

(2010) 12 RAJ CK 0087
In the Rajasthan High Court
Case No : Company Appeal No. 5 of 2008

Suresh Kr. Agarawal

APPELLANT

Vs

R and R Consortium (P) Ltd. and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398, 402, 403

Citation : (2010) 12 RAJ CK 0087

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Company appeal u/s 10F of Indian Companies Act, 1956 ("Co. Act") is directed against order dt.27/10/2008 passed by the Company Law Board New Delhi rejecting Company Petition-36/2006 filed by Appellant making allegations of certain oppression and mismanagement on the part of Respondent-1 (M/s RR Consortium (P) Ltd) being covered u/s 397 and 398 of Co. Act.

2. Appellant filed petition Under Sections 397, 398, 402 and 403 of Co. Act against Respondent-1 Company and its Directors making allegations of certain oppressions and mismanagement on their part. As per material on record, Respondent-1 (Company) was incorporated in the year 1996 with authorized share capital of Rs. Five lacs divided into 50,000 equity shares of Rs. 10/-each, which was increased to Rs. 25 lacs in June, 1996 and further increased to Rs. 50 lacs in March, 1997. Respondent-1 Company was established with the objects to purchase, acquire, convert, develop, improve, hold with absolute or limited rights or on lease, sublease or otherwise and to erect, construct, build, demolish, re-erect, alter, repair furnish and maintain land including agricultural land, building, houses, farms houses, residential flats, commercial complexes, etc.

3. Counsel for Appellant has reiterated the self same submission having been

urged before the Company Law Board and what has been contended by him is nothing but reappreciation of the facts having already been considered while arriving at a finding of fact by the Board under the order impugned.

4. As alleged, only land/real asset of Respondent-1 (Co.) is a plot situated at Ashok Marg, C-Scheme, Jaipur admeasuring 1725 sq. yards which was purchased with defective title out of Rs. 22.5 lacs which was brought by the Appellant into the company in the year 1996 out of which one lac equity shares of Rs. 10/-each of Respondent-1 (Co.) were allotted in favour of Appellant while balance amount of Rs. 12.5 lacs was retained by the Company. It was alleged that Appellant was promised with share holding in the Company in 50:50 ratio besides Directorship.

5. It appears that when share capital of the Company was increased and one more Director (Respondent-3) was inducted who happens to be son of the Director holding major shares. Appellant felt aggrieved of induction of Respondent-3 being without consent of Appellant as also without resolution with an ill-intention to create majority on the Board of Respondent-1 (Co.) and to oppress the Appellant, tantamounting to oppression and mismanagement under the Co. Act, which the Appellant filed by way of Co. petition before the Company Law Board.

6. It has come on record that appointment of Respondent-3 as Director was with the consent and signature of the Appellant who filed Annual Return in Form 32 before the Registrar of Cos.; and in fact he sold his share holding to Respondent-3 for the consideration having been received by Appellant. In regard to sale consideration for transfer of the shares, initially a cheque No. 195751 dt.06/07/05 was issued in the name of Appellant who made request that it may be issued in the name of his promoter Company Bansal Land Mark (P) Ltd - accordingly cheque No. 195752 dt.06/07/05 for a sum of Rs. 30 lacs was drawn and was cleared from the Bank on 07/07/2005.

7. However, there is no material brought on record that Bansal Land Mark (P) Ltd is not a company promoted by the Appellant or there was some business transaction ever having taken place with Respondent-1 (Co.) and Bansal Land Mark (P) Ltd under which payment of Rs. 30 lacs was made to it its promoter company. The Appellant averred that the money was transferred as loan and not towards transfer of shares.

8. Taking note of over-all material on record, the Company Law Board finally recorded finding that the Appellant who continues to be Director in Respondent-1 (Co.) had himself decided to disassociate from the affairs of the Company having taken a decision to sell off his share holding to the Respondents and since he could not decide the name of the transferee, a cheque was initially issued on 06/07/05 for Rs. 30 lacs towards consideration for his shares @ Rs. 30 per shares on a premium of Rs. 20/- on face value of Rs. 10/- each; but on the request of Appellant, earlier cheque was cancelled and another cheque No. 195752 dt. 06/07/05 for self same sum of Rs. 30 lacs was handed over in the

name of Bansal Land Marks (P) Ltd - promoter Company of Appellant and was duly encashed in its account.

9. Taking note of the finding of fact recorded by Co. Law Board about oppression/ mismanagement, for which the Appellant failed to make out a case of winding up of Respondent-1 (Co.) which was one of pre-requisites for attracting provisions of Section 397 and 398 of Co. Act. Apart from merits, it was also observed by the Board that Appellant being Director was fully aware of the defect in title of Respondent-1 (Co.) property, which cannot be construed to a cause of oppression and mismanagement nor can he be oppressed by appointment of Respondent-3 as Director as he had duly consented with it and also filed Annual return in Form-32 for the year ending on 31/03/2005 before the Registrar of Cos. on 27/03/2006 and the Appellant failed to make out a case as to how conduct of Respondent-1 at any point of time was harsh, burden some and wrongful, which too cannot be considered to be oppression or mismanagement of affairs of the Company.

10. However, the scope Under Sections 397 and 398 of Co. Act has been considered in Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others, wherein Apex Court observed *ad infra* :

14. In a number of judgments, this Court considered in extenso the scope of Sections 397 and 398. The following judgments could be usefully referred to :

(a) Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others,

(b) M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others,

(c) Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others,

(d) Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others,

(e) Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others,

From the above decisions, it is clear that oppression would be made out :

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-avis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would

amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board u/s 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.

11. In view of what has been observed (supra), Section 10F permits an appeal to the High Court from an order of the Co. Law Board only on a question of law as the Co. Law Board is the final authority on facts unless such findings are perverse, based on no evidence or are otherwise arbitrary or the conclusion was against law or arose from consideration of irrelevant material or omission to consider relevant materials, the appellate Court would interfere u/s 10F of the Co. Act.

12. In the present appeal, it is not the case that what has been observed and recorded by Co. Law Board under order impugned are against law or based on irrelevant material or omission to consider relevant materials or was malafide or for a collateral purpose or was burdensome, harsh or wrongful - in absence whereof, in the opinion of this Court, finding of fact duly supported by material on record is not open to be re-appreciated and no question of law has emerged in present appeal which requires to be examined u/s 10F of Co. Act. No doubt, it is settled position of law that if finding of fact is perverse and is based on no evidence, it can be a question of law and be examined under scope of Section 10F of Co. Act; however, it is not the case established by Appellant herein. Consequently, appeal fails and is hereby dismissed.

13. No order as to costs.