of N. Singhania is that Rs. 500/- was paid against 8,000 shares in Indian Iron and Steel for which confirmation slips were issued but after the bills were made out they were not preserved, but this was not even challenged. I accept this evidence of N. Singhania. The evidence on record has in my judgment merely established that the transactions mentioned in paragraphs 2, 4, 5 and 6 of the plaint were of the plaintiff firm and not personal transactions of Sri Gopal Jalan. Thus I answer this issue accordingly.

Issue No. 2 (b): Evidence has clearly established that all the transactions in question, took place within the ring, of the hall of the association. It has further been established that only members of the association can transact a business in the ring of the hall and the partners' transactions are binding on the firm to which they belong. I am satisfied with this evidence and hold that Sri Gopal Jalan and Co. (the plaintiff firm) is bound by the transaction mentioned in paragraphs 2, 4, 5 and 6 of the plaint. This issue is therefore answered in the affirmative.

Issue No. 3: Exts. 1 and 2 with the endorsement of acceptance of Sri Gopal Jalan and Co. by the pen of Sri Gopal Jalan and the payment of Rs. 500/- against the bills clearly support ratification, adoption and implementation of the transactions. I am satisfied from the evidence of N. Singhania and D. Chakraborty that even after the notice dated 18th March 1944 the plaintiff firm carried on business in the Stock Exchange as before. I disbelieve the evidence of N.K. Jalan in this respect that the plaintiff had stopped business. I answer this issue in the affirmative.

Issue No. 4: From the language of the notice dated 18th March 1944 it is clearly manifest that it was in respect of all future and new independent transactions. The sale transaction of 19th March 1944 was not a new independent transaction or an already existing outstanding transaction. Next it appears from the testimony of N.K. Jalan that he alone sent the notice dated 18th March 1944 in the name of the plaintiff firm. There is no evidence on record to show that all other partners of the plaintiff firm agreed to issue such a notice. Under the Partnership Act one partner alone, cannot either in fact or in law affect the right of another partner to act on behalf of the firm and bind the firm. In *B. R. NAIK Vs. COMMISSIONER OF Income Tax, BOMBAY.*, Kania, J., at page 275 observed-

"In the case of a partnership while each partner is the agent of the firm in respect of its business, he occupies a dual capacity. He is an owner himself and to the extent he is acting for his partners he is their agent. His authority is not liable to be terminated at the will of another individual, because he is also- the owner."

It further appears to me that this notice dated 18th March 1944 was not duly proved as no notice to produce the original notice was given. The notice proved was merely a copy made by N.K. Jalan. Further it has not been established that the notice dated 18th March 1944 was put on the Notice Board prior to 23rd March 1941 Next it appears that as to the effect of this notice the question was

considered by the sub-committee at first, and thereafter by the full committee of the defendant association. Their decision therefore is final and this Court has no jurisdiction to go into the question again. The committee in fact came to the conclusion that the plaintiff firm did business in spite of the notice dated 18th March 1944. N. Singhania has also stated that the plaintiff was carrying on business as before, after the notice dated 18th March 1944. Therefore I answer issue No. 4(a) in the negative. As regards 4(b) I answer the first part in the affirmative and as regards the last part I hold that the plaintiff did not act upon the said notice, that is my answer is in the affirmative with regard to issue No. 4(b).

Issue No. 5: N.K. Jalan has admitted that Sri Gopal Jalan acted as a senior partner of the plaintiff firm. I answer this issue in the affirmative.

Issue No. 6: It was argued on behalf of the plaintiff that there was violation of the principle of natural justice in this case inasmuch as no notice of hearing was given. From the plaint it appears that there is no allegation that no notice of hearing was given but it has been contended that this is included when it is pleaded that no hearing was given. In any event N.K. Jalan admitted that if sent for by the committee they can only appear. I am satisfied on the evidence of the Secretary D. Chakraborty that all notices of all meetings of the sub-committee and/or of the full committee were duly served on the parties and that the plaintiff was given every opportunity to represent its case. This is established by Ext. I being letter dated 30th March 1948 written by N.K. Jalan to the Secretary of the defendant association whereby he stated his case and his objections. These objections were considered by the full committee which after due deliberation came to the conclusion that the plaintiff must pay the claim of the defendant No. 1 with the committee fee. There is no substance in the plaintiff's contention that Sagarmal Nathani should not have been allowed to sit on the committee. Such a demand by the plaintiff was wrongful and against the bye-laws and the rules of the association and was rightly rejected by the Association. As regards the allegation of bias there is no evidence to support it. There was no suggestion of bias made during the evidence. Bias in my opinion has not been established. It has also not been established that the committee did not give its decision honestly or in good faith or in conformity with the principles of natural justice. In any event, all these points were decided by the full committee. These are questions of fact and this Court not being the Court of Appeal cannot go into the question any further. The fact remains that the full committee of the association after going into the question came to the conclusion that on the facts and circumstances of the case Sri Gopal Jalan and Co. was to pay the claim of the defendant No. 1.

9. The law on this point has been clearly stated in State Medical Faculty of West Bengal Vs. Kshiti Bhusan Dutt and Others, where it was held that:

The decision of a domestic body or a tribunal or a board particularly of a professional body can only be interfered with by the Courts of law on three main

principles, namely, (1) that such domestic authorities have acted under bias or in bad faith and mala fide, (2) that such domestic authorities have violated the principles of natural justice in the proceedings and conclusion before it and (3) that such domestic authorities have exceeded their jurisdiction under the statutes, rules and regulations, regulating their duties and procedure. If it is found that there is no infringement of three principles stated above then the law is that it is not for the Court to substitute its own view or opinion on the merits of the decision of the domestic authorities."

Such being the state of law with which I fully agree I am satisfied upon evidence there has not been any infringement of the three principles mentioned above in this case. Therefore issue No. 6 is answered in the negative.

Issue No. 7 is also answered in the negative for the same reasons.

Issue No. 8. For the reasons stated above this Court has no jurisdiction to entertain and try this suit.

Issue No. 9: Negative.

Issue No. 10: The plaintiff is bound to fail and is not entitled to any relief.

10. The suit is dismissed with costs.

11. Certified for two counsel.