

(1984) 08 PAT CK 0034
In the Patna High Court
Case No : L.P.A. Case No. 88 of 1984

Upendra Kumar Joshi

APPELLANT

Vs

New Victoria Mills Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-08-1984

Acts Referred:

Companies Act, 1956 — Section 155, 155(4)

Citation : (1985) 33 BLJR 398 : (1986) 59 CompCas 798 : (1985) PLJR 514

Hon'ble Judges : S.S. Sandhawalia, C.J; Sarwar Ali, J; B.P. Jha, J

Bench : Full Bench

Advocate : Party in person, for the Appellant; Ram Balak Mahto, for the Respondent

Judgement

1. Are the provisions of Clause (b) of Sub-section (4) of Section 155 of the Companies Act, 1956, prescriptive of the minimum number of judges for hearing an appeal or merely descriptive of the High Court in which such an appeal arises is the somewhat ticklish question which has necessitated this reference to the larger Bench.

2. Though the issue here is pristinely legal and turns entirely on the larger import and the specific language of Section 155 and thus could even be considered de hors the facts giving rise thereto, nevertheless, a brief reference to them may still be made. The appellant, Shri U. K. Joshi, had preferred an application u/s 155 of the Companies Act, 1956 (hereinafter called "the Act"), seeking the rectification of the register of members of Messrs New Victoria Mills Company Limited by incorporating his name among the shareholders on the basis that he held 50 preference shares and 200 ordinary shares in the said company. The said application came up before a learned single judge of this court, before whom a preliminary objection was raised by the registry that the said application was not maintainable since the registered office of the company was not within the territorial jurisdiction of this court. Upholding the preliminary objection, the learned single judge took the view that the application was not entertainable by

this court and dismissed the same by his order dated February 18, 1983.

3. Against the said dismissal, the present company appeal u/s 155(4) of the Act has been preferred. The appellant raised the controversy that this appeal must be heard by a Bench consisting of three or more judges, and to resolve the same, the matter was first directed to be placed before a Division Bench. Before it also the appellant maintained his stand that the appeal could only be heard by three or more judges, and the Division Bench, after observing about some obscurity of draftsmanship in the provision of Sub-section (4) of Section 155 of the Act and the consequent confusion arising therefrom, has directed the matter to be placed before a larger Bench, and that is how the matter is before us.

4. Now, the threshold question herein is whether the present appeal u/s 155(4) (b) must be heard only by a Bench consisting of three or more judges of this High Court. Inevitably, the clue to this issue is provided only by the language of the provision around which the controversy revolves and the relevant part of Section 155 may, therefore, be read at the very outset-

" Power of court to rectify register of members.--(1) If-

(a) the name of any person-

(i) is without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register is, without sufficient cause, omitted therefrom ; or

(b) default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be, a member ;

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register...

(4) From any order passed by the court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in Section 100 of the Code of Civil Procedure, 1908 -

(a) if the order be passed by a District Court, to the High Court;

(b) if the order be passed by a single Judge of a High Court consisting of three or more judges, to a Bench of that High Court."

Before one turns specifically to the precise language of Sub-section (4)(b), it seems apt to look at the larger import and purpose of Section 155 itself. This confers on the court the power to rectify the register of members of a company. It provides that a person aggrieved by any of the grounds specified in Sub-section (1) thereof, may apply to the court for rectification of the register. Sub-section (2) then gives a wide-ranging power to the court to either reject the application or order a rectification of the register and in doing so, Sub-section (3) empowers the court to decide, if necessary or expedient, the allied question of

title of any other person with regard to the shareholding for the purposes of the rectification or otherwise of the register.

5. It is from such an order that Sub-section (4) provides for a forum of appeal. Now, it seems manifest that the power of rectification of the register is not in any way an exceptional or extraordinary power of great moment or significance. Indeed, it was argued before us with plausibility that it is somewhat of a routine and relatively ordinary power conferred on the company court. Where such power is exercised by a District Court, the appeal therefrom is provided to the High Court and the statute does not in any way specify the number of judges who will hear such appeal. It may well be heard by a single judge and no further appeal therefrom is envisaged under the Act. However, where the original order u/s 155(2) has been passed by a single judge of the High Court, an appeal therefrom is envisaged within the limitations of Clause (b) of Section 155(4). Now, it is trite learning that, ordinarily, appeals from the order of a single judge lies to a Division Bench under the letters patent jurisdiction. No reason even remotely, could be pointed out to us as to why in this particular context an exception may be made to the ordinary rule that an appeal from the order of a single judge must be before a Bench of at least three judges or even more. Indeed, the Companies Act, in other contexts, provides for appeals against an order of the single judge of the High Court and no provision could be brought to our notice which requires that such appeals should be heard by a minimum number of three judges of the High Court or more. In the somewhat limited context of the power of rectification u/s 155, no larger rationale is evident for construing Section 155(4)(b) as a mandate for the hearing of the appeal thereunder by a minimum number of three judges of the High Court. The larger aspect of Section 155, therefore, clearly militates against the tenuous stand taken on behalf of the appellant.

6. Again, the nature of the appeal under Sub-section (4) and the limits in which it is sought to be confined then calls for notice. It is plain that this provision does not envisage a reappraisal of evidence and facts as in a first appeal but seeks to limit the appeal to substantial questions of law. Subsection (4) clearly provides that such an appeal lies on the grounds mentioned in Section 100 of the Code of Civil Procedure. Thus, the appeal here is analogous, if not identical, with that of a second appeal provided by the Code aforesaid. The intent of the Legislature to put a limitation on the scope of the appellate forum is thus equally evident even in cases where such an appeal is directed against the order of a District Court in the first instance.

7. Coming now to the specific language of Clause (b), it seems plain that the phrase "consisting of three or more judges" is obviously descriptive of the High Court in which the appeal arises. The said phrase follows the words "High Court" and qualifies the same. It has no relevance to the number of judges who are to constitute the Bench but merely draws a line between the larger High Courts having three or more judges and the smaller ones composed of two or less. An

example which readily comes to one's mind is the High Court of Sikkim which, when originally constituted, was comprised of a solitary judge being its Chief Justice. For a considerable time, it continued as such and later it was composed of only two judges till the year 1984 and when recently, it has been enlarged to three judges, it would be wasteful to advert to the other earlier smaller High Courts which were composed of less than three judges. Equally, it has to be recalled that jurisdictions which were earlier covered by the courts of Judicial Commissioners were deemed to be a High Court in the eye of law for many purposes. Consequently, there was no dearth of jurisdictions where, by a legal fiction, one or two Judicial Commissioners exercised jurisdiction in an area, or of smaller High Courts composed of less than three judges. Section 155(4)(b) was thus clearly intended to distinguish and describe a High Court consisting of three or more judges as against the smaller ones.

8. Now, once it is held that the phrase "consisting of three or more judges " is descriptive of the size of the High Court, the rest of the provision falls neatly into a correct perspective. The closing part of Clause (b) provides that an appeal would lie "to a Bench of that High Court". Now, in plain and ordinary parlance, a Bench of a High Court, when we talk with regard to an appeal from a judgment or order of a single judge, means a Division Bench. A Bench of the court does not mean necessarily a Full Bench or the Full Court or a Bench of three or more judges. Even at the cost of repetition, it may be noticed that the phrase "consisting of three or more judges " follows the words "High Court" and does not in any way qualify or specify the Bench which is to hear the appeal. I have, therefore, little hesitation in holding that an appeal under this provision would lie before a Division Bench and not before a Bench consisting of three or more judges.

9. In the aforesaid context, it seems somewhat obvious that the Legislature here was squarely faced with the problem of providing a forum of appeal where the number of judges of the High Court may be less than three. Now, it needs no great erudition to see that by the very nature of things, no appeal against the order of a single judge of the court would be possible within the same High Court where it is composed of less than three judges. Plainly enough, if it is a court of a single judge, Judicial Commissioner or a High Court of two or less judges, there would not remain even the minimum number of two other judges in the same High Court to hear the appeal against the order rendered by a single judge. It is in this light and in plain recognition of realities that the Legislature spelt out that a further appeal against an order of a single judge would arise only where the High Court is composed of not less than three judges. As was noticed earlier, where the order is passed by a District Court, an appeal lies to the High Court, which may well be heard by a single judge and no further appeal therefrom is provided by the Act. In the smaller High Courts consisting of two or lesser number of judges, the order passed by a single judge in the original jurisdiction was apparently given finality within that court.

10. Viewed from another angle, it is equally significant to notice that the Legislature is more than well aware of the terminology to be employed when the minimum number of judges for constituting a Bench of the High Court is to be mandated. Reference in this connection may be made to one of the oldest statutes, namely, Section 17 of the Indian Divorce Act, 1869, which is in the following terms :

" Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the judges of the High Court is three or upwards) by a court composed of three such judges, and in case of difference, the opinion of the majority shall prevail or (where the number of the judges of the High Court is two) by a court composed of such two judges, and in case of difference, the opinion of the Senior Judge shall prevail."

From the above, it is plain that where the Legislature envisages the minimum number of judges for constituting a Bench, it knows and employs categorical language for doing so. A similar provision exists in the following form in the Code of Criminal Procedure.

" 369. Confirmation or new sentence to be signed by two judges. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such court consists of two or more judges, be made, passed and signed by at least two of them."

It is unnecessary to refer to numerous other statutes and it seems to be manifest that whenever the minimum number of judges for composing a Bench of the High Court is to be mandated, then the terminology employed is entirely different from the one used in Section 155(4)(b).

11. What appears to me as an argument of desperation was then raised by the appellant more vociferously but less logically in contending that Section 155(4)(b) would be arbitrary and it is unconstitutional because of the fact that in a High Court composed of less than three judges, no appeal would be competent from an order of a single judge whereas in the larger High Court, an appeal against such order would be so. This submission stems from the patently fallacious misapprehension that the right of appeal is either a fundamental or an inherent right. It is by now well-settled that an appeal is entirely a creature of the statute and if the Legislature in its wisdom, does not wish to provide an appellate forum at all, the provision would not be rendered unconstitutional. Equally, it would follow that where limitations on the appellate forum are placed, they would be squarely within the parameters of constitutionality. If authority was needed for what appears to be a somewhat plain proposition, it exists in the exhaustive judgment of the Punjab and Haryana High Court in the case of *Sri Chand v. State of Haryana* in the following words :

" Despite the vehemence with which the proposition aforesaid was advanced and pressed, it appears to me that the same stems from a basic fallacy with regard to the very nature and content of the right of appeal, if at all it may be so termed, it is manifest that the right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the Constitution which may even remotely vest any such inalienable right in the citizens. Indeed, learned counsel for the petitioners was compelled to concede that the right of appeal was not a fundamental right nor a constitutional one. That being so, it is equally evident that there is no inherent claim or right to appeal from an original forum. It is, therefore, that it has been repeatedly asserted that the right of appeal is a mere creature of the statute. If that be so, it is plain that the creator who confers such rights, namely, the legislature, can equally take the same away. It inevitably follows that if the whole right can be thus taken away, it can equally be impaired, regulated or burdened with conditions onerous or otherwise. "

Even otherwise, Section 155(4)(b) can be squarely rested on the basis of reasonable classification by the Legislature with regard to High Courts consisting of three or more judges and those composed of two or less number of judges. The line drawn between the two rests on sound rationale. As has been demonstrated earlier, in the smaller High Courts consisting of two or less number of judges in a court, appeal from the order of single judge is a virtual impossibility. Consequently, within this inherent limitation, the Legislature provided for a forum of appeal against the order of a single judge in the larger High Courts and gave finality to the order of the single judge in the smaller ones. Consequently, Section 155(4)(b), far from being arbitrary or unconstitutional, is a recognition of patent reality and rests on a reasonable classification. In the context of our Constitution, it has to be remembered that there is always a wide ranging residuary power of the final court under Article 136 to correct any blatant injustice if it occurs from an order of the single judge against which no intra-court appeal may be possible.

12. It seems unnecessary to elaborate further because the issue before us has been earlier the subject-matter of consideration in an unreported decision by a Bench of three judges, though at the order stage, in Upendra Kumar Joshi v. Kesoram Industries and Cotton Mills Ltd. (Second Appeal No. 646 of 1980, vide Order No. 19, dated February 8, 1982, converted into and numbered as Miscellaneous Appeal No. 263 of 1982--See [1983] 54 Comp Cas 2 (Pat)). I am somewhat surprised that this judgment was not brought to notice when the matter was before the Division Bench earlier. Mr. Joshi, who was a party to the earlier judgment, sought to explain this by contending that the said judgment was not good law in view of the earlier judgment of a larger Bench in N. M. Verma v. Upendra Narain Singh. On a close perusal of the same, I find that the general principles of construction spelt out in the aforesaid case can in no way detract from the view expressed in Upendra Kumar Joshi v. Kesoram Industries and Cotton Mills Ltd. [1983] 54 Comp Cas 1 (Pat) and the submission on this score is not at all well conceived. We would wish to record our unhesitating

concurrence with the view in Second Appeal No. 646 of 1982.

13. To finally conclude, it is held that Section 155(4)(b) of the Act in no way prescribes a Bench of three or more judges for hearing an appeal thereunder but merely describes the High Court in which an appeal may arise. Consequently, the present appeal can lie before a Division Bench and not a Full Bench of three or more judges.

14. In the light of the above, it is directed that this appeal would now go back before a Division Bench for its decision on merits.