

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

The Hon'ble Justice Sabyasachi Bhattacharyya

R.V.W. No.92 of 2021

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

Arising out of

C.O. No.1201 of 2021

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

For the petitioners	:	Mr. Ranjan Deb, Mr. Shuvasish Sengupta, Mr. Rohitendra Chandra Deb, Mr. P.K. Jhunjunwala, Mr. Soumyajit Mishra
For the respondents	:	Mr. Jishnu Saha
Hearing concluded on	:	10.02.2022
Judgment on	:	15.02.2022

Sabyasachi Bhattacharyya, J:-

1. The present application has been filed seeking review of the judgment and order dated August 5, 2021 passed in C.O. No.1201 No. of 2021,

which was passed in presence of counsel for the revisionist-petitioners and opposite party no.1 (present review applicant no.1).

2. By the order under review, C.O. No.1201 was allowed on contest, thereby setting aside the order impugned therein and rejecting the plaint of Title Suit No.13 of 2019 pending in the court of Civil Judge (Senior Division), at Uluberia, District Court, Howrah. Consequentially, the application filed by the review applicants, who were the plaintiffs in the suit, under Order XXIII Rule 1 of the Code of Civil Procedure was rendered infructuous and also dismissed.
3. The review applicants, who were opposite parties in the revisional application, had filed a suit bearing Title Suit No.13 of 2019 following Reliefs:

“(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 or 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."*

4. By the orders impugned in the revisional application, the application of the review applicants under Order XXIII Rule 1 was allowed on contest, thereby permitting them to abandon the part of their claim prayed in the Relief (e) contained in the plaint, which related to the rectification of the Register of Members of the defendant-company nos.4 and 5.
5. The application filed by the defendant nos.1 and 2, who were the revisionist petitioners, under Order VII Rule 11 of the Code of Civil Procedure, was considered and rejected on contest by the Trial Court.
6. Learned senior counsel appearing for the applicants in the review petition argues that the primary premise of the order under review was that the suit was barred by the principle of *res judicata*. However, the order passed by the Company Law Board (CLB), which was the premise of arriving at such finding, had been challenged in appeal by both the parties. As such, it is argued, the said order the CLB did not acquire finality sufficient to operate as *res judicata* in the subsequent suit.
7. That apart, it is argued that in view of the applicants having already prayed for deletion and abandonment of Relief (e) of the plaint, which pertained to rectification of the register of members of the defendant company nos.4 and 5, in their applications under Order VI Rule 17 and Order XXIII of the Code, the only prayer which could have arguably operated as *res judicata* was sought to be abandoned, leaving behind declaration of title as the main relief. Hence, it is argued, the said relief was justly permitted to be abandoned by way of

amendment of the plaint by the Trial Court, thereby denuding the objection as to *res judicata* taken by the defendants.

8. Learned senior counsel places reliance on the judgments of *Sangramsinh P. Gaekwad and others Vs. Shatadevi P. Gaekwad (Dead) through LRS. and others*, reported at (2005) 11 SCC 314, for the proposition that the Company Law Board does not have jurisdiction to declare title in property.
9. In support of his first proposition, that when appeals have been preferred against a decree, the same would not operate as *res judicata*, learned senior counsel cites the following judgments:
 - i. *Shashibhushan Prasad Misra (Dead) and another Vs. Babuji Rai (Dead) By His Legal Representatives and others* [AIR 1970 SC 809];
 - ii. *K. Muthuswami Gounder Vs. N. Palaniappa Gounder* [(1998) 7 SCC 327].
10. In answer, learned senior counsel appearing for the revisionist petitioners/opposite parties in the review application argues that Murari Kejriwal (since deceased), the father of the applicants and opposite parties, did not prefer any appeal against the CLB order. As such, since only two of the sons of Murari, not claiming through their father, had preferred appeals, there was no conflict of interest between the appellants which could justify the statement that “both sides” had preferred appeals against the CLB order. Since the father Murari had not preferred any appeal, the individual appeals by the

said sons could not tantamount to jeopardize the effect of the judgment of the CLB.

11. Moreover, it is argued that the operation of the CLB order had not been specifically stayed by the appellate court, as such, leaving it open for the CLB order to operate as *res judicata* in the suit.
12. It is further argued by learned senior counsel for the present opposite parties that, in the suit, the reliefs were entirely oriented towards declaration of title to the shares-in-question and not the assets or property of the company. The decision taken by the CLB was primarily on an interpretation of the Family Arrangement between the parties. In the subsequent suit, the same issues were re-agitated. However, this court rightly held that the suit was not maintainable before the civil court but that only the Company Law Board (now NCLT, that is, National Company Law Tribunal) had jurisdiction to decide the same.
13. Upon hearing learned counsel for both the contesting parties in the review application it is evident that in the order under review dated August 5, 2021 all the questions which are sought to be argued in the review application were substantially argued and dealt with by this Court. In the said order, the direct and substantial involvement of the issues involved in the suit and the CLB proceeding was specifically considered.
14. It was also considered elaborately that the suit contained averments and sought reliefs entirely in respect of the right, title and interest of the parties in respect of the shares of the companies and not the

assets or property thereof. As such, the ratio of *Sangramsinh P. Gaekwad (supra)* is not applicable to the present *lis*.

15. As regards the other question, regarding two appeals having been allegedly preferred against the CLB order, until and unless the appeals were allowed and the CLB order set aside, the said order holds its field as a valid and decisive order binding the parties. Although in certain cases, it has been held by the Supreme Court that a judgment and decree impugned in appeal is “in jeopardy”, such legal fiction does not negate the binding force of the impugned judgment and decree altogether, unless the appeals against the same is allowed and it is set aside.
16. Secondly, it is rightly submitted by the present opposite parties that both the appeals preferred against the CLB order were at the instance of two sons of Late Murari, who enjoyed the benefits of the said order and the family arrangement at whose behest was interpreted by the CLB. Hence, there was identity of interest between both the separate appellants and it could not be said that both the contesting parties before the CLB had challenged its order in appeal. Hence, the basic premise of the review applicants’ submissions does not hold good ground.
17. Hence, the principle laid down in *Shashibhushan Prasad Misra (supra)* and *K. Muthuswami Gounder (supra)* is not attracted as well to the present case.
18. Thirdly, this Court, while passing the order under review, had clearly held, by accepting the revisionist petitioners’ submissions, that the

suit was barred not only by *res judicata* but also issue estoppel against the plaintiffs/review applicants. The second limb of the said finding, as regards issue estoppel, is not mitigated even by the arguments of the review applicants.

19. *Res judicata* is only a species of the genus “issue estoppel”, which is wider in operation than “*res judicata*”. Thus, even if it could be argued that *res judicata* was inapplicable in terms, the Doctrine of Issue Estoppel would debar the plaintiffs from filing the later suit.
20. Insofar as the third argument of the review applicants is concerned, even if the amendment sought by the petitioner, abandoning Relief (e) in the suit, was to be allowed, such deletion would not change the complexion of the suit itself. The right, title and interest in respect of the shares of the company, adjudication on which fell within the specific jurisdiction of the then CLB (now NCLT), permeated the entire scope of arguments and issues involved in the suit. The above proposition was, in fact, discussed in detail in the order of this Court, review of which has not been sought.
21. Hence, the argument of the review applicants, that the abandonment of Relief (e) would bring the suit within the purview of the Civil Court’s jurisdiction, does not hold water at all.
22. Since all the above questions and issues were discussed thoroughly in the order under review, there arises no occasion to hold that the same suffered from any error apparent on the face of record and/or discovery of new material or any like cause, to come within the ambit of Section 114 and/or Order XLVII of the Code of Civil Procedure.

23. Thus, invocation of the review jurisdiction is not justified at all in the present case.
24. In any event, the arguments advanced by the review applicants, if considered on merits, pertain to arguable questions of law and fact, requiring interpretation of the cited judgments and the materials-on-record in detail, which would take such consideration beyond the realm of the review jurisdiction, as contemplated in Section 114 Order XLVII of the Code.
25. Hence, the review application fails.
26. RVW 92 of 2021 is dismissed on contest, without interfering in any manner with the judgment and order dated August 5, 2021 passed in C.O. No.1201 of 2021.
27. There will be no order as to costs.
28. 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.)