

(2013) 06 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 2551 of 2012

Yogesh K. Shah and 1 Another

APPELLANT

Vs

Dilipbhai K. Shah and 4 Others

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9
Companies Act, 1956 — Section 10, 10GB, 9
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 121 SCL 6

Hon'ble Judges : S.G. Gokani, J

Bench : Single Bench

Advocate : Sejal K. Mandavia, for the Petitioners No. 1-2, for the Appellant;

Final Decision : Dismissed

Judgement

Sonia Gokani, J.—This petition is preferred under Articles 226 and 227 of the Constitution of India challenging the order of learned Chamber Judge, City Civil Court, Ahmedabad passed in Civil Suit No. 322 of 2009 below Exh. 22, whereby the application of petitioners under Order VII Rule 11 of the CPC has been dismissed by the Court. Brief facts are as under:-

1.1. The respondents are original plaintiffs, who filed Civil Suit, inter alia, contending that the petitioner No. 2 filed application before Registrar of Companies on 23.9.1992 for registering the company in the name of Viprey Publication Pvt. Ltd. It is a registered "company, whose name got subsequently changed in the year 1995 and it is now known as Blue-chip Publication Limited. The plaintiffs made various allegations against the present petitioners in the suit alleging number of irregularities in the administration and prayed not to transfer the properties of the company to the petitioner or to anyone with a further prayer that the petitioners have no right over the said immovable properties.

The petitioners original defendants filed a detailed reply and contended that if any grievances are there with regard to the administration of the company, the

plaintiffs respondents should complain before the Registrar of Companies and City Civil Court has no jurisdiction to entertain this suit.

2. An application was given under Order VII Rule 11 of the CPC urging that the Civil Court has no jurisdiction to try and decide the suit and the Court thereafter on hearing both the sides, rejected such application of the petitioners relying on the decision of the Apex Court delivered in the case of Dwarka Prasad Agarwal (D) by Lrs. and Another Vs. Ramesh Chandra Agarwala and Others, .

3. Learned advocate Ms. Sejal Mandavia appearing for the petitioners has urged that all allegations made in the suit are in connection with the affairs of the company, for which a complaint is already made before the Registrar of Companies. The grievance with regard to illegal sale of the shops and offices, non-calling of Annual General Meeting, non-furnishing of accounts of the company to the shareholders etc. are already before the Registrar of the Companies. She further urged that the respondents are the shareholders of the company and the trial Court, on a wrong belief that the suit pertains to the encroachments of the civil rights, erroneously entertained the suit and rejected the application of the petitioners. She also urged that all the reliefs sought for concern the business of the company. The trial Court has wrongly held that the jurisdiction of the Civil Court is not barred. She urged this Court to quash and set aside the impugned order passed below application Exh. 22 and also urged further to stay the proceedings of the Civil Suit.

4. It can be noted that the Court while determining the application of present petitioners (original defendants) under Order VII Rule 11 of the CPC was in know of the fact that u/s 10GB of the Companies Act, the Civil Court's jurisdiction is barred. The Court noted that the plaintiffs have asked for permanent injunction restraining the present petitioners(defendants), who are the Directors of the Company not to transfer or alienate the property of the company. It would be worthwhile to reproduce section 10GB of the Indian Companies Act, at this stage:-

10 GB. Civil Court not to have jurisdiction.-(1) No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force.

5. This provision contemplates that if any Tribunal or appellate Tribunal is empowered to determine in respect of any matter under the Companies Act, Civil Court shall not have jurisdiction to entertain such subject matter.

6. Ordinarily, Civil Court would not have jurisdiction when the relief sought is with regard to the business of the company. Relying on the decision of Dwarka Prasad Agarwal (Decd.) by Lrs. And another vs. Ramesh Chandra Agarwala and

others (supra), it is held that the jurisdiction of the Civil Court has not been ousted by sections 9 and 10 of the Companies Act.

7. Learned Chamber Judge has rightly held in its order that ouster of jurisdiction of Civil Court is required to be established in as much as section 9 of CPC confers the jurisdiction upon the Courts to determine all disputes of civil nature, unless barred by the statute, impliedly or expressly. It would be worthwhile to also refer to the judgment of the Apex Court rendered in the case of Abdul Waheed Khan Vs. Bhawani and Others, .

(9) Under S. 9 of the Code of Civil Procedure, a civil Court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a civil Court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a civil Court must be strictly constructed.

8. Some of the questions raised by the plaintiffs before the Court, as rightly held in the order by the learned Chamber Judge, can be termed as civil rights conferring jurisdiction to the Civil Court. The Court has also substantiated its version by the decision of the Apex Court in the case of Suvvari Sanyasi Apparao and Another Vs. Boddepalli Lakshminarayana and Another, . In absence of any material to indicate any manifest error or illegality in reaching to such conclusion concerning civil Court's jurisdiction, writ jurisdiction does not deserve to be exercised. No error is committed. Resultantly, petition does not deserve to be entertained. Hence, petition is dismissed.