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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO. A.(SB) 9/2011

**CHARANJIT KHANNA
AND ORS.**

Through

..... Appellants
Mr. Salil Sagar, Senior
Advocate with Mr. Arun K.
Sinha, Mr. Samrath Sagar,
Mr. Radhesh Makrandi, Mr.
Purushottam Jha and Mr.
Varun Singh, Advocates

versus

**M/S. KHANNA PAPER MILLS LTD.
AND ORS.**

Through

..... Respondents
Mr. Neeraj Kishan Kaul,
Senior Advocate with Mr.
S.M. Sundaram, Advocate

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Reserved on : 22nd March, 2011
Date of Decision: 20th April, 2011

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J :

1. The present appeal has been filed under Section 10F of the

Companies Act, 1956 (for short 'the Act') challenging the order dated 24th November, 2010 passed by the Company Law Board (for short 'CLB') in Company Application No. 213/2007 in Company Petition No. 61/2007 whereby the said petition was dismissed as not maintainable. However, the appellants were given liberty to file a petition for rectification of the register of members under Section 111A of the Act and in the event of their being successful in the said petition, they were granted further liberty to file a petition under Sections 397/398 of the Act.

2. The relevant facts of the present case are that appellants are real brothers, nephews and nieces of Mr. Brij Mohan Khanna, respondent no. 2 and respondent no. 1 is a family company. The appellants filed a company petition under Sections 397 and 398 of the Act being Co. Pet. No.61/2007 before CLB against respondents on the ground of oppression and mismanagement. Per contra, respondents filed Company Application No.213/2007 challenging the maintainability of the petition. The appellants in response moved an application bearing CA No.313/2008 for amendment of the Company Petition 61/2007 by incorporating relief under Section

111A of the Act. However, the CLB dismissed the appellants' petition on the ground that since the names of appellants no longer appear in the register of members, they were lacking in requisite eligibility under Section 399 of the Act to maintain such a petition. As stated hereinabove, the appellants were granted liberty to file a petition under Section 111A of the Act for rectification of the register of members.

3. Mr. Salil Sagar, learned senior counsel for appellants submits that when the company petition was filed before CLB, appellants were not aware that their names had been removed from the register of members. He states that it was only when the maintainability issue was raised by the respondents that the appellants came to know the said fact and accordingly, appellants applied for amendment of the petition. He further contends that neither any document nor any evidence was produced by respondents to show that prior to filing of Company Application No. 213/2007 before CLB, appellants were aware that their names had been removed from the register of members.

4. Mr. Sagar next submits that the CLB has failed to appreciate

that a composite petition is maintainable in law and in fact, CLB has been entertaining composite petitions. He further states that when the title/transfer to shareholding is in dispute, requirement of Section 399 of the Act is not relevant. In this regard, Mr. Sagar relied upon following judgments :-

a) ***Satish Chandra Sanwalka & Ors. Vs. Tinsplate Dealers Association, 2001 (107) CC(CLB) 98.***

b) ***Turner Morrison Ltd. & Anr. Vs. Jenson & Nicolson India Ltd., 1998 (93) CC 347***

c) ***C. Vasudevamurthy Vs. Associated Oxides P. Ltd. & Ors., (2009) 150 CC 339 (CLB).***

5. Mr. Sagar relied upon ***Sangramsing PC Gaikwad & Ors. Vs. Sahantidevi P. Gaikwad, 2005 (123) CC 566 SC*** wherein the Supreme Court held that the jurisdiction of the Court to grant appropriate relief under Section 397 of the Act is indisputably of wide amplitude.

6. Mr. Sagar lastly submits that since the appellants came to know the fact of removal of their names from the register of members through CA 213/2007, the cause of action accrued to

appellants during the pendency of the petition, and, therefore, amendment in CP 61/2007 incorporating pleas under Section 111A of the Act should have been allowed by the CLB.

7. On the other hand, Mr. Neeraj Kishan Kaul, learned senior counsel for respondents submits that the present appeal is liable to be dismissed as it does not disclose any question of law. He further submits that as the appellants had signed the share transfer deeds and also parted with their respective share certificates to respondent No.2, the company petition was not maintainable.

8. To oppose the maintainability of the composite petition, Mr. Kaul relied upon the judgments of Gujarat High Court in ***Gulabrai Kalidas Naik & Ors. Vs. Laxmidas Lallubhai Patel and Ors.***(1997) **47 CC 151 (Guj)** and Punjab and Haryana High Court in ***Ved Prakash & Ors. Vs. Iron Traders Pvt. Ltd. & Ors.*** (1961) **31 CC 122 (P&H)**.

9. Mr. Kaul also points out that the original petition was filed by the appellants in CLB on 22nd May, 2007 and though the respondents challenged the maintainability of the petition on the very same date, the amendment application was filed belatedly after a gap of one

year. Mr. Kaul next submits that in a case where the share certificates have been admittedly parted with, the remedy available to the person aggrieved is under Section 111A of the Act and not under Sections 397/398 of the Act. Accordingly, he submits that the appeal is liable to be dismissed.

10. Having heard the parties, I am of the view that the present appeal is not an appeal on facts but it gives rise to a question of law, namely, whether a composite petition under Section 397 and/or 398 read with Section 111A of the Act is maintainable.

11. In my opinion, it cannot be said as a proposition of law that no composite petition under Sections 397, 398 and 111A of the Act is ever maintainable. In fact, in a large number of petitions filed under Sections 397 and/or 398 of the Act, the primary allegation of oppression and mismanagement is that the faction that is in control of the company has either intentionally reduced the rival faction to less than 1/10th of the total number of members of the company or removed the rival faction from the register of members. In such cases where allegation of oppression and mismanagement is inexplicably intertwined with the issue of maintainability of the

petition under Section 399 of the Act, a composite petition has to be held as maintainable. To ask a petitioner to file two separate petitions in such circumstances would not only be unfair but would also result in unnecessary delay.

12. Moreover, neither *Ved Prakash & Ors.* (supra) nor *Gulabrai Kalidas Naik & Ors.* (supra) lay down the proposition of law that a composite petition under Section 111A read with Sections 397/398 of the Act is not maintainable in any circumstances. In fact, in the case of *Ved Prakash & Ors.* (supra) the separate petition for rectification of register of members had been dismissed and no suit had been filed prior to filing of petition under Sections 397 and 398 of the Act, even though specific liberty had been granted by the civil Court. The Gujarat High Court in *Gulabrai Kalidas Naik & Ors.* (supra) has held that it is not in all cases that a composite petition under Section 155 (now Section 111) and Sections 397/398 of the Act is not maintainable.

13. In the present case, the respondents are opposing the maintainability of the appellants' petition under Section 397/398 of the Act on the ground that the appellants had not only signed the

share transfer deeds and parted with their respective share certificates but they were also throughout aware about removal of their names from the register of members of the company. However, after a detailed perusal of the impugned order, I find that though the CLB has painstakingly noted the submissions of both the parties, yet it has not adjudicated upon the same. In fact, CLB has given no finding/conclusion on the contentions raised by the respondents while opposing the maintainability of the petition except observing that the appellants were at liberty to file a petition under Section 111A of the Act and in the event they succeed in the said petition, they would be at liberty to file a petition under Sections 397/398 of the Act. The impugned order to my mind is a non-reasoned one to this extent.

14. I am further of the opinion that if the respondents' submissions with regard to maintainability of the appellants' petition under Section 397/398 of the Act are correct, then the CLB should not have even granted liberty to the appellants to file a petition under Section 111A of the Act.

15. Moreover, from a perusal of the impugned order, it is apparent

that the CLB has not dealt with the amendment application filed by the appellants, except observing that it was infructuous. The Supreme Court in ***Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors., AIR 2006 SC 1647*** has held that all amendments which are necessary for determining the real question in controversy between the parties should be allowed provided it does not cause injustice or prejudice to the other side. The Supreme Court has further held that at the time of allowing the amendment application, the merit of the amendment is not to be considered and a liberal approach is to be adopted. The relevant observation of the Supreme Court in the aforesaid case are reproduced hereinbelow:-

“17. Order VI, Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

19. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

20. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

16. In view of aforesaid, the present appeal is allowed and the CLB is directed to take the amended composite petition on record. However, as the CLB has not reached any conclusion with regard to the contentions raised by the respondents in its application being Company Application 213/2007, the respondents are granted liberty

to raise the said issues before the CLB, who would deal with the same while disposing of the composite petition.

17. With the aforesaid observations, the present appeal is allowed, but with no order as to costs.

MANMOHAN, J.

APRIL 20, 2011

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