

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.558 of 2014

Navin Kumar Singh, Director, Junasis Developer and Exporters Pvt. Ltd. S/o
Yogal Kishore Singh, resident of village- Tangaul, P.O. & P.S. Hajipur,
District- Vaishali.

... .. Plaintiff/ Appellant/s

Versus

1. Junasis Developers and Exporters Private Limited being a company incorporated under the Companies Act, 1956 and having its registered office at Umesh Cinema Road, Hajipur, P.O. & P.S. Hajipur, District- Vaishali.
2. Sunil Kumar, Director, M/s Junasis Developers & Exporter Private Limited, S/o Late Ramdeo Singh, resident of village Dighi Kala, P.S. Hajipur, P.O. Hajipur Sadar, District- Vaishali.
3. Akhowri Raghvendra, Director, M/s Junasis Developers & Exporter Pvt. Ltd., S/o Late Vishwanath Sahay Verma, resident of Mauna, P.O. Ismailpur, P.O. Hajipur, P.S. Hajipur Sadar, District- Vaishali.
4. Sunil Kumar Singh, Director, M/s Junasis Developers & Exporter Pvt. Ltd., S/o Late Mahesh Singh, resident of village- Saidpur, Rajauli, P.S. Hajipur Sadar, P.O. Hajipur, District- Vaishali.
5. Arvind Kumar Singh, Director, M/s Junasis Developers & Exporter Pvt. Ltd., S/o Late Ram Singh, resident of village Saidpur, Rajauli, P.S. Hajipur Sadar, P.O. Hajipur, District- Vaishali.
6. Uday Kumar Director, M/s Junasis Developers & Exporter Pvt. Ltd., S/o Yogendra Prasad, resident of village- Shahpur Diyara, P.O. Pahleza, Banka, P.S. Sonapur, District- Saran.



7. Mohammad Sharif, Director, M/s Junasis Developers & Exporter Pvt. Ltd.,
S/o Md. Miya, resident of Village Majhauri, P.O. Suha Shahpur, District-
Saran.

8. Registrar of Companies Bihar and Jharkhand, office situated at Mourya
Lok Complex Block A western wing, 4th floor Dak Banglow Road, P.O.-
G.P.O., P.S. Kotwali, District- Patna.

... .. Defendants/ Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Kishore Verma, Adv.
For the Respondent/s	:	Mr. Sanjay Kumar, Adv.
	:	Mr. Anshuman Singh, Adv.
For the respondent nos. 1 & 2	:	Mr. Keshv Shrivastava, Sr. Adv.
	:	Mr. Sarbottam Kumar Sarkar, Adv.
	:	Mr. Bhubneshwar Pd., Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 23-12-2020

The proceedings of the Court are being conducted
through Video Conferencing and the Advocates joined the
proceedings through Video Conferencing from their residence.

This miscellaneous appeal has been filed by the
plaintiff/appellant for setting aside the order dated 17.06.2014
passed by learned Sub-Judge-III, Hajipur (Vaishali) in Title Suit
No. 557 of 2010 dismissing the petition of the plaintiff/appellant
under order 39 Rule 1 and 2 of C.P.C. for grant of temporary
injunction.

Plaintiff/appellant's case as made out is that he was
engaged in the business of dealing with real estate and property



mostly in Hajipur and in the year 2006 he decided to float a private limited company to take over and manage his real estate business and for said purpose he formed a company, namely, M/s Junasis developers and exporters Pvt. Ltd. alongwith his four business associates.

Company was incorporated on February 10, 2006 and the plaintiff alongwith aforesaid four persons agreed to take 200 equity shares each in the capital of said company and said persons were also appointed as directors of the company alongwith plaintiff.

Defendant no. 1 company had initially five directors, (1) Sunil Kumar(defendant no. 2) (2) Navin Kumar Singh (plaintiff) (3) Md. Junaid (4) Md. Imteyaz (5) Md. Sakil Ahmad. There were 5000 shares in the company, out of which 1000 shares were paid up capital which was allotted equally among all the directors, each director having 200 shares. Rest 4000 shares were unallotted.

According to plaintiff/appellant on 29.08.2006 three directors namely, Md. Junaid, Md. Imteyaz and Md. Shakil Ahmad resigned and transferred their shares i.e. 600 shares in favour of plaintiff/appellant Navin Kumar Singh. By Board resolution dated 30.08.2006 their resignation were accepted and



plaintiff/appellant became holder of above 600 shares, apart from his own 200 shares. In the same board meeting 4000 unallotted shares were allotted to plaintiff/appellant and resolution was duly signed by the directors including the director, namely, Sunil Kumar (defendant no. 2).

Defendant nos. 1 to 7 have admitted that company was incorporated on February 10, 2006 with authorized share capital of Rs. 5 lacs and initially 1000 share were allotted and at the time of incorporation, the company had five directors as stated in the plaint and since inception Sunil Kumar (defendant no. 2) was appointed its Managing Director and on August 29, 2006 the other directors of the company resigned. It is further stated that on September 10, 2006 five more directors were appointed in presence of plaintiff.

It was decided in early part of year 2009 that unsubscribed share capital of Rs. 4 lacs would be subscribed and on February 23, 2009 resolution was passed that unsubscribed 4000 equity shares of Rs. 100 each will be allotted to the directors and in spite of having notice of said meeting plaintiff did not attend the meeting rather took away important documents and common seal of the company, as such, it was resolved in the meeting of board of directors on February 23,



2009 to open fresh minute book and a new common seal of the company.

It has been categorically denied by the defendants in their written statement that 4000 shares which were unsubscribed until February 23, 2009 were ever allotted to the plaintiff. The minutes of the meeting of the board of director held on August 30, 2006 is a forged and fabricated document. Defendant no. 2 Sunil Kumar never participated in said meeting nor signed any such minutes dated August 30, 2006. No such meeting was ever held and contention of plaintiff that 4000 shares were allotted to him in said meeting is false and incorrect.

Initially, plaintiff approached the company law board (Kolkatta Bench) through C.P. No. 1208(Kol) 2009 for redressal of his grievances for rectification of register of members by incorporating the name of plaintiffs in respect of 4000 shares already allotted to him by a resolution dated 30.08.2006 but vide order dated 09.09.2010 the bench after filing of reply of respondents declined to decide the issue raised in view of involvement of disputed questions of fact requiring evidence as the defendant no. 2 took a defence that resolution dated 30.08.2006 was not signed by him. Thereafter



Plaintiff/appellant filed present title suit being title suit no. 557 of 2010 for declaration that plaintiff/appellant has right, title and interest over 4000 share in the defendant no. 1 company and has challenged the allotment of 4000 shares in favour of defendant nos. 2 to 7 who are other directors of the company.

Plaintiff/appellant filed an application under order 39 Rule 1 and 2 of C.P.C. for grant of temporary injunction during pendency of the suit and for restraining the defendants from transferring/alienating and/or encumbering the properties belonging to the companies in any manner or increasing the share capital or inducting new directors/share holders in the company.

It was submitted on behalf of plaintiff/appellant that there is admission by defendant no. 2 that plaintiff/appellant owns 800 shares whereas Sunil Kumar (defendant no. 2) owns 200 shares and being minority share holder, he cannot transfer or deal with the properties of the company in any manner without the consent of plaintiff/appellant and, as such, prima facie case for grant of temporary injunction is made out. Balance of convenience also lies in favour of plaintiff/appellant and defendants have unauthorizedly executed various sale deeds creating third party right, as a result of which plaintiff/appellant



will suffer irreparable injury. Counsel for the appellant has relied upon judgment of the Apex Court since reported in AIR (2005) SC 104.

On the other hand counsel for the defendants have supported the order passed by the trial court and submits that no case for grant of temporary injunction is made out and as such, the trial court has rightly rejected the injunction petition which requires no interference by this Court. It is further submitted that plaintiff/appellant had filed an injunction petition dated 23.12.2010 alongwith plaint and same was withdrawn without seeking liberty of the court to file fresh injunction petition, as such, 2nd injunction petition is barred.

Sr. Counsel for the defendants has relied on the judgement and order in the case of Poonam Sinha Vs. ASU Construction since reported in 2020(2) PLJR and in the case of Hind Samachar Limited and Ors. Vs. Indian Newspaper Society since reported in 119(2005) DLT 570.

During pendency of this appeal, the forensic report with respect to minutes of board meeting dated 30.08.2006 was received by the trial court and forensic laboratory after examination of disputed signatures on aforesaid minutes dated 30.08.2006 with the admitted signature of defendant no. 2 Sunil



Kumar vide its report dated 06.08.2015 has held that both the signatures are of the same person, as such, the contention of plaintiff/appellant that meeting was held on 30.08.2006 and 4000 shares was allotted to him in said meeting has been found to be correct and contention of defendant no. 2 that minutes of board meeting dated 30.08.2006 is forged and fabricated document has been found to be false in view of report submitted by Director, F.S.L., Government of N.C.T. of Delhi.

It is further submitted that evidence of plaintiff has been closed and evidence on behalf of defendant was led and was closed by the trial court but defendant no. 2 twice filed a petition for recall of order of closer of evidence and is trying to delay the disposal of the suit.

Respondent no. 8 Registrar of Companies Bihar and Jharkhand has also filed counter affidavit through his lawyer Dr. Anshuman and has placed on record certain facts with respect to company as available in records maintained by the Registrar of Companies.

After hearing the counsel for the parties and going through the order passed by trial court, this Court directs the trial court to finally decide the suit within three months from the date of receipt of order passed by this Court and till then the



parties shall maintain status quo and in case of urgency permission of the trial court shall be obtained before making any change in status quo. The trial court shall submit a report to this Court after disposal of the suit within the period as indicated above and if, suit is not disposed of within said period, the reasons for delay in disposal of suit.

The miscellaneous appeal is disposed of.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2021
Transmission Date	NA

