IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 41 OF 2016

VEDANTA LTD., EARLIER KNOWN AS SESA GOA LTD., ... Petitioner

Versus

KRISHNA HARINARAYAN BAJAJ AND 5 ORS., ... Respondents

Mr. Devidas J. Pangam, Advocate for the petitioner.
Respondent no.3 in person.

Coram:- F. M. REIS, J.

Date:- 21st July, 2017

ORAL ORDER :

Heard Mr. D. Pangam, learned counsel appearing for the petitioner and the respondent no.3 in person.

2. The challenge in the present petition is to an order passed by the learned District Judge dated 03.06.2016 whereby the application under Order 7 Rule 11 of the Civil Procedure Code was partly allowed and only prayer (a) of the plaint came to be rejected.

3. Mr. Pangam, learned counsel appearing for the petitioner has pointed out that the whole premise of the suit is that the shares purchased by the petitioner from the respondents are in

terms of the provisions of Section 395 of the Companies Act, 1956. The learned counsel further pointed out that on meaningful reading of the said provisions, before attracting such provisions there has to be a scheme put forward by the company whereby the shares of the minority share holders are intended to be transferred in favour of the petitioner. It is further pointed out that in the absence of establishing any such scheme in terms of the said provisions, the respondents are not justified to file a suit inter alia claiming that the transaction entered way back in the year 2003 whereby the petitioner purchased shares of the respondents are null and void. It is further pointed out that pursuant to the voluntary letter of offer submitted by the petitioner, the respondents transferred the shares in favour of the petitioner way back in the year 2003 upon receipt of the accepted consideration. It is further pointed out that only thereafter when there were proceedings for amalgamation initiated by the petitioner and the transferer company, objection was raised to such amalgamation by the respondents. The learned Single Judge rejected the objection but however, in an appeal preferred before the Division Bench of this Court such appeal came to be allowed and the objection of the respondents were upheld. The matter was taken by the petitioner before the Apex Court challenging the judgment passed by the Division Bench of this Court which appeal was allowed and the judgment of the learned Division Bench upholding the objection raised by the respondents came to be set aside. It is further pointed out that in such proceedings, it was mentioned that the disposal of amalgamation proceedings would not affect any civil or criminal proceedings which may be initiated by the parties as an inquiry was then pending before the Central Government. The learned counsel further submitted that in the inquiry conducted by the Central Government, it is observed that the shares were not registered in terms of Section 395 of the Companies Act. The respondents accordingly filed a suit inter alia raising a contention that the whole transaction which took place in the year 2003 is null and void and sought for different reliefs. The learned counsel further submitted that the petitioner filed the written statement as well as an application under Order 7 Rule 11 of the Civil Procedure Code for rejecting the plaint as according to the petitioner the Civil Court could not grant a relief as prayed for at prayer (a) of the plaint and the remaining prayers should not be granted as it was the contention of the petitioner that in case the provisions of Section 395 of the Companies Act were not complied with there is a provision to file an appeal and the suit itself is hopelessly barred by law of limitation as according to him, admittedly, the transaction took place in the year 2003 and the suit came to be filed in the year 2012. The learned counsel has thereafter extensively taken me through the order passed by the Company Judge at Bombay wherein a person similarly placed had challenged a similar letter of offer as given by the petitioner and the learned Company Judge has taken a view that such offer was voluntary at the instance of such person. It is further pointed out that in such circumstances, the contention of the respondents that such offer was given in terms of Section 395 of the Companies Act is totally misplaced and as such the learned Judge was not justified to pass the impugned order. The learned counsel further pointed out that the petitioner have a forum to raise such objection under the Companies Act and as such in terms of Section 10 of the said Act, the jurisdiction of the Civil Court stands barred. The learned counsel in support of his submissions has relied upon the judgment of the Apex Court reported in (1997)10 SCC 488 in the case of B.O.I. Finance Ltd. V/s Custodian and others.

4. On the other hand, the respondent no.3 in person has submitted that on plain reading of the letter of offer submitted by the petitioner, it clearly shows that such offer was in terms of Section 395 of the Companies Act. It is further pointed out that the petitioner did not disclose that the shares were not registered and in fact the annexures to the letter of offer clearly stipulate that all the formalities in law were complied with and that no other requirements are to be complied with. It is further pointed out that this representation of the petitioner was believed by the respondents which led to the transfer of the shares in favour of the petitioner. It is further pointed out that as the mandatory

requirement of registering the shares before the Registrar has not been complied with, the transaction itself is a nullity which entitled the respondents to file the suit for declaration and other incidental reliefs. It is further pointed out that immediately after the respondents came to know that the shares were not registered before the Registrar, the respondents filed the said suit for the reliefs as mentioned in the plaint. It is further pointed out that the contentions of the learned counsel appearing for the petitioner are essentially on the basis of the defence raised by the petitioner which cannot be gone into at this stage while examining the application under Order 7 Rule 11 of the Civil Procedure Code. It is further pointed out that the Company Court cannot grant a declaration as claimed by the petitioner and that the reliefs sought by the respondents based on the pleadings in the plain can only be granted by the Civil Court. In support of his submissions, the respondents have relied upon the judgment of the Division Bench of this Court reported in (2002)2 Company Law Journal 386 in the case of Shirish Finance and Investment (P) Ltd. V/s M. Sreenivasulu Reddy and others. The respondents further pointed out that the judgment of the Apex Court has been duly considered in the said judgment wherein it is held that merely because orders are challenged under the Companies Act, there is no bar of jurisdiction for the Civil Court to examine the specific cases brought before such Court. The respondents as such pointed out that there is no case made out for interference in the impugned order.

5. I have duly considered the rival contentions and I have also gone through the records. The learned Judge while examining the material on record has come to the conclusion that there are averments in the plaint to claim that the petitioner/defendant in the suit had not disclosed to the respondents all the correct facts essentially that the shares intended to be purchased were not registered before the Registrar. The learned Judge also noted the contention of the petitioner that the shares were not purchased in terms of Section 395 of the Companies Act. On reading Section 395 of the said Act, the situation envisaged therein is not only a scheme prepared by the transferee company or a contract which came to be entered between the petitioner and the respondents. It is the stand taken by the respondents that the transaction with the respondents is based on the contract between the respondents and the petitioner herein. Whether such contention is to be accepted or not is a matter which would have to be examined after examining the defence of the petitioner. At this stage, there is nothing pointed out by the petitioner based on the plaint and the annexures thereto to prima facie substantiate their contention that this offer was not in terms of Section 395 of the Companies Act. In the judgment reported in 1992(3) Bom.C.R. 310 in the case of Santosh Poddar and another V/s Kamalkumar Poddar and others,

it has been observed at para 13 thus :

"13. It is however, quite clear from a reading of these two sections that there is no ouster of the jurisdiction of a Civil Court in all cases where the provisions of the Companies Act may be attracted. It is only in respect of these proceedings which are expressly contemplated under the Companies Act under any specific provision that the Court which is referred to in that section would be the special Court, namely the High Court or the Notified District Court. In all other cases ordinarily Civil Courts would continue to have jurisdiction. This has been so held by a learned Single Judge of our High Court in the case of Rao Saheb Manilal Gangaram Sindore v. Messrs Western India Theatres Ltd., reported in LXIV Bom.L.R. at page 532."

6. Looking into the said observations of the learned Division Bench of this Court, at this stage, the contention of the learned counsel appearing for the petitioner is not at all justified.

7. The next contention of the learned counsel appearing for the petitioner that the suit itself is barred by limitation, I find that on the basis of the averments in the plaint, it is contended by the respondents that they learnt about the material, as alleged which entitled the respondents to seek the relief only in the year 2011 when an inquiry was conducted by the Central Government in

respect of the transaction with the petitioner herein and others. Whether this averments are correct or not is a matter which would have to be examined by the learned Judge on its own merits after looking into the defence of the respondents. Considering that limitation is a mixed question of law and fact and the alleged contention of the respondents is that the whole transaction is a nullity, I find that this aspect would have to be considered after examining the defence of the petitioner herein.

8. The learned Judge after examining the relevant aspect has come to the conclusion that the application for rejection of the plaint can be granted to the limited extent. There is no jurisdictional error committed by the learned Judge while passing the impugned order to interfere in the present revision under Section 115 of the Civil Procedure Code. The learned Judge upon considering the material on record and looking into the pleadings and the relevant provisions of law has taken a view that the plaint could not be rejected on the ground raised by the petitioner. In such circumstances, the question of reappreciating the material on record to take a contrary view in the present revision under Section 18 of the Civil Procedure Code would not at all be justified. There is no jurisdictional error committed by the learned Judge as pointed out herein above which would call for interference in the present revision.

9. Be that as it may, the observations made by the learned Judge in the impugned order as well as herein above are only tentative observations for the purpose of considering the application under Order 7 Rule 11 of the Civil Procedure Code. All contentions of the parties on merits with that regard are left open. Such observations would not influence the learned Judge while deciding the suit on its own merits. The revision stands accordingly rejected.

F. M. REIS, J.

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