

221

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5643-2016 (O&M)

Date of Decision: 13.02.2023

Jiwan Mehta

....Petitioner

Versus

Sanjeev Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Payel Mehta, Advocate
for the petitioner.

Mr. Gorav Kathuria, Advocate
for respondent No.1.

Mr. Hamid Hassan, Advocate
for respondent No.3.

Mr. Padamkant Dwivedi, Advocate
for respondent No.4.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 24.05.2016 (Annexure P-1) passed by the Ld. Civil Judge (Sr. Division), Panchkula rejecting application under Order 7 Rule 11 CPC filed by defendant No.3-petitioner herein.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Respondent No.1 had filed a civil suit for specific performance of Agreement to Sell dated 12.06.2012 executed between defendant No.1-respodnent No.2 herein and the respondent No.1 in respect of 2160 shares

holding in M/s Hateshwari Paper Moulding Private Ltd. and 1/5th share in suit property (i.e. land measuring 15 kanals 9 marlas at Village Mouli, District Panchkula) and for permanent prohibitory injunction qua the said share of land. Upon notice the petitioner appeared and objected the maintainability of the civil suit and filed an application under Order 7 Rule 11 CPC. However, vide impugned order dated 24.05.2016 the same was dismissed. Hence, the present revision petition.

5. I have heard the arguments of the learned counsel for the parties and gone through the record. I am of the view that the Ld. Trial Court having once observed that the dispute in the civil suit pertains to the sale purchase and subsequent transfer of 2160 shares which are claimed to have been agreed to be sold by way of agreement to the plaintiff (respondent No.1 herein), then the same clearly ought to have been adjudicated under the provisions of the Companies Act. The Ld. Trial Court was fully conscious of the same as is reflected from the following part of the impugned order:-

“xxxx xxxx xxxx xxxx

In the present suit the plaintiff has sought specific performance of agreement to sell dated 12.6.2012 and also sought declaration to the effect that share transfer from dated 19.06.12 and subsequent entries of share transfer are illegal, null and void and further seeking permanent injunction restraining the defendants from alienating or charging nature of the shares in question and further, restraining the defendants from interfering into peaceful over the suit land. Thus, several reliefs have been claimed by the plaintiff in the present suit and out of them, one in regarding permanent injunction restraining the defendants from interfering in possession of the plaintiff over the suit land. Section 430 of the companies act, 2013 specifically states that 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 Appellant Tribunal.

Meaning thereby, the Civil Court cannot grant injunction in respect of any action taken or to be taken by the Tribunal in pursuance of any power conferred under this act and as such, in case no power have been conferred upon the Tribunal in respect of any subject matter the Civil Court has got ample jurisdiction to decide the same.

In reference to the power of the Tribunal, it is imperative to refer section 280 of the Companies Act 2013 pertaining to jurisdiction of the Tribunal, which provide that the Tribunal shall have jurisdiction to entertain or dispose of any suit or proceeding by or against the company any claim made by or against the company, any application made under section 233, any scheme submitted under Section 262 and any question including those relating to assets, business, actions, rights, entitlement, benefits, duties, responsibilities, obligation or in any matter arising out of or in relation to winding up of the company.

xxxx xxxx xxxx xxxx”

6. It is rather strange while on the one hand the Ld. Trial Court observed that the dispute fell within the domain of NCLT under the provisions of the Companies Act, yet it interfered merely because a decree for permanent injunction has also been sought qua the peaceful possession of the suit property (1/5th share of land measuring 15 Kanals 9 Marlas) owned by the Company against defendant No.3, who is also a promoter/director of the company, having got 33,373 number of shares subscribed in the company and is thus the single largest share-holder.

7. In the totality of circumstances, in order to balance the equities, while setting aside the impugned order and by allowing the petitioner’s application under Order 7 Rule 11 CPC, liberty is granted to the

plaintiff/respondent No.1 herein to approach the National Company Law Tribunal (NCLT). In the interregnum, it is made clear that the erstwhile company M/s Hateshwari Paper Moulding Private Ltd. now rechristened as M/s Alcoi Building Systems Private Ltd. and defendant No.3 (petitioner herein), Director of the company, are restrained for a period of two months from transferring the disputed shares in the name of any person or until this order is varied or modified by the NCLT upon being approached by the plaintiff/respondent No.1 herein, whichever event is first.

- 8. Disposed of in the above terms.
- 9. Pending civil miscellaneous application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 13, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No