
(1999) 07 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Revision Petition No"s. 738/99 and 852/99

The Bank of Rajasthan

APPELLANT

Vs

Manish Agarwal and Another

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2000) 1 CivCC 225 : (2000) 2 RLW 1205

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : Prasad Kuhad and Mr. S. Kasliwal, for the Appellant; S. Kasliwal for the Respondents in 738/99 and Mr. Paras Kuhad for the Respondents in 852/99, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—These two revisions will be disposed of by this single order as they have been filed by both the parties against the impugned order dated 30.4.1999 passed by learned Additional District Judge No. 5, Jaipur City, Jaipur in Civil Suit No. 18/99.

2. Brief facts are that the Bank of Rajasthan is a banking company incorporated and registered under the provisions of the Companies Act, 1956. A resolution was passed on 22.9.1995 in the Annual General Meeting of the company for taking requisite steps, measures and actions for bringing in additional capital. It was decided in the said general meeting that the Board of Directors of the company would be competent to take all proceedings and actions for enabling the company to come out with the bonus/rights issue at any time for the purpose of generating additional capital. Consequently, AGM made a reference on 28.9.1998 to the Reserve Bank of India seeking its approval for induction of five new" Directors in the Board of Directors of the company. The Reserve Bank of India granted approval for induction of five directors from Tayal Group with certain conditions. Accordingly five Directors from the Tayal Group were included

into the Board of Directors. In the meeting held on 3.2.1998 it was decided that the rights issue would provide for issuance of five new ordinary shares of the face value of Rs. 10/- each at a premium of Rs. 5/- per share to the existing shareholders for every two ordinary shares held by them and further that alongwith each rights share a detachable warrant would be issue entitled the holder thereof to apply for and be allotted one ordinary share of Rs. 10/- within 12 to 18 months at a discount of 25% of the average market price of the share prevailing during the last six months. As required by law, the matter was thereafter referred to the Security and Exchange Board of India who passed an order on 25.2.1999 granting its approval to the proposed rights issue with certain observations/modifications which were to be complied with before the commencement of issue. In the right of the conditions imposed by SEBI the company took some decision and the matter was again duly considered by Extraordinary General meeting of the company held on 5.1.1999 wherein it as duly resolved to increase the capital of the company by providing in its memorandum of association that the capital of the company shall be Rs. 150 crores only divided into 15 crores shares of Rs. 10/- each. Thereafter the company took all actions and measures for being able to come out with the said rights issue as per the deadline laid down by the Reserve Bank of India.

3. Shri Manish Agarwal plaintiff, who had been sitting silent during all these proceedings, chose to file a civil suit on 17.3.1999 in the Court of District Judge, Jaipur City, Jaipur from where it was transferred to Additional District Judge No. 5. Plaintiff Manish Agarwal sought relief in terms of declaration and injunction. He wanted a temporary injunction in respect of the aforesaid rights issue. A notice was given to the Bank of Rajasthan and on 22.3.1999 the trial Court passed an order of injunction against the rights issue. An appeal was filed by the SEBI in the High Court which was dismissed on 30.3.1999 against which a special leave to appeal before Hon''ble Supreme Court is pending.

4. The Bank of Rajasthan moved an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the plaint does not disclose the cause of action and that no civil suit was maintainable against the defendant sin view of the provisions of Sections 20-A and 23 of the SEBI Act as the two sections bar jurisdiction of a civil Court. On 30.4.1999 the learned Court below held that the suit is not maintainable against the defendant SEBI and consequently the suit against SEBI was dismissed and its name was deleted from the array of defendants but the suit was kept alive against Bank of Rajasthan. It is against this order that the Bank of Rajasthan has preferred this revision and Manish Agarwal has also filed Revision No. 852/99 praying that the order dated 30.4.1999 passed by lower Court be quashed and set aside to the extent of allowing the application under Order 7 Rule 11 CPC even qua SEBI.

5. I have herd both the revisions on merits.

6. The first and foremost question in these revisions is whether the suit was maintainable against SEBI? Learned counsel Shri Kasliwal submitted that the suit

was not barred even against SEBI but Shri Kuhad drew my attention to various provisions of the SEBI Act which bar the suit against SEBI. His contention is that it was SEBI who authorised Bank of Rajasthan and also issued guideline therefore, the suit was barred not only against SEBI but against the Bank of Rajasthan and as such the trial Court should have rejected the plaint in to to under Order 7 Rule 11 CPC. He drew my attention to Section 20-A of the SEBI Act which bars the jurisdiction. Section 11 of the said Act which prescribes the functions of the Board. Section 11-A which empowers the Board to specify regulations and Section 11-B of the said Act which empowers the Board to issue directions. In nut shell, his contention is that since the SEBI has authorised under its powers to the Bank of Rajasthan to issue shares, the suit was barred against both, SEBI and the Bank of Rajasthan and hence the plaint should have been rejected against both of them. He has tried to explain why the jurisdiction of the civil Court has been barred. To this, learned counsel Shri Kasliwal replied that firstly the suit was not barred against SEBI. Even if the same was barred, there was no bar against the Bank of Rajasthan and as such the trial Court rightly issued injunction against Bank of Rajasthan while rejected the plaint against SEBI. The order granting injunction was affirmed by this Court in S.B. Civil Misc. Appeal No. 446/99, decided on 30.3.1999 by brother Hon''ble Shiv Kumar Sharma, J. and it is stated at the bar that the same is under challenge before Hon''ble Supreme Court. It has been contended that the point about jurisdiction will be raised before Hon''ble the Supreme Court in SLP Be that as it may be, the present position is that the order grating temporary injunction has been affirmed by this Court in Civil Misc. Appeal No. 446/99. After hearing both the parties and after going through the various provisions of the SEBI Act, I am of a very clear view that the suit against SEBI was barred.

7. So far as the Bank of Rajasthan is concerned, the temporary injunction was issued by trial Court against Bank of Rajasthan and the order granting injunction has been affirmed by this Court in Civil Misc. Appeal No. 446/99, decided on 30.3.1999. After being unsuccessful, petitioner Bank of Rajasthan moved application under Order 7 Rule 11 CPC before the Court below and on its rejection filed this revision.

8. Contentions of leaned counsel Shri Kasliwal are that the application under Order 7 Rule 11 CPC could be filed only by SEBI and not by Ban of Rajasthan and that the objection about non-maintainability of the suit could be raised only by way of written statement and that such an application was not maintainable because of pendency of injunction proceedings. So far as merit of this application under Order 7 Rule 11 CPC are concerned, it has been contended by Shri Kasliwal that Section 20-A of the SEBI Act is attracted only if a suit was directed against the order passed by SEBI and the document dated 25.2.1999 is not an order but merely a letter issued by SEBI. But it is found from the record that a decision was taken under statutory powers by SEBI which has been communicated by letter dated 25.2.1999. SEBI is a statutory authority and exercises powers u/s 11, 11-A and 11-B of the SEBI Act as well as guidelines

framed thereunder. According to Shri Kuhad it amounts to an order in view of Supreme Court Judgment in C.G. Ghanshamdas and Others Vs. Collector of Madras, being formal expression of decision made by competent authority. Shri Kuhad submitted that the plaintiff has not prayed to set aside this order and as such till it is set aside, it remains in force as an order and when the Bank of Rajasthan has decided to float the right issue, it could not be done and the suit was barred even against Bank of Rajasthan. I do not agree with this contention because the Reserve Bank of India has not issued any directions u/s 35-A of the Banking Regulations Act, 1949 nor Reserve Bank of India is a party in the sit. The suit may be barred against the SEBI but is not barred against Bank of Rajasthan and as such the trial Court was not obliged to reject the plaint in toto.

9. Contention of learned counsel Shri Kasliwal that the Bank of Rajasthan was not competent to raise objection with regard to maintainability of suit against SEBI has no force because as per provisions of order 7 Rule 11 CPC any party to the suit can raise objection about maintainability of the suit because Order 7 Rule 11 CPC states that the plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; and
- (d) where the suit appears from the statement in the plaint to be barred by any law.

10. The Bank of Rajasthan simply drew attention that the suit was barred under the SEBI Act and the trial Court did find that it was so, so far as SEBI was concerned and, therefore, rejected the plaint against SEBI. It was not necessary to wait till the written statement was filed as has been contended by learned counsel Shri Kasliwal. Shri Kasliwal cited AIR 1996 Bom 46, Nishit M. Prabhu Vedekar Vs. Chandranath Vinayak Dhume and others, which is a citation for application of Order 7 Rule 11 CPC. In this citation summons were issued to all the defendants for settlement of issues. However, none of the defendants filed their defence by way of written statement and if there were only two defendants who by their application dated 18.10.1983 raised objection about maintainability of the suit. After hearing the parties the learned trial Judge made order rejecting the plaint and it was ordered that the defendants may file written statement and then the matter be decided after hearing the parties. This citation does not apply to the case in hand because no injunction was sought against the SEBI.

11. The suit is not barred against the Bank of Rajasthan under the provisions of

Companies Act or the Banking Regulations Act. The suit against SEBI was found barred by the trial Court and, therefore, its name was removed from the array of defendants.

12. The contention of Shri Kasliwal that the name of SEBI should not have been removed from the array of the respondent at the stage of passing order under Order 7 Rule 11 CPC and the Court should have waited till the written statement was received, is devoid of force because in the case before me the suit was barred against SEBI under various provisions of law and, therefore, rejection of plaint against SEBI was proper. But since the suit was not barred against the Bank of Rajasthan, the impugned order does not suffer from infirmity.

13. In *Mst. Chandani Vs. Rajasthan State and Others*, it was observed that where the plaint appears to be barred by law against some of the defendants but not against rest, the proper course is to strike out the name of the defendants against whom there is no cause of action or the suit is barred by law and allow it to proceed against the rest. This would, of course, be subject to the paramount consideration that such a suit, as a matter of substantive law, would be maintainable against the remaining defendants. In this respect AIR 1968 J&K 98, *Ramcharan Mahto and Others Vs. Custodian of Evacuee Property and Another*, are also relevant. In 1981 RLW 239, *Nagar Palika, Nathdwara Vs. Temple Board, Nathdwara*, stage of rejection of plaint was considered and it was observed that provisions of Order 7 Rule 11 CPC are imperative and can be brought at any stage of the suit. In *Samar Singh Vs. Kedar Nath alias K.N. Singh and Others*, stage was considered and it was observed that Order 7 Rule 11 CPC does not either expressly or by necessary implication provide that the power under Order 7 Rule 11 CPC should be exercised at a particular stage only. It was a case of election petition and it was held that if the election petition does not disclose any cause of action, the Court would be acting within its jurisdiction in exercise of its power under Order 7 Rule 11 CPC in rejecting the same even after settlement of issues. Thus, it is very clear that the provisions can be invoked at any stage of the suit. The law in relation to order 7 Rule 11 CPC is thus very clear and authorises the Court the rejection of a plaint where the suit appears from the statement in the plaint itself to be barred by any law and that too at any stage of the suit.

14. Learned counsel Shri Kuhad relied upon (1982)2 SCC 487, *Roop Lal Sathi Vs. Nachhattar Singh Gill*, wherein it was observed that only a part of the plaint cannot be rejected and the plaint as a whole must be rejected if no cause of action is disclosed. In this citation it has been observed that it is to be done only when the plaint discloses no cause of action. The citation is distinguishable on the ground that in the case in hand cause of action is definitely disclosed when the Bank of Rajasthan issued notification to issue shares without following the proper procedure and by ignoring the rights of the plaintiffs. Plaintiffs, in exercise of their civil rights had every right to challenge the floating of the issue. Therefore, to say that there was no cause of action even against Bank of Rajasthan is not

correct and as such this citation would not help the Bank of Rajasthan. Counsel for the petitioner submitted that the issue of shares is such an important matter that the economy of the country depends on it and it should not be interfered with lightly, therefore, where there was no cause of action, the plaint should have been rejected. About importance of such a matter Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, , has been relied upon. There is no doubt that such matter related to the economy of the country but side by side it has to be seen that if any action is taken by a corporate body like Bank of Rajasthan, it has to be taken according to the law and the Rules and not arbitrarily. It should not deprive the rights of other share holders. The bar of jurisdiction of civil Court does apply to the SEBI and not with regard to the Bank of Rajasthan.

15. In Sher Singh (dead) through L.Rs. Vs. Joint Director of Consolidation and others, the Apex Court held that the High Court, while exercising its revisional jurisdiction, cannot correct errors of fact howsoever gross they may be or even errors of law unless, they have relation to the jurisdiction of the Court to try the dispute itself. In The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, it was held that the High Court should not interfere even if the order is right or wrong or in accordance with law or not unless it has exercised its jurisdiction illegally or with material irregularity. In the cases in hand, I do not find such jurisdictional errors. Hence, no interference is required in the impugned order.

16. In view of what has been discussed above, the impugned order of the trial Court dated 30.4.1999 is to be upheld. Therefore, both these revision petitions are liable to be dismissed. Both revision petitions are dismissed. No orders as to costs.