

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

SAO No.50 of 2016(O&amp;M)

Reserved on: 22.09.2023

Date of Order:27.09.2023

Kamlesh and another

..Appellants

Versus

M/s Harsha Steels Limited and others

..Respondents

SAO No.51 of 2016(O&amp;M)

Romesh Lal and others

.Appellants

Versus

M/s Harsha Steels Limited and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Vishal Munjal, Advocate,  
for the appellants (in SAO-51 of 2016)****Mr. Vipin Mahajan, Advocate  
for the respondents.****ANIL KSHETARPAL, J.**

1. With the consent of the learned counsel representing the parties, two connected second appeals against the order by which the the first appellate court remanded the case back to the trial court shall stand disposed of.

2. In order to comprehend the issue involved in these two appeals, relevant facts, in brief, are required to be noticed.

3. M/s Harsha Steels Limited filed a suit through Mr. Kamal Dogra as its Director. The caption of the suit read as under:-

“ (A) Suit for permanent injunction against the defendants/his agents, representatives from alienating,

*creating any charge over the land measuring 25 kanals 09 marlas No. Khewat 21, 22, 23, 24, 25, No. Khatauni 37, 38, 39, 40, 41, No. Khasra 5R/24/2, 14, 17, 18, 23/1, 6R/11, 5R/7, 16, 5R/6/2, 5R/15 situated in village Phangarian, Tehsil Pathankot and as entered in the jamabandi for the years 1995-96.*

*(B) Suit for declaration to the effect that the plaintiff is the owner in possession of the land as fully detailed in clause (A) of the headnote of the plaint and defendants no.2 to 7 have no right or title with respect to it and the sale of suit land purported to have been made by defendants no.1 to 3 in favour of defendants no.4 to 7 vide the four sale deeds dated 24/25 Oct. 2001 vide the documents no.3657, 3658, 3659 and 3660, is illegal, null and void, unauthorised and is not binding on the plaintiff and the alleged appointment of defendants no.2 and 3 and the alleged resignation of Mr. Kamal Dogra, are all false, bogus, illegal and are not binding on the plaintiff.*

*And as a consequential relief suit for permanent injunction against defendants no.2 to 7 from interfering in the possession of the plaintiff over the suit land, changing its nature and alienating it in any shape or form.”*

4. It is the case of the plaintiff that he is one of the Director of the company and late Sh. Ramesh Sharma, who was the Managing Director expired on 31.10.2000. Thereafter, no new Managing Director was appointed and defendant no.1 who is the wife of late Sh. Ramesh Sharma along with defendants no.2 and 3 have wrongly executed four registered sale deeds on 24/25.10.2001 while disposing of 19 kanals and 17 marlas land of the company. It was claimed that there was no decision as such of the Board of Directors to sell the property and he i.e. Kamal Dogra has never resigned from the company.

5. Defendants no.1 to 3 contested the suit while claiming that Sh. Kamal Dogra resigned as the Director on 25.10.2001, which was accepted and the company appointed defendants no.2 and 3 as its Directors. Even defendant no.1 was inducted as a Director. It was also pleaded that the Registrar of Companies at Jalandhar was duly informed of the appointment of new Directors in Form No.32 dated 15.11.2000. It was also claimed that there is no resolution in favour of Sh. Kamal Dogra authorizing him to file the suit. Defendants no.1 to 3 have also claimed that the company did not take off and vide resolutions dated 01.10.2001 and 20.11.2000, the properties were disposed of. Defendants no.4 to 6 claim that they are bonafide purchaser apart from reiterating the stand taken by defendants no.1 to 3.

6. From the pleadings of the parties, the following issues were framed:-

- “1. Whether the plaintiff is owner in possession of the land in suit?OPP
2. Whether the sale deeds executed by defendant no.1 to 3 in favour of the defendants no. 4 to 7 dated 24.10.01, 25.10.01 bearing documents no.3657, 3658, 3659, 3660 are illegal, null and void?OPP
3. Whether the plaintiff is entitled to injunction as prayed for ?OPP
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the defendants no.4 to 6 are bonafide purchaser for a valuable consideration?OPD
6. Relief.”

7. The trial court on appreciation of evidence held that the

jurisdiction of the civil court is barred by virtue of Section 10(GB) of the Companies Act, 1956. The trial court held that Ex.D10 is the resignation of Sh. Kamal Dogra which was not withdrawn by him nor any protest was lodged before the Registrar of Companies. However, thereafter, the trial court held that the civil court has no jurisdiction and therefore concluded that the suit is liable to be dismissed.

8. The first appellate court has remanded the case back to the trial court on the ground that the trial court did not frame any issue over the objection with regard to lack of jurisdiction. While arguing the case, the learned counsel for the plaintiff contends that no argument was addressed by the learned counsel representing the defendants on the question of jurisdiction. However, the trial court on its own has taken up this objection and decided the case without giving opportunity of hearing to the plaintiff to explain this objection. This court also noticed that despite the trial court's observations in para 20 that Ex.D10 is the resignation of Sh. Kamal Dogra, still the court did not hold that the suit is not maintainable.

9. That is how these two counter appeals have been filed, one by the plaintiff and other by the defendants no.1 and 2.

10. Section 10(GB) of the Companies Act, 1956 is extracted as under:-

*“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.”*

11. On a careful reading of Section 10 (GB) of the Act, it is evident that the bar on the jurisdiction of the Civil Court is not absolute. It has been provided that where the Tribunal or Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force, only then the civil court shall have no jurisdiction. Moreover, the first appellate court has also failed to notice that the Companies Act, 1956 stands repealed and substituted by the Companies Act, 2013. In the considered view of the Court, the first issue which required adjudication before the civil court was with respect to competence of Sh. Kamal Dogra to institute the suit on behalf of the company. The second issue which required adjudication was whether Sh. Komal Dogra did resign on 25.10.2001. If he had validly/voluntarily resigned then the next question would be whether the suit could be filed by the company through him?

12. A limited company is an artificial person which is required to act through a natural person. For that purpose, Board of Directors of the Company are authorized to take decisions from time to time. Sh. Kamal Dogra has not produced any resolution of the company to prove that authorization has been given. There can be cases where memorandum of association or article of association does authorize a particular Director or any Director to institute the suit. However, all these questions have not been answered either by the trial court or by the first appellate court.

13. Keeping in view the aforesaid facts and discussions, the order passed by the first appellate court remitting the case back to the trial court is

just and proper in the facts and circumstances of the present case. Hence, both the appeals are dismissed.

14. The trial court is requested to cull out proper issues and thereafter, proceed to decide the case after granting opportunity of leading evidence to the parties. The trial court is expected to frame distinct issue with regard to competence of Sh. Kamal Dogra to file the suit in absence of resolution from the Board of Directors as well as a separate distinct issue with regard to jurisdiction of the civil court.

15. All the pending miscellaneous applications, if any, are also disposed of.

27<sup>th</sup> September, 2023  
nt

(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned :YES/NO  
Whether reportable :YES/NO