

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

C.O. No.1201 of 2021

**Mahesh Kumar Kejriwal and another
Vs.
Ramesh Kumar Kejriwal and others**

For the petitioners	:	Mr. Jishnu Saha, Mr. Aniruddha Mitra, Mr. Sabyasachi Sen
For the opposite party no. 1	:	Mr. Utpal Bose, Mr. Shuvasish Sengupta, Mr. Soumyajit Mishra
Hearing concluded on	:	13.07.2021
Judgment on	:	05.08.2021

Sabyasachi Bhattacharyya, J:-

1. The present revisional application arises out of a suit for declaration and injunction filed by the opposite party nos. 1 to 3 against the petitioners and opposite party nos. 4 to 6. In the plaint, the following reliefs were claimed :

“(a) Decree declaring that the defendant nos. 1 and 2 are holding the shares in the defendant nos. 4 and 5 as particularised in Schedule “A” at the foot of this plaint as trustees for the benefit of the plaintiffs and the said defendants have no beneficial interest over such shares;

- (b) *Decree declaring that in view of the family settlement made in the Kejriwal family and recorded in the Memorandum dated 29 September 2002, a copy whereof is contained in Annexure "B" hereto, --*

5 which stood registered in the names of the Parents of the plaintiff no.1 and the defendant no.1 viz. Murari Mohan Kejriwal since deceased and Smt. Savitri Devi Kejriwal since deceased and particularised in Schedule "B" at the foot of this plaint and such vested right of the plaintiffs crystallised only upon demise of both the Parents; and

ii. the Parents merely held life interest in such shares and had no right or competence to transfer or bequeath such shares to the defendant nos. 1 to 3 or any other person save and except the plaintiffs;

- (c) *Decree declaring that all testamentary dispositions if any, made or effected by the Parents viz., Murari Mohan Kejriwal since deceased and Smt. Savitri Devi Kejriwal since deceased relating to the shares of the defendant company nos.4 and 5 standing in their names or held by them as particularized in Schedule "B" at the foot of this plaint be adjudged illegal, null and void insofar as the same relates to disposition of the said shares in favour of the defendant nos.1 to 3 or any other person and be directed to be delivered up and cancelled.*
- (d) *Mandatory Decree directing the defendant nos. 1 and 2 to transfer and deliver their entire shareholding in the defendant company nos. 4 and 5 as particularised in schedule "A" at the foot of this plaint to the plaintiffs in consideration of the said family settlement made in the Kejriwal family;*
- (e) *Decree be passed for rectification of the Register of Members of the defendant company nos. 4 and 5 by deleting the names of the Parents viz., Murari Mohan Kejriwal since deceased and Smt. Savitri Devi Kejriwal since deceased and the defendant nos. 1 and 2 in respect of the shares stated in Schedule "A" and*

“B” at the foot of this plaint and substituting the names of the plaintiffs as the joint owners of such shares;

- (f) Decree of permanent injunction restraining the defendant nos. 1, 2 and 3 from exercising any right standing in their names or in the names of the Parents viz., Murari Mohan Kejriwal since deceased and Smt. Savitri Devi Kejriwal since deceased in the defendant company nos. 4 and 5 and particularised in Schedules “A” and “B” at the foot of this plaint;*
- (g) Decree of permanent injunction restraining the defendant nos.1, 2 and 3 from selling, transferring, encumbering, pledging or in any way dealing with any share in the defendant company nos. 4 and 5 standing in their names of held by them or standing in the names of the Parents viz., Murari Mohan Kejriwal since deceased and Smt. Savitri Devi Kejriwal since deceased in the defendant company nos. 4 and 5 and particularised in Schedules “A” and “B” at the foot of this plaint;*
- (h) Interlocutory injunction;*
- (i) Receiver;*
- (j) Attachment;*
- (k) Costs;*
- (l) Further and other reliefs.”*

- 2.** The suit property, as described in Schedules “A” and “B” of the plaint, pertains to various shares, held in the opposite party nos. 5 and 6 (defendant nos. 4 and 5 respectively in the suit)-Companies.
- 3.** In the said suit, the defendants/petitioners filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. The plaintiffs/opposite party nos. 1 to 3, on the other hand,

took out an application under Order XXIII Rule 1 of the Code of Civil Procedure, thereby praying for liberty to abandon the relief (e) claimed in the plaint, relating to rectification of the Register of the Members of the defendant nos. 4 and 5 and to approach the National Company Law Tribunal (NCLT) for such relief.

4. *Vide* impugned order no.21 dated March 13, 2020, the trial court rejected the application of the petitioners under Order VII Rule 11 of the Code of Civil Procedure, but allowed the application of the plaintiffs for abandonment of relief (e).
5. Learned senior counsel appearing for the defendant nos. 1 and 2/petitioners contends that the entire premises of the suit pertains to the interpretation of a family arrangement in order to ascertain the respective rights of the parties to certain shares of the defendant nos. 4 and 5-Companies. By placing particular reliance on paragraphs 23 and 64 of the plaint, learned senior counsel further submits that the plaintiffs admitted in their plaint that there was a previous adjudication by the Company Law Board (CLB) on similar issues, wherein the ownership of the shares of the defendant nos. 4 and 5-Companies as well as the veracity of the transfers were considered in the light of the family arrangement. Admittedly, the plaintiffs/opposite party nos. 1 and 2 have preferred a challenge before the appropriate appellate forum against such order of the CLB, which is still pending. Hence, learned senior counsel contends, the suit is *ex facie* barred by the principles of *res judicata* and issue estoppel.

6. Learned senior counsel further contends that, under Section 430 of the Companies Act, 2013, the jurisdiction of the Civil Court is specifically barred in respect of issues where the forums specified under the said Act have jurisdiction to determine. In view of Sections 241 and 242 of the 2013 Act, dealing with applications to Tribunal for relief in cases of oppression, etc., specifically empowering the Tribunal to decide such questions pertaining to shares of a company and incidental issues, the jurisdiction of the Civil Court is barred in the present case, since the material reliefs sought in the suit relate to ownership and transfer of shares. It is argued that the family arrangement has been referred to by way of clever drafting to bring the matter within the scope of the Civil Court, although such arrangement relates totally to shares and its legal effect has already been decided by the CLB.
7. In this context, learned senior counsel for the petitioner places reliance on the judgment of *Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and another*, reported at (1999) 5 SCC 590, for the proposition that Section 11 of the Code of Civil Procedure is not exhaustive of the general doctrine of *res judicata*. Learned senior counsel relies on the observations in the said report regarding the scope of "cause of action estoppel" and "issue estoppel", vis-à-vis the concept of *res judicata*, in support of his contentions.
8. Learned senior counsel then relies on *Bhanu Kumar Jain Vs. Archana Kumar and another*, reported at (2005) 1 SCC 787 in support of the proposition that "cause of action estoppel" arises where, in two

different proceedings, identical issues are raised.

9. The concept of issue estoppel, that is, the doctrine which provides that a person is estopped from raising an issue in a latter proceeding where such issue has been determined previously and attained finality. Both the doctrines are contemplated within the purview of the principle of *res judicata*, it is submitted.
10. The petitioners then rely on *Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others*, reported at (2004) 3 SCC 137. In the said report, the Supreme Court observed that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of the rigours of Order VII Rule 11 of the Code. If, on a plain and meaningful, and not a formal, reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the plaint should be rejected. The averments of the plaint, in the present case, read as a whole meaningfully, will indicate that not only does the plaint fail to disclose any cause of action, it is also evident that the suit is patently barred by the principle of *res judicata*.
11. Learned senior counsel next cites *Abdul Gafur and another Vs. State of Uttarakhand and others*, reported at (2008) 10 SCC 97, to lay stress on the nature and scope of Section 9 of the Code of Civil Procedure. It is argued that, although Section 9 provides that the Civil Court shall have jurisdiction to try all suits of a civil nature, suits of which

cognizance is either expressly or impliedly barred, are excepted. Such exceptions, carved out from the jurisdiction of the Civil Court, are attracted in the present case in view of Section 430 of the Companies Act, 2013.

12. The petitioners next rely on the judgment *Shashi Prakash Khemka (Dead) through Legal Representatives and another Vs. NEPC Micon (Now NEPC India Limited) and others*, reported at (2019) 18 SCC 569, wherein it was held that even if the cause of action has arisen at a stage prior to the enactment of the 2013 Act, relegating the parties to a Civil Court subsequently would not be the appropriate remedy, keeping in view Section 430 of the said Act.
13. It is contended by learned senior counsel appearing for the plaintiffs/opposite party nos. 1 and 2, on the other hand, that, in order to adjudicate an application under Order VII Rule 11 of the Code of Civil Procedure, the averments in the plaint have to be taken to be correct.
14. It is contended that the presumption is in favour of the Civil Court having jurisdiction to decide civil disputes, unless there is specific bar of law.
15. Learned senior counsel for the opposite party nos. 1 and 2 next submits that the suit refers to the daughter Sudha and encompasses shares of the Hanuman Cotton Mills (HMC) as well as Hanuman Foundry (HF). However, the latter was not a party to the proceeding decided by the CLB. Hence, it is argued such decision is not binding on HF.

16. The company petition was filed by the revisionist-petitioners and not the plaintiffs/opposite party nos. 1 and 2. Thus, the two proceedings are not same.
17. Even if it was to be argued that the CLB award is binding on the HCM, there cannot be any partial rejection of plaint.
18. In support of the last proposition, learned senior counsel places reliance on the judgment reported at (2019) 7 SCC 158 [*Madhav Prasad Aggarwal and another Vs. Axis Bank Limited and another*] and that of (2004) 3 SCC 137 [*Sopan Sukhdeo Sable and others Vs. Assistant charity Commissioner and others*].
19. In order to lay stress on the proposition that the question of *res judicata* involves adjudication of a mixed question of fact and law, learned senior counsel for the opposite party nos. 1 and 2 places reliance on the judgment of *Vaish Aggarwal Panchayat Vs. Inder Kumar and others*, reported at AIR 2015 SC 3357.
20. Learned senior counsel then cites *Vaish Aggarwal Panchayat Vs. Inder Kumar and others*, reported at (2020) 12 SCC 809, in support of the contention that the ground under Order VII Rule 11(d) of the Code of Civil Procedure, that is, bar of law, on the principle of *res judicata*, would involve only a perusal of the plaint alone. If such perusal did not make it evident that the suit was barred by the principle of *res judicata*, the issue would have to be determined at trial and the plaint could not have been rejected on that ground.
21. Prior to deciding the issues involved in the matter, it ought to be mentioned that both Section 241 and Section 242 of the Companies

Act, 2013 take within their fold of the tribunal's jurisdiction regarding the conduct of the affairs of the company in a manner prejudicial or oppressive to any member of the company.

- 22.** Section 242, while dealing with the powers of the tribunal, also contemplates within the powers of the tribunal to pass orders for the regulation of conduct of affairs of the company in future, the purchase of shares of any members of the company by other members, restrictions on the transfer or allotment of the shares of the company, etc.
- 23.** A plain and meaningful reading of the pleadings in the plaint clearly shows that the scope of the suit falls broadly within the purview of such jurisdiction of the tribunal, as contemplated under Sections 241 and 242 of the 2013 Act. The reliefs claimed in the plaint, even excluding relief (e), which was sought to be abandoned by the plaintiffs, pertain to declarations regarding the shareholding of the defendant nos. 4 and 5 companies. The family settlement/arrangement, which was sought to be interpreted in the suit, relates only to the shares of the parties, which is also evident from the subject matter of the suit, as described in Schedules "A" and "B", which are nothing but shares in the defendant nos. 4 and 5 company. The averments made in the plaint clearly relate to the transfer and dealing of the said shares, in which context the family settlement/arrangement was sought to be interpreted.
- 24.** That apart, the plaintiffs clearly refer in the plaint to the order passed by the CLB in a company petition filed under Sections 397, 398, 402,

403, 406 and 409 of the Companies Act, 1956 bearing C.P. No.31 of 2006. Paragraph 42 of the plaint quotes certain portions of such order and the effect of the same has been sought to be explained in the succeeding paragraphs of the plaint. The plaintiffs further admitted that, being aggrieved with some of the findings of the CLB, an appeal bearing APO No. 210 of 2013 was preferred by the plaintiffs, which appeal was averred to be pending even on the date of filing of the suit.

- 25.** Since the said order of the CLB has been specifically quoted and referred to in the plaint of Title Suit No.13 of 2013, the said order can invariably be looked into for the purpose of deciding an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.
- 26.** Sections 397 and 398 of the 1956 Act referred to relief in cases of oppression and mismanagement and were similar in scope to Sections 241 and 242 of the 2013 Act. Since, admittedly, the CLB order was, *inter alia*, passed under the former provisions, the same operates as an issue estoppel against the plaintiffs from urging similar issues in the subsequent suit. The plaintiffs submitted to the jurisdiction of the CLB by participating in the proceeding before the CLB.
- 27.** The principle of *res judicata* squarely applies, since the CLB elaborately considered the family settlement/arrangement-in-question in the context of the transfer of the shares of both the companies –

HCM and HF.

28. As such, in view of the CLB having already adjudicated the issue on merits at length in similar context as in the present suit, the principle of *res judicata* comes into operation squarely, debarring the plaintiffs from filing the present suit.
29. Thus, on such score as well, the suit is barred by law as contemplated in Order VII Rule 11(d) of the Code of Civil Procedure. Insofar as the judgments cited on behalf of the opposite parties on the proposition that there cannot be any partial rejection of plaint, the ratio of such reports are not attracted in the present case, since the entire plaint is to be rejected on the grounds as discussed above.
30. *Shashi Prakash Khemka* (supra), cited by the petitioners, is relevant in the context, since the remedies sought in the civil suit are completely barred in the present case and the power is vested with the NCLT, despite the cause of action having arisen at a stage prior to the enactment, which was dealt with by the CLB. As far as the judgment cited by the petitioners in the context of issue estoppel and *res judicata*, those are applicable in the present case in view of the above discussions on facts.
31. Upon a plain and meaningful reading of the plaint and the documents referred to therein, including the order of the CLB, the plaint is palpably barred by law as a whole, in particular keeping in view

Section 430 of the 2013 Act, as well as by operation of the principles of *res judicata* and issue estoppel.

- 32.** C.O. No.1201 of 2021 is, accordingly, allowed, thereby setting aside the impugned orders and rejecting the plaint of Title Suit No.13 of 2019 pending in the court of the Civil Judge (Senior Division) at Uluberia, District-Howrah. Consequentially, the application filed by the plaintiffs/opposite parties under Order XXIII Rule 1 of the Code of Civil Procedure is rendered infructuous and thus also stands dismissed.
- 33.** There will be no order as to costs.
- 34.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)