IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 14 OF 2021

1) Vidarbha Ceramics Private Limited, a company registered under the Companies Act, 1956 having its registered office at 5, Temple Road, Civil Lines, Nagpur – 440010

2) Adarsh Shriratan Daga, aged about 52 years, occ. Business, resident of 5, Temple Road, Civil Lines, Nagpur – 440010

.. **Applicants**

Versus

1) Anupama Daga d/o Vivek Daga, aged about 23 years, occ. Student, resident of 1831, 3rd Floor, ATS Green Village, T-18, Sector 93-A, Expressway, NOIDA

2) Maharashtra Industrial Development Corporation, Head Office : "Udyog Sarathi", Marol Industrial Area, Mahakali Caves Road, Andheri(East),Mumbai-400093 Regional office, DIC Bldg., 5th Floor, Civil Lines, Nagpur – 440001, through its Regional Officer.

.. **Respondents**

Mr. Masood Shareef, Advocate for applicants.
Mr.S.V.Bhutada with Mr.Yash Maheshwari and Mrs.R.S.Sirpurkar, Advocates for respondent No.1.
Mr. A. D. Sonak, Advocate for respondent No.2.

CORAM : MANISH PITALE, J.

DATED : 23rd June, 2021

ORAL JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) The Civil Revision Application is heard finally with the consent of learned counsel for the rival parties.

(3) By this revision application, the applicants (original defendants No.2 and 3) have challenged order dated 20/03/2021, passed by the Court of Joint Civil Judge, Junior Division, Nagpur, whereby, an application (Exh.10) for rejection of plaint filed under Order VII Rule 11 of the Code of Civil Procedure (CPC) has been rejected.

(4) The applicants have approached this Court with the basic contention that in the present case, the respondent No.1 (original

plaintiff) has indulged in clever drafting and creating of an illusion of cause of action, in order to claim that the suit for injunction filed by her is maintainable before the Court below.

(5) According to the applicants, the reliefs claimed by the respondent No.1 are to be agitated before the National Company Law Tribunal (NCLT) under the provisions of the Companies Act, 2013 and that in fact, such a petition filed prior in point of time to the aforesaid suit before the NCLT is pending consideration. It is contended in the application for rejection of plaint that the effect of Section 430 of the Companies Act, is that the suit filed by the respondent No.1 is barred by law and that therefore, the plaint ought to be rejected.

(6) The Court below in the impugned order has taken note of the fact that the aforesaid petition filed before the NCLT on behalf of the respondent No.1 is indeed pending and yet the application filed by the applicants herein has been rejected on the ground that the parties in the two proceedings i.e. the suit filed before the Court below and the petition pending before the NCLT are different in nature and the prayers are also different.

(7) Mr. Masood Shareef, learned counsel appearing for the applicants submits that the Court below committed a grave error in passing the impugned order and that the observations made therein are not borne out by the material on record and the admitted facts that emerge from the record.

(8) The learned counsel for the applicants invited attention of this Court to the contents of the company petition dated 02/01/2021, filed on behalf of the respondent no.1 herein. It was submitted that the grievance of the respondent No.1 pertains to alleged mismanagement of a trust fund created for the benefit of the respondent No.1 in the backdrop of a matrimonial dispute between her parents. The trust fund was allegedly created, so that the maintenance of respondent No.1 could be taken care of and that the estranged parents of respondent No.1 would be the trustees.

(9) According to the respondent No.1, the defendant No.3, who happens to be her uncle, is responsible for surreptitious and clandestine transactions, the result of which is misuse and misappropriation of the trust fund, which is prejudicial to the interest

of respondent No.1. There are allegations made that all the companies owned by the family are being mismanaged and that the defendant No.3 (i.e. petitioner No.2 herein) has been illegally transferring shares to the detriment of the respondent No.1. In fact a specific allegation is made that 4800 shares of the respondent No.1 have been illegally transferred, allegedly at the behest of the original defendant No.3.

(10) On the basis of such pleadings in the company petition, the respondent No.1 has sought the following reliefs.

> ***"RELIEF SOUGHT***
>
> *In view of the facts mentioned above the petitioner prays for the following reliefs :*
>
> *(a) pass an appropriate order, relief, directions under Section 241 and 242 of the Companies Act, 2013 to bring an end to the aforesaid acts of oppression and mismanagement perpetrated by the respondents and for necessary orders and reliefs in respect thereto, including as prayed :*
>
> *(b) pass an appropriate order declaring the transfer of shares of the petitioner in favour of respondent no.3 – Vandana Daga and Adarsh Daga HUF (represented by respondent no.2 – Adarsh Daga) as null and void.*
>
> *(c) pass an appropriate order declaring respondents no.2 and 3 as unfit to continue as directors of the respondent no.1 – Company.*

(d) pass an appropriate order restraining the respondent nos.2, 3 and/or 4 or any person acting through them to transfer sale or create any kind of interest in the property of the respondent no.1 Company at Plot no.F-13, MIDC Industrial Area, Hingna, Nagpur.

(e) pass an order under Section 59 of the Companies Act directing the respondent no.5 to rectify the register of the respondent no.1 Company by including petitioner's name against the 4800 shares owned by her.

(f) Award cost for the petition.

(g) Pass such other order or grant such other relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

(11) The respondent No.1 has also sought interim prayers in the said company petition which read as follows :-

*" **INTERIM PRAYERS***

(a) Pass an ex-parte interim order, to be confirmed after notice, restraining the respondent nos.2, 3 and/or 4 any person acting through them to transfer sale or create any kind of interest in the property of the respondent no.1 Company at Plot no.F-13, MIDC Area, Hingna, Nagpur ;

(b) Pass an ex-parte interim order, to be confirmed after notice, restraining the Respondent No.2 and Respondent No.3 from alienating, charging, mortgaging and selling any of their shares, securities, fixed assets, immovable assets as the case may be, held and owned by them either individually

or with associations of other without the leave of this Hon'ble Tribunal.

(c) Pass an ex-parte interim order, to be confirmed after notice, restraining the Respondent No.1, 2, 3 and 4 from transferring their shareholding in Respondent No.1 company to any third party or creating any third party rights or interest in Respondent No.1 company in any manner.

(d) Pass an ex-parte interim order, to be confirmed after notice, directing investigation in the affairs of the Respondent No.1 Company qua the management handled by the Respondent No.2 and Respondent No.3.

(e) Pass an ex-parte interim order, to be confirmed after notice, appointing administrator to take control of the assets and affairs of Respondent No.1 Company.

(f) Pass any other interim orders that are deemed expedient by this Hon'ble Tribunal;

(g) Direct that no shareholders and board meetings of respondent no.1- company be held without the permission of this Hon'ble Tribunal till the disposal of the Petition.

(h) Pass such other and/or further Order/directions which this Hon'ble National Company Law Tribunal may deem fit and proper in the facts and circumstances of the present case."

(12) In this backdrop, the learned counsel for the applicants invited attention of this Court to the contents of the plaint filed on behalf of the respondent No.1, before the Court below. The contents thereof show that allegations identical to those made in the company petition, have been made in the plaint, while claiming relief of injunction. This is manifest from the contents of the plaint from paragraphs 5 to 14. It is brought to the notice of this Court that thereafter in the plaint, there are certain allegations made against the original defendant No.1 (respondent No.2 herein) in order to foist jurisdiction on the Court below. According to the learned counsel for the applicants, this is an illustration of clever drafting and the respondent No.1 is seeking to maintain a suit, which is completely barred under Section 430 of the Companies Act.

(13) In order to support the contentions raised on behalf of the applicants, the learned counsel has relied upon the judgments of the Hon’ble Supreme Court in the case of **Shashi Prakash Khemka (dead) through legal representatives and another vs. NEPC Micon (Now NEPC India Ltd.) and others**[1] and **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)(D) Thr LRs and others**[2] and judgment of this Court in the case of **Shankar Assana Gaddam vs. Achanak Associates Realtors Pvt. Ltd. and others**[3].

1 (2019) 18 SCC 569
2 AIR 2020 SC 3310
3 2021(2)Mh.L.J. 159

(14) On the other hand, the learned counsel for the contesting respondent No.1, submitted that even if there were some similarities in the pleadings in the company petition, as well as the said suit, a proper appreciation of the pleadings from paragraph 15 onwards of the plaint would show that the respondent No.1 desired to seek vindication of her right against the original defendant No.1 (i.e. respondent No.2 herein) pertaining to right to be heard and her objection being considered in accordance with law by the said defendant in respect of the intended transfer of property by the original defendant Nos.2 and 3 (i.e. applicants herein), which would be detrimental to her interest.

(15) It is submitted that the respondent No.1 is seeking a specific injunction against the original defendant No.1 from proceeding with processing the request of the original defendant No.2 for transfer of property. It is pointed out that there is a specific allegation regarding original defendant No.1 acting in concert with defendants No.2 and 3, to deprive the respondent No.1 of her legitimate rights. It is submitted that such a relief cannot be sought successfully before the NCLT in the company petition and that therefore, bar under Section 430 of the Companies Act would not apply. It was submitted that whether the respondent No.1 would ultimately succeed in the suit and whether the suit would ultimately be found to be frivolous, was a matter that could be decided only after trial and that therefore, the Court below was justified in passing the impugned order.

(16) Mr. Sonak, learned counsel has appeared on behalf of respondent No.2, which is essentially a proforma party, insofar as the present application is concerned.

(17) Having heard the learned counsel for rival parties and upon perusal of the material placed on record, it would be relevant to refer to the relevant provisions of law :-

> *"**Section 430. 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."*

> *"**Section 242. Powers of Tribunal – (1)** If, on any application made under section 241, the Tribunal is of the opinion -*
>
> *(a) ……….*
>
> *(b) ……….*
>
> ***(2)** Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for -*
>
> ***(a)** ……….*
> ***(b)** ……….*
> ***(c)** ……….*
> ***(d)** ……….*
> ***(e)** ……….*
> ***(f)** ……….*
>
> ***(g)** the setting aside of any transfer, delivery of goods, payment, 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;"*

(18) The learned counsel for the respondent No.1 has not seriously disputed the fact that the said respondent can certainly hear her grievance before the NCLT under the provisions of the said Act and this is evident from the fact that she has already filed the aforesaid company petition. It is relevant that the company petition was filed prior in point of time to the suit filed before the Court below.

(19) A perusal of the contents of the company petition, when compared with the contents of the plaint would show that the grievance sought to be raised on behalf of the respondent No.1 in both the proceedings is essentially identical. The apprehension of respondent No.1 is on the same footing and it is an admitted position that the above quoted final prayers and interim prayers made before the NCLT would take care of the cause of action that has allegedly arisen for the respondent No.1. The company petition has been pending before the NCLT and it is submitted on behalf of the respondent No.1 that the same could not be taken up for consideration, because of the lock-down imposed as a consequence of the COVID-19 pandemic.

(20) Be that as it may, the company petition is pending and the respondent No.1 does not appear to have taken any pains or made efforts to seek relief urgently from the NCLT. The suit for injunction has been admittedly filed thereafter. As noted above, the contents of the two proceedings are identical for most part and it is only towards the end of the plaint from paragraph 15 onwards, that the respondent No.1 has introduced the alleged role of the original defendant No.1(respondent No.2 herein) to claim that the suit is maintainable for the reliefs claimed therein. A careful perusal of the contents of the plaint from paragraph 15 onwards would show that much emphasis is placed on the Officers of the original defendant No.1 allegedly acting hand in glove with the applicants herein, so as to surreptitiously transfer the property. The allegation against the defendant No.1 is that its Officers have been stalling attempts on the part of the respondent No.1 for getting any information as regards the alleged attempt of the defendant No.2 to dispose of properties and that the defendant No.1 needs to be injuncted for giving any permission or approval to the petitioner No.1 from taking steps to dispose of the property. It is on this basis that the prayer have been made in the aforesaid suit. The specific prayer reads as follows :-

> *"(A) Permanently restrain the defendant no.1, its agents, servants, or any person acting through it from proceeding with the request of the Defendant no.2 – Vidarbh Ceramics Private Limited to sell Plot no.F-13, MIDC, Hingna, Nagpur."*

(21) The essential grievance of the respondent No.1 is eloquently stated in the company petition and repeated in the plaint upto paragraph 15. This Court finds that the pleadings are not only identical, but the grievance sought to be projected is also same. The apprehension of the respondent No.1 with regard to alleged attempts by the applicants herein to surreptitiously dispose of the property are also found in the company petition. It is only if such attempts have any basis that the alleged role of the defendant No.1 for issuance of permission or approval would arise. If the respondent No.1 is found to be prima facie justified regarding apprehension about surreptitious transfer of properties by the applicants, appropriate interim relief can be granted by the NCLT. In fact, the interim prayers quoted above made on behalf of respondent No.1 before the NCLT clearly spell out such reliefs sought on her above. Under Section 242(2)(g) of the Companies Act quoted above, the NCLT has power to grant such reliefs to the respondent No.1. A perusal of the above quoted main reliefs sought in the company petition also demonstrate that the grievance of the respondent No.1 can be fully addressed and satisfied in the proceedings before the NCLT.

(22) The nature of pleadings clearly show that the bar under Section 430 of the Companies Act would operate in full force, insofar as the aforesaid suit filed by the respondent No.1 before the Court below is concerned. The contents of the plaint from paragraph 15 onwards are obviously a case of clever drafting, only in order to create an illusion of cause of action, so as to foist jurisdiction on the

Court below, while by operation of law, such a suit is clearly barred. The Courts have recognized such situations when the plaintiff seeks to wriggle out of a specific bar created by a special law like the Companies Act in the present case.

(23) In this backdrop, the learned counsel for the petitioner is justified in relying upon judgments of the Hon'ble Supreme Court in the case of Shashi Prakash Khemka vs. NEPC Micon(supra) and in the case of Dahiben vs. Arvindbhai (supra). The Hon'ble Supreme Court in these judgments has clearly found that when the relief sought by an aggrieved party can be granted by the NCLT under Section 59 of the said Act, the bar under Section 430 thereof would fully operate. In fact, in the judgment of Dahiben vs. Arvindbhai(supra) the Hon'ble Supreme Court has specifically referred to the art of clever drafting of plaints, so as to create illusion of cause of action and that if the Courts find that the plaintiffs have indulged in such an art, it is required to be nipped in the bud, in order to put an end to bogus litigation at the earliest.

(24) Reliance placed on recent judgment of this Court in the case of Shankar Gaddam vs. Achanak Associates (supra) is also justified, because in the said judgment this Court has specifically referred to the power available to the NCLT under Section 242(2)(g) of the Companies Act to grant appropriate reliefs and that plaintiffs on the basis of clever drafting cannot be permitted to knock the doors of the Civil Court when jurisdiction is clearly barred by the operation of law.

(25) In view of the above, it becomes clear that the Court below committed a grave error in appreciating contentions raised on behalf of the applicants. The observation made in paragraph 24 of the impugned order to the effect that Section 430 of the Companies Act is not applicable, because the parties and prayers are different in the plaint and the company petition, is wholly erroneous and completely unsustainable. Therefore, it is found that that the impugned order is erroneous and it deserves to be set aside. It is found that in the present case the plaint deserves to be rejected under Order VII Rule 11(d) of the CPC.

(26) Accordingly, the Application is allowed.

(27) The impugned order is quashed and set aside and the application filed on behalf of the applicants for rejection of the plaint (Exh.10) is allowed in terms of the prayer made therein. No order as to costs.

[MANISH PITALE J.]

KOLHE/P.A.