

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1023 OF 2019

Elegant Industries Pvt. Ltd.	...	Petitioner
Vs.		
Jyoti Chordia and others	...	Respondents

Mr. Dileep Nevatia, on behalf of the Petitioner.
Ms Preeti Shah for Respondent No.1.
Mr. R. P. Kadam, AGP for Respondent No.4.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 5, 2019

P.C. :

Heard Mr. Nevatia, on behalf of the petitioner in person, Ms Shah, learned Counsel for the respondent No.1 and Mr.Kadam, learned AGP for the respondent No.4 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the order dated 22.10.2018 passed by the learned Judge, Court Room No.14 of the Court of Small Causes at Mumbai below exhibit-242 in application below exhibit-123 in L.E.&C. Suit No.22/27 of 2005. By that order, the learned trial Judge rejected the application made by the plaintiff seeking to frame and decide the preliminary issue of maintainability of the application at exhibit-123.

3. Application at exhibit-123 was taken out by the respondent No.1 *inter alia* contending that Mr. Dileep Nevatia ceased to be the Director of plaintiff - M/s. Elegant Industries Pvt. Ltd. in view of the provisions of Section 283(1)(g) of the Companies Act, 1956 as he failed to remain present in three consecutive meetings held on 04.08.2010 (wrongly typed as '04.08.2012'), 04.12.2010 and 22.12.2012. Defendant No.1

further contended that Dileep Nevatia is not an authorized representative nor a signatory of the plaintiff's company nor he has any kind of authority given by the Board of Directors to sign Vakalatnama nor there is any document for and on behalf of the plaintiff's company. Defendant No.1, therefore, prayed for - (i) setting aside order of filing Vakalatnama; (ii) holding that Dileep Nevatia has no power, authority to sign Vakalatnama; and also (iii) declaring that Dileep Nevatia is neither Director nor authorized representative to file Vakalatnama.

4. The plaintiff took out application exhibit-242 inter alia praying for framing and deciding the preliminary issue of maintainability of application exhibit-123 and dismissing the application exhibit-123. Pending the hearing and disposal of the application exhibit-242, prayer was made for staying the hearing of application at exhibit-123.

5. By the impugned order, the learned trial Judge rejected the application by observing that framing such issue as a preliminary issue and deciding the same is not proper. Such a question can sufficiently and equally be decided and considered in a hearing of application exhibit-123 itself.

6. In support of this Petition, Mr. Nevatia has invited my attention to the order dated 20.06.2018 passed by this Court in Writ Petitions No.3838 of 2018, 3843 of 2018 and 3844 of 2018. In pursuance thereof, the petitioners therein filed application under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for production of documents before the Appellate Court. The application taken out by the petitioners therein was rejected by the Appellate Court on 16.08.2018. Against the order dated 16.08.2018, Writ Petitions No.13986 of 2018, 13987 of 2018 and (St.) 33105 of 2018 were instituted in this Court. By

order dated 07.12.2018, Petitions were disposed of by granting leave to the petitioners therein to withdraw the Petitions with liberty to challenge the said order in case the Appellate Bench dismisses the petitioners' appeals and petitioners' seeking to challenge the said dismissal or even if the Appellate Court decides in favour of the petitioners and if the respondent (petitioner herein) seeks to challenge the said decision. All contentions of the parties on merits were kept open.

7. Mr. Nevatia also invited my attention to the order dated 02.08.2018 passed by the learned trial Judge below exhibit-196. That application was taken out by the plaintiff for deciding the sequence of hearing of various pending applications for expeditious disposal of the Suit. In paragraph 12, the learned trial Judge noted the objections raised as to the authority of the signatory of the plaintiff as to whether Mr.Dileep Nevatia is a Director or an employee of the plaintiff and whether he is duly authorized by any of the Directors of the plaintiff. The learned trial Judge observed that all the objections raised in the instant Suit are mixed question of law and fact and as such, cannot be tried as a preliminary issue. In so far as the application exhibit-123 is concerned, the learned trial Judge observed in paragraph 13 that the applications at exhibits 123, 166 and 184 respectively are required to be decided in the beginning itself as they are subject matter of disqualification.

8. While passing the impugned order, in paragraph 8, the learned trial Judge observed thus,

“8. ... In this case, what is required to be decided by virtue of application vide exh.123 is power and authority of Mr. Dileep Nevatia who represents the plaintiff being its Director. Obviously such question cannot be said to be a mixed question of law and facts. In my view, its a purely a question of fact. Therefore, framing such issue as a preliminary issue and deciding the same is not proper.”

9. Mr. Dileep Nevatia submitted that the learned trial Judge should have allowed the application exhibit-242 and decided the maintainability of application at exhibit-123. He submitted that in the written statement filed on behalf of the defendant No.1, the contention about his authority to sign Vakalatnama and represent the plaintiff company was not raised. He also relied upon Order XIV of C.P.C. and submitted that the Petition requires consideration.

10. On the other hand, Ms Shah supported the impugned order. She submitted that the prayers made in the application at exhibit-242 are wholly misconceived. The contention raised in exhibit-123 about authority of Mr. Nevatia to represent plaintiff company is not a pure question of law. She relied upon Order XIV, Rule 2(2) of C.P.C. and submitted that only issue of law can be decided as a preliminary issue.

11. I have considered the rival submissions advanced by the parties. I have also perused the material on record. The plaintiff had filed application at exhibit-242 praying for the following reliefs:

“(a) This Hon'ble Court be pleased to frame and decide the preliminary issue of maintainability of the present application at exhibit-123;

(b) This Hon'ble Court be pleased to dismiss the present application at exhibit-123;

(c) Pending the hearing and disposal of the present application, further hearing of the application at exhibit-123 be stayed;”

12. Order XIV, Rule 2(2) reads thus,

“2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the

same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

13. A perusal of the prayers made in the application exhibit-242 shows that the contentions raised therein cannot be said to be a pure question of law. That apart, the said contention also does not relate to the jurisdiction of the Court or a bar to the Suit created by any law for the time being in force.

14. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application at exhibit-242. While deciding the application exhibit-123, all contentions of the parties are left open. Subject to this, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)