IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3445 of 2014
Date of decision : May 16, 2016

Ashish Jain

.... Petitioner

Versus

Gurpadam Investment and Finance Pvt. Ltd.and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. S. Narula, Advocate
for the petitioner.

Mr. Parveen Gupta, Advocate
for respondent No.4.

Mr. Vishwas Arora, Advocate
Mr. Aman Kashyap, Advocate
for respondent No.3.

Mr. Rahul Sharma-I, Advocate for
for respondent Nos. 5 to 8.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

<u>Amit Rawal, J (oral).</u>

The petitioners are legal representatives of original plaintiff who instituted the suit which has been returned by invoking the provisions of Section 10 of the Companies Act, 1956.

Learned counsel appearing on behalf of the petitioner submits that following claims were sought:

i) Plaintiff is one of the Director of the Company namely M/s Gurpadam Investment and Finance Private Limited regisered office 1-Motia Khan, New Delhi.

ii) Transfer of shares belonging to the plaintiff and her late husband namely Sh. Mahabir Parshad Jain, in the name of Dinesh Kaushal, defendant No.2, is illegal, invalid, null and void

iii) Plaintiff is entitled to the immediate holding of Special General Meeting of the equity share holders of the Company namely M/s Gurpadam Investment and Finance Private Ltd.as per legal provisions and under the supervisions of Local Commissioner where the new Board of Directors be considered for appointment and to the effect.

iv) That the sale of house No.124, Sector 8-a, Chandigarh in favour of the defendant No.5, is illegal, invalid, null and void and for

v) Mandatory injunction directing defendant Nos. 2 to 4 to peacefully handover movable and immovable assets, bank accounts and entire record of the company to the new Directors under Order 7 Rule 1 CPC.

He submits that the claim aforementioned cannot be said to be on the basis of fraud and mis-representation by giving detail, therefore the Company Law Board could not have been tried petition under Section 115 or 397 of the Companies Act, 1956, for,the plaintiff was not having even 1/10th share holdings. In support of his contentions has relied upon the judgments of Hon'ble Supreme Court in **Dwarka Prasad Aggarwal Vs. Ramesh Chandra Agarwala and others 2003 AIR (SC) 2692, Spices Valley Estate Ltd. Vs. TC for express Ltd. 2007 (3) Com.L.J.148** of Madras High Court, **Satish Chandra Sanwalka and others Vs. M/s Tinplate Dealers Association Pvt. Ltd.and others 2012 (5) AD (Delhi) 657** of Delhi High Court, **Prabodh Jamnadas Kothari Vs. Vikram Jamnadas Kothari and others 2013 (1) Mh.LJ 825** of Bombay High Court, **M/s Ammonia Supplies Corporation (P) Ltd. Vs. M/s Modern Plastic Containes Pvt. Ltd. 1998 AIR (SC) 3153** of Hon'ble Supreme Court.

Mr. Rahul Sharma-I appearing on behalf of respondent Nos. 5 to 8 and Mr. Vishwas Arora, Advocate for Mr. Aman Kashyap, Advocate appearing on behalf of respondent No.3 and Mr. Parveen Gupta, Advocate appearing on behalf of respondent No.4 having joint interest urges that there is no illegality and perversity in the impugned order, rightly so the provisions of Section 111 of Companies Act, 1956 had been invoked, at the best, suit could have been filed under Section 155 for seeking rectification qua transfer of shares. Even registered office of the Company is in Delhi and no harm would be caused to the plaintiff to file the suit at Delhi as it would be easy to summon the record etc.

Mr. Rahul Sharma-I, Advocate appearing on behalf of respondent Nos. 5 to 8 submits that his clients are bona fide purchasers of H.No.124 Sector 8-A, Chandigarh belonging to the

Company. Even otherwise, plaintiff alleged to have been share holder but since interest of the share holder i..e her husband who was director, the remedy, if any would be of Companies Court and not civil court. Mere allegation in the plaint is not sufficient to invoke the jurisdiction of the trial court. He further submits that there is no illegality and perversity in the impugned order.

I have heard learned counsel for the parties, appraised the paper book. The provisions of Section 10 of the Act have been heavily relied upon by learned counsel for the petitioners. The Hon'ble Supreme Court has pondered upon such proposition of law which has arisen from time to time being invoked by the aggrieved persons. In **Spices Valley Estate Ltd.'s case (supra)** the Madras High Court had an occasion to deliberate upon the jurisdiction of the civil court by referring to the provisions of Section 10 of the Act and it has been held that where there is an allegation of mis-representation and fraud, failure to furnish details and dishonesty or mala fide intention, suppression of material facts, removal of plaintiff from position of director by resolution are the disputes which can be decided by the civil court on oral and documentary evidence and not by any other court.

In my view, Section 10 of the Act would not come in the way, at the best application could have been under Order 7 Rule 11 CPC, for it is for the court to see averments in the plaint as well as provisions of Section 19 and 20 CPC. The prayer had been sought in the suit qua challenge to alleged removal/resignation from the directorship and non-transfer of shares and alienation of the property of the company. In the judgment in **M/s Ammonia Supplies Corporation (P) Ltd.'s case (supra)** the Hon'ble Supreme Court after discussing the entire material and statutory provisions of law held that mere allegation of fraud at the drop of hat cannot invoke jurisdiction of the trial court in order to wriggle out of the provisions of the Companies Act, 1956.

On co-joint reading of judgment rendered by Hon'ble Supreme Court and Madras High Court, I am of the view that the defendants may not be precluded from raising the plea of jurisdiction of the court at an appropriate time and stage but not at the threshold of suit by invoking the provisions of Section 10 of the Companies Act, 1956. Rectification of the register of Companies, as per provisions of Section 155 of the Act is with regard to the correction of incorrect particulars or other purpose, but does not envisage the illegality and fraudulent transfer of the shares in favour of third party where the share holder do not give consent and such said allegations should have the foundation of fraud and mis-representation.

Be that as it may, I am of the view that the order of the trial court suffers from illegality and perversity, but that will not preclude the defendant from raising the issue of jurisdiction, for, in case plaintiff fails to prove such ingredients the court even at the fag end of the trial, after conclusion of plaintiff's evidence is competent to pass appropriate orders regarding its jurisdiction.

Keeping in view the aforementioned observations the order under challenge is set aside. The trial court shall frame the issues as per pleadings of the respective parties including territorial jurisdiction/ jurisdiction of civil court and the defendants can move an appropriate application or raise objection after conclusion of the evidence of the plaintiff, if it is not able to prove prima facie.

Resultantly the revision petitions stands disposed of.

(AMIT RAWAL)
JUDGE

May 16 , 2016
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