

(2015) 05 BOM CK 0101
In the Bombay High Court
Case No : Suit No. 965 of 2011

Subhiksha Trading Services Ltd. and Others

APPELLANT

Vs

Azim Premji

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 29 Rule 1, Order 6 Rule 14
Companies Act, 1956 — Section 291

Citation : (2015) 4 ABR 269

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Karl Shroff and N.S. Rodrigues i/b RandM Partners, for the Appellant;
J.P. Sen, Senior Advocate, Rohan Cama instructed by Federal and Rashmikan,
Rajashree Ram and Anuja Abhyankar, Advocates for the Respondent

Judgement

S.C. Gupte, J—The present suit is a defamation action filed by Plaintiff Nos. 1 and 2 against the Defendant. It is the case of the Plaintiffs that Plaintiff No. 2, who is also a promoter and Managing Director of Plaintiff No. 1, is conversant with the facts of the case and able to depose to the same and also to sign and verify the plaint on behalf of Plaintiff No. 1. The Plaintiffs rely upon a resolution of Plaintiff No. 1 dated 9 April, 2000, which authorises Plaintiff No. 2 to sign all court papers for and on behalf of Plaintiff No. 1 including vakalats, affidavits, petitions or any other instruments, papers or writings, as may be required from time to time, in connection with petitions/writs/appeals/memoranda in all courts, tribunals, etc. The Plaintiffs claim that under this resolution, Plaintiff No. 2 has the requisite authority to sign and verify the plaint on behalf of Plaintiff No. 1. This position is contested by the Defendant in his written statement. It is the case of the Defendant that under the Articles of Association of Plaintiff No. 1 (the Articles having since the date of the aforesaid resolution been amended), the commencement or discontinuance of any litigation, as set out therein, is required to be authorized by a resolution of the Board of Directors of the company and no such resolution could be passed or legally acted upon unless at least one Director

nominated by the "V-C Investor" (i.e. ICICI Venture Funds Management Company Ltd. - I-Ven) votes in favour of consents to, such resolution. It is the case of the Defendant that no such consent being there in the present case and therefore, no valid board resolution for commencement of the present litigation, the suit instituted by Plaintiff No. 2 for and on behalf of Plaintiff No. 1 is not maintainable. Based on these pleadings, an issue (Issue No. 3) has been framed by this Court as under:--

"3. Whether the Plaintiff No. 2 has authority to file suit on behalf of Plaintiff No. 1?"

Besides this issue, there are other issues concerning the passages from the interview of the Defendant reproduced in para 7 of the plaint which are claimed to be defamatory, namely, whether these are of a malicious or defamatory nature and whether these statements are fair comments made bona fide.

The Defendant applies for trial of this issue (Issue No. 3) first before the other issues are determined. It is submitted that the Defendant accepts and does not dispute the factum of the alleged resolution referred to above. The Defendant's case is that the Articles of Association of Plaintiff No. 1 having been amended subsequent to this resolution, introducing the mandatory provision of the consent of V-C Investor for the validity of any resolution for commencement of litigation on behalf of Plaintiff No. 1, the present suit is devoid of any authority of law for its commencement. It is submitted that since the resolution, on the basis of which the Plaintiffs claim authority in Plaintiff No. 2 to sign and verify the plaint and commence a legal action on behalf of Plaintiff No. 1, not having been disputed, there is no factual inquiry necessary for determination of this issue. It is submitted that this issue is a pure question of law and a substantial part of the case, which concerns defamation of Plaintiff No. 1 by the Defendant, can be disposed of on this issue itself and that, accordingly, this issue should be tried by the Court first.

2. On the other hand, it is submitted by learned Counsel for the Plaintiffs that the issue is not only both of law and fact, but that, assuming without admitting that the factual inquiry is done away with by reason of the Defendant having accepted the factum of the resolution, the issue does not relate to either the jurisdiction of the Court or the bar to the suit created by any law for the time being in force. It is submitted that unless and until an issue relates to the jurisdiction of the court or a bar to the suit created by any law for the time being in force, the same cannot be tried even if such trial were to dispose of a part of the case. Secondly, it is submitted that the question of trial of the issue before the trial of other issues has to be determined at the time of framing or settlement of issues and not thereafter.

3. Order 14, Rule 2 of the Code of Civil Procedure Code provides as follows :

"2. Court to pronounce judgment on all issues.--(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the

provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

4. Ordinarily, the Court must pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue. Determination of all issues is thus a matter of rule, but there is an exception to this rule, which is contained in sub-rule (2) of Rule 2 of Order 14. If the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first and for that purpose, postpone the settlement of the other issues until after determination of that issue and may deal with the suit in accordance with the decision on that issue. This of course is subject to a condition that such issue of law must relate either to (a) the jurisdiction of the court, or (b) the bar to the suit created by any law for the time being in force. In other words, it must be such an issue, which if determined in favour of the Defendant would non-suit the Plaintiff, his suit being rendered without jurisdiction or barred by law. In the present suit, the Articles of Association of Plaintiff No. 1 bar any suit being filed for and on behalf of Plaintiff No. 1 unless the commencement of such legal action is preceded or supported by a resolution duly passed in accordance with its Articles, the Articles providing for a mandatory consent of V-C Investor. Plaintiff No. 1 is a corporation, which acts in accordance with its Articles of Association and through its authorized representatives. Though Board of Directors or Managing Director under the superintendence, control and direction of the Board of Directors, has power to act on behalf of the company, such power is subject to restrictions contained inter alia in the Articles of Association of the company. This is a matter of law. If a particular action is barred under the Articles, the action of the company or its board or managing director despite such bar is illegal. This is the combined effect of Section 291 of the Companies Act read with the Articles of Association, and the bar is created by law for the time being in force. So also, under Order 6, Rule 14 read with Order 29, Rule 1 of the Code of Civil Procedure, the plaint on behalf of the company has to be signed by an authorized officer. If not so signed, the suit itself is not properly instituted and is likely to be dismissed, though it may be permissible to cure the defect later during the trial. This again is a matter of law. The bar to such a suit is by law for the time being in force. The bar to this suit for want of authority in terms of the relevant restrictions in the Articles can, thus, be termed as a bar to the suit created by law for the time being in force. It also bears on

the jurisdiction of the Court. If the plaint is not properly instituted in the Court, the Court has no jurisdiction to try the suit.

5. Learned Counsel for the Plaintiffs relies upon a decision of the Supreme Court in the case of Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, AIR 2006 SC 3672 : (2006) 132 CompCas 479 : (2006) 5 CompLJ 203 : (2006) 6 JT 253 : (2006) 7 SCALE 62 : (2006) 5 SCC 638 : (2006) 69 SCL 211 : (2006) 3 SCR 414 Supp : (2006) AIRSCW 3768 : (2006) 6 Supreme 44 . In this case, the Supreme Court reaffirmed the proposition of law laid down by the Supreme Court in the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, AIR 1964 SC 497 : AIR 1963 SC 497 : (1964) 66 PLR 115 : (1964) 4 SCR 409 where the Court affirmed that the Code confers no jurisdiction upon the court to try a suit on a mixed issue of law and fact as a preliminary issue. The Court observed that normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depends upon the decision on issues of fact, would result in a lopsided trial of the suit. There is no quarrel with this proposition of law. The question is of applicability of that proposition to the facts of this case. In the present case, the issue before the court, which is sought to be tried first, is, whether, in the face of the resolution passed by Plaintiff No. 1 on 9 April, 2000 and the Articles of Association of Plaintiff No. 1 as amended, both of which are not matters of dispute, Plaintiff No. 2 has the requisite authority in law to file the present suit on behalf of Plaintiff No. 1. This issue is a pure issue of law. It relates to the bar of law in filing the suit and also jurisdiction of the court to try the suit. In that view of the matter, the issue satisfies the requirements of Order 14, Rule 2 of the CPC. It is an issue purely of law; it relates to jurisdiction of the Court or bar to the suit by any law for the time being in force; and it disposes of a part of a case.

6. There is no merit in the contention that the question as to whether or not a particular issue should be tried first before the Court considers others issues arising in the matter, should be decided only at the time of settlement of issues and not at any time thereafter. Determination of issues is a matter of trial. The court can at any stage of the trial determine the order in which and the manner in which the issues will be decided. If the court is of the view that any particular issue of law, which, if tried first, would dispose of a substantial part of a case, it will be within its rights to order trial of that issue first before the other issues are determined.

7. Accordingly, Issue No. 3 quoted above is ordered to be tried first, before other issues are taken up for hearing.

8. The case is posted for hearing on 19 June, 2015. The resolution dated 9 April, 2000, which is presently marked only for identification, is, in view of the admission of the Defendant, now admitted in evidence and marked Exhibit P-8.