
(1986) 12 DEL CK 0009

In the Delhi High Court

Case No : Interim Application No. 4625 of 1986 and Suit No. 1236 of 1986

T.L. Arora and Others

APPELLANT

Vs

Ganga Ram Agarwal and Others

RESPONDENT

Date of Decision : 11-12-1986

Acts Referred:

Citation : (1987) 31 DLT 210

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Advocate : B.N. Nayar, R. Sawhney, Sudha Srivastava, M.L. Varma, Suresh Singh and Ashima Sehgal, for the Appellant;

Judgement

Mahesh Chandra, J.

(1) By this order I propose to dispose of I.A. 4625186 which has been filed by defendants 1, 2, 3, 6 & 7 u/s 10 read with Section 151 of the CPC for stay of the suit on the allegation- that plaintiffs have filed this suit for declaration to the effect E that plaintiff No. I is a validly denominated director of defendant No. 7-company and the plaintiffs have also filed petitions u/s 408 & Section 409 of the Companies Act before the Company Law Board on 25th April 1986 on identically similar pleadings as in the above suit and the two reliefs claimed in the said petitions before the Company Law Board are identically similar to the relief claimed in the above suit and as such the proceedings in this suit be stayed till further orders u/s 10 of the Code of Civil Procedure. The application is opposed on behalf of the plaintiffs on the ground that Section 10 of the CPC has no application; to the facts of this case. I have heard the learned counsel for the parties and have gone through the file and after giving my considered thought to the matter before me I have come to the following findings.

(2) This application has been filed in this suit filed by the plaintiffs for a declaration that plaintiff No. I is a validly denominated director of defendant No. 7-company on the allegations that plaintiff No. I was a director of defendant No.

7 and at the annual general meeting held on 31st March 1986, he was to retire by rotation and was to be re-elected as director thereof being the sole representative of Mri group and being in possession of majority support of other local Indian shareholders in the form of proxy but defendant No. 1 in conspiracy with defendants 2 to 4 and two other directors objected to the denomination of plaintiff No. 1 as director and defendant No. 1 with the support of his employee directors and other bogus share-holders had forged proceedings of the meeting in the minutes book which has cast a cloud on the right of plaintiff No. I and other plaintiffs and on the status and title of plaintiff No. 1.

(3) Section 10 of the CPC reads as under :

"NO Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. ".....Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

This shows that in order to attract provisions of Section 10 of the CPC it must be established that the issue in this suit and the proceedings pending before the Company Law Board are substantially the same and the Company Law Board has jurisdiction to grant the relief claimed and the two proceedings are between the same parties or their representatives and such parties are litigating in both these matters under the same title. It would be difficult to accept that the issue before the Company Law Board is substantially the same as is the matter in issue before this Court. It would similarly be difficult to accept that the relief claimed in this suit can be granted by the Company Law Board. The defendant has filed a photostat copy of the order dated 31st July 1986 of the Company Law-Board in the petitions moved by the plaintiffs against the defendants. Para 2 of the said order shows that "the application had been filed by Sh. T. L. Arora and 30 others under Sections 408, 409, 247 & 250 of the Companies Act requesting, inter alia, for appointment of directors on the basis of the proportional representation, appointment of additional directors from among the applicants and freezing of voting rights in respect of certain allegedly bogus shares". The conclusions of the Company Law Board with regard to relief u/s 409 of the Companies Act in the said application have been incorporated in para 25 of the said order which reads as follows :

"IN regard to maintainability of an application u/s 409 of the Act, the condition precedent is that the application should be made by either a director, managing director or other persons holding certain positions as mentioned in Section 409. Since Shri Arora did not hold any of these positions at the relevant time and it has also not been shown that any of his co-applicants held the same when the

application was made, it is clear that the same is not maintainable."

(4) With regard to relief u/s 408 of the Companies Act, the Company Law Board has observed in para 26 as follows :

"WITH regard to the application u/s 408 it may be mentioned that the applicant No. 2 has not been able to prove most of the allegations in particular the one relating to advances of Rs. 1.64 crores said to have been given to companies concerned with Shri G. R. Agarwal. The remaining transactions have been reasonably explained by the respondents. It is also significant that the financial institutions are actively associating themselves with conducting the affairs of the company and have suggested professionalisation of the Board of Directors, described in para Ii supra and appointment of concurrent auditors. These should adequately take care of proclivity if any, towards mismanagement and we do not think if any further preventive action u/s 408 of the Companies Act is warranted."

--- *** --- In the end the orders of the Company Law Board are that "the application u/s 408 is dismissed as not being substantiated" and "application u/s 409 is dismissed as not being maintainable". This being the position it would be difficult to accept that the subject-matter of the present suit is substantially the same as was in the application u/s 408 and Section 409 of the Companies Act before the Company Law Board or that the same was still pending before Company Law Board. Even otherwise a perusal of Sections 408 and 409 of the Companies Act would show that the scope of those Sections is altogether different. Section 408 of the Companies Act refers to "powers of Government to prevent oppression or mismanagement" and Section 409 thereof provides for "power of Central Government to prevent change in Board of directors likely to effect company prejudicially". The present one is a suit for declaration that plaintiff No. I was duly denominated and as such was director of defendant No. 7 in its annual general meeting held on 31st March 1986. In view of this situation, it cannot be accepted that the Company Law Board could grant the relief claimed in this suit u/s 408 or Section 409 of the Companies Act. That being the position it would be difficult to accept that all the conditions precedent necessary for invoking Section 10 of the CPC are present in the instant case and consequently it cannot be said that the provisions of Section 10 of the CPC are attracted by this suit merely because application u/s 408 and Section 409 of the Companies Act has been filed by the plaintiffs against the defendants. The mere fact that application was filed by these very plaintiffs would not be of much consequence unless the subject-matter both before this Court and before the Company Law Board is substantially the same and the Company Law Board is competent to grant the relief claimed here. Since the scope of proceeding previously instituted and pending before another court or authority is not substantially the same and rather is altogether different than the relief claimed before this Court and further the other court or authority (Company Law Board in the instant case) is not competent to grant the relief claimed in this suit, the proceedings before this Court cannot be stayed u/s 10 of the Code of Civil procedure. In view of my

discussion above. I find no force in this application and the same is liable to be dismissed and is dismissed with costs which are assessed at Rs. 1,000.00 .