IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.02 of 2019 (O&M)
Date of decision:05.03.2019

M/s Teg Bahadur Hire Purchase (P) Ltd. and others ... Petitioners

Vs.

Kamaljit Singh Toor and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajinder Mahajan, Advocate
for the petitioners.

Mr. Rajinder Pal Singh Rana, Advocate
for respondents No.1 to 3.

Mr. Deepak Kundu, Advocate for
Mr. Piyush Khanna, Advocate
for respondent no.5.

AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 22.10.2018 (Annexre P-1) whereby application of the petitioner-defendants in the suit under Order 7 Rule 11 read with Section 151 of Code of Civil Procedure for rejection of plaint, has been dismissed.

The respondent-plaintiffs on 29.05.2018, filed the civil suit in the court of Civil Judge (Senior Division), Jalandhar with the following title and relief:-

"1. Kamaljit Singh Toor son of Pargat Singh, aged 62 years, resident of 450 Model Town Jalandhar.

2. Paramveer Singh son of Kamaljit Singh, aged 31 years,

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

resident of 450 Model Town Jalandhar.

3. Smt. Jasleen Kaur wife of Kamaljit Singh, aged 55 years, resident of 450 Model Town Jalandhar.

... Plaintiffs

Vs.

1. M/s Teg Bahadur Hire Purchase Pvt. Ltd., Ranjit Nagar, Civil Lines Road, Jalandhar.

2. Jagjit Singh Toor son of Pargat Singh.

3. Baljinder Singh son of Jagjit Singh resident of 450 Model Town Jalandhar.

4. Sub-Registrar, Jalandhar-I, Jalandhar.

5. Registrar of Companies, Corporate Bhawan, Plot No.4-B, Chandigarh.

..Defendants

Reliefs

a) declare that the resolutions alleged to have been passed by the Defendant No.2 and uploaded in Form-12 against the SRN U65921PB1989PTC002848 through his personal email Jdleathers19@gmail.com alleging that Baljinder Singh Toor, Defendant was appointed as Director of Promoter Category in the Company. Along with the Form No.DIR-12(Annexure P-14) DIR-2. PDF (Annexure P-14/1), MBP-1, PDF (Annexure P-14/4), Resolution of Cessation. PDF (Annexure P-14/2),

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

Resolution of Appointment. PDF, are forged, fabricated, null and void

AND

b) declare that Form No.DIR-12 SRN U65921PB1989PTC002848 uploaded by defendants no.2 and 3 alleging therein about the cessation of Additional Director Paramveer Singh, plaintiff no.2 with effect from the AGM dated 30.09.2016 for having been not reelected are forged and fabricated, null and void;

AND are having no effect on the rights and status of the plaintiffs who continue to be the Director and Managing Directors of the defendant Company and

c) declare that all agreement, documents and deeds that may have been entered into by the defendants no.2 and 3 on behalf of the company without consent of the plaintiffs are null and void.

d) permanent injunction restraining the defendants no.2 and 3 from holding out as or representing in any manner as directors, officers or representatives of the Company AND

e) permanent injunction restraining the defendants no.2 and 3 from dealing with or interfering with the movable assets and immovable assets of the Company in any manner whatsoever

AND

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

f) permanent injunction for restraining the defendants no.2 and 3 from interfering with the management and affairs of the company in any manner whatsoever AND

g) directing the defendants no.2 and 3 to hand over possession of all documents of the company.

h) direct defendants no.2 and 3 to hand over all the statutory records of the company including the books of accounts, bills, voucher, statutory licenses, documents, contracts, deeds, minute books etc to the plaintiffs.

i) pass such other or further order(s) as this Hon'ble Court may deem fit and proper to the facts and circumstances of the case."

The petitioner-defendants submitted an application (Annexure P-3) for dismissal/rejection of the suit on the premise that (1) entire subject matter of the suit related to the alleged management of defendant no.1-company. As per the provision of Section 430 of the Companies Act, 2013, jurisdiction of the Civil Court to try and entertain the subject matter of the suit vests with the National Company Law Tribunal and therefore, was without jurisdiction.

(2) The plaintiffs had already filed a similar case carrying the similar pleadings on the same cause of action before the National Company Law Tribunal at Chandigarh which was withdrawn on 16.02.2018, therefore, was hit by provisions of Order 23 Rule 3 and as well as Order 2 Rule 2 of Code of Civil Procedure.

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

(3) Even the relief sought had not been valued separately and independently for the purpose of assessing the court fee.

Mr. Rajinder Mahajan, learned counsel appearing on behalf of the petitioners submitted that the impugned order suffers from illegality and infirmity. On plain and simple reading of the provisions of Section 430 of the Act, there is separate procedure as per the provisions of Section 241 of the Act enabling the effected party to seek relief in cases of the oppression and powers of the Tribunal have been defined under Section 242 of the Act.

In support of the aforementioned submissions, relied upon the following case laws:-

1. **Panjab Agro Industries Corporation Limited Vs. Indian Overseas Bank and another 2015 (8) RCR (Civil) 54;**
2. **Sunwhite Infrastructure P. Ltd. vs. Kindle Developers P. Ltd. and others 2017(204) Comp Cas 195;**
3. **Pawan Goel Vs. Basudev Garg 2010 (66) RCR (Civil) 86 and**
4. **Sandhya Educational Society Vs. Union of India and others 2014(7) SCC 701.**

Per contra, Mr. Rajinder Pal Singh Rana, Advocate and Mr. Deepak Kundu, learned counsel appearing on behalf of respondents No.1 to 3 and respondent no.5 respectively supported the impugned order alleging that for the purpose of adjudication and decision of the application, only the averments in the plaint have to be examined and not the defence.

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

The company petition was withdrawn on the premise that there were chances of some compromise and there was no adjudication on merits. The provisions of CPC would not apply to the proceedings under the Companies Act, the suit cannot be said to be ex facie barred under provision of Order 23 Rule 3 or Order 2 Rule 2 of Code of Civil Procedure. The powers of Civil Court under Section 9 CPC are much wider in nature as the relief sought was not within the domain of the National Company Law Tribunal or the Companies Tribunal established under 2013 Act.

The company was floated by Pargat Singh, father of plaintiff no.1 and defendant no.2 alongwith Jagatjit Singh and Karam Singh and with the passage of time, the company diversified and progressed. Plaintiff no.2 purchased 6580 shares of his cousin brother Guraman Singh and his share holding became 16,675 out of 38750 shares which were not separated by defendant no.2 as he desired to induct his son Baljinder Singh-defendant no.3 in the company. Defendant no.3 had, already, been carrying out the business of leather tanneries in Leather Complex Jalandhar alongwith defendant no.2 as partner of J-Star International. Between June 2017 to second week of October 2017, defendant no.2 was in U.K. The company sent a notice of AGM to be held on 30th September to the share holders of the company and to its Directors. On 30th September the meeting of the share holders was held, passed the resolution by informing the SHO Baradari of having taken the possession of the building. On a particular date, defendant no.3 snatched the cash from the reception of the company and defendant no.2 uploaded the Form DIR-12 with SRN number through

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

his personal e-mail alleging Baljinder Singh-defendant no.3 to be appointed as Director of Promoter Category in the Company. The suit had been filed on various grounds and could not have been thrown out as such.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Mahajan. It would be in the fitness of the things to reproduce provisions of Section 430, 241, 242 of the Companies Act, 2013:-

> **Section 430 of Companies Act 2013- Civil court not to have jurisdiction**
>
> 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, by the Tribunal or the Appellate Tribunal.
>
> **241. Application to Tribunal for relief in cases of oppression, etc**
>
> (*1*) Any member of a company who complains that—
>
> (*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

(*b*) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(*2*) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

<u>Section 242- Powers of Tribunal</u>

(1) If, on any application made under section 241, the Tribunal is of the opinion—

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment,

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

The ratio decidendi culled out in Panjab Agro Industries Corporation Ltd.'s case (supra), would not apply to the present case as the

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

referred case pertaining to provisions of Section 10 of Companies act, 1956 pertaining to payment of return capital. In Sunwhite Infrastructure (P) Ltd.'s case (supra), the judgment pertained to the powers of the National Company Law Tribunal under Sections 241 and 242 dealing with the allegation of oppression and mismanagement and even the matter of appointment of Director was assailed which was held to be not proved and the Court while dealing with the factum of non-return of the loan amount, held the jurisdiction of the Civil Court was barred. In Pawan Goel's case (supra), both civil suit and as well as petition before the National Company Law Tribunal were pending and the Court found that final proceedings cannot be initiated. In Sandya Educational Society's case (supra), question arose as to whether once the SLP was dismissed as withdrawn without seeking permission to file Special Leave to Petition once over again after exhausting the remedy of review petition, the petition was held to be not maintainable.

In my view, the ratio decidendi culled out in all the aforementioned judgments would not apply to the present case in view of the facts, narrated above, and as well as the last judgment in which it is yet to be established whether the withdrawal of the petition including the various “different reliefs”, “few of them being similar”, provisions of Order 23 Rule 3 and as well as Order 2 Rule 2 of Code of Civil Procedure can be attracted or not, would be a matter of trial can always be decided through a specific issue.

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh

I cannot remain unmindful of the fact that previous petition was withdrawn with a statement that parties were likely to be compromise.

For the reasons aforementioned, the order under challenge cannot be said to be suffering from illegality and infirmity, much less without jurisdiction.

Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

March 05, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

SAVITA KADIAN
2019.03.29 10:26
I attest to the accuracy and
integrity of this document
High Court Chandigarh