

**In the High Court at Calcutta
Civil Appellate Jurisdiction
ORIGINAL SIDE**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**IA GA No. 1 of 2024
APOT No. 371 of 2024
Arising out of
IA GA No. 1 of 2024
CS No.214 of 2024**

**Meenakshi Periwai and Ors.
Vs.
Gautam Gan and Ors.**

For the appellants	:	Mr. Abhrajit Mitra, Sr. Adv., Mr. Debanjan Mandal, Adv., Mr. Jishnu Chowdhury, Adv., Mr. Sanjiv Kr. Trivedi, Adv., Mr. Soumya Ray Chowdhury, Adv., Mr. Subhankar Nag, Adv., Mr. Sarvapriya Mukherjee, Adv., Mr. Satadeep Bhattacharyya, Adv., Ms. Iram Hassan, Adv., Mr. Sanket Sarawgi, Adv., Mr. Rachit Lakhmani, Adv
For the respondent no.7	:	Mr. Abhratosh Majumdar, Sr. Adv., Mr. Rajesh Upadhyay, Adv.
For the respondent no.9	:	Mr. Krishna Raj Thaker, Adv. Ms. Akansha Chopra, Adv. Mr. Saptarshi Kar, Adv.
For the respondent nos.8 and 10	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. D.N. Sharma, Adv. Ms. Pritha Basu, Adv. Mr. Rajarshi Dutta, Adv.

For the
respondent no.11 and 12 : Mr. Anirban Ray, Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. D. Chakraborty, Adv

For the respondent no. 14 : Mr. Ranjan Bachawat, Sr. Adv.
Mr. Sayan Roy Chowdhury, Adv.
Mr. Satyaki Mukherjee, Adv.
Mr. B. Garodia, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Sanbhik Chaudhury, Adv.

Hearing concluded on : 13.11.2024

Judgment on : 20.11.2024

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of an order refusing the prayer of the plaintiffs/appellants for interim injunction. The impugned order was passed in connection with a suit instituted by the plaintiffs/appellants seeking declaration that the decision taken by the defendants/respondent-Company nos.8 to 12 to obtain leasehold rights in their favour in respect of the seventh floor of the Birla Building at 9/1, R.N. Mukherjee Road, Kolkata - 700001 is illegal, null and void and for injunction restraining the defendants from giving further effect to the said decision as well as from removing or transferring any record or document of the defendants nos. 8 to 12 from their existing tenanted premise at the fourth floor of the same building as well as consequential reliefs.
2. In the said suit, an application was filed for appointment of Receiver/Special Officer to make an inventory of all such records found to be in symbolic possession of the respondent nos. 8 to 12 at their

existing tenanted premises as well as for injunction in line with the reliefs sought in the plaint. Interim order sought therein was refused by the impugned order, giving rise to this appeal.

3. Learned senior counsel appearing for the appellant argues that the plaintiffs/appellants are universal legatees of the estate of Late Smt. Priyamvada Debi Birla (PDB) and since late PDB was either a majority shareholder or had controlling interest through her shareholding in defendants/respondent nos. 8 to 12-Companies, the plaintiffs have a stake in the said companies.
4. A Letter of Administration proceeding is at present pending before the Testamentary Court and in a recent order of the Division Bench of this Court, it was held that the estate and, through it, be *Administrator Pendente lite* (APL) exerts influence over the estate, including the Companies. It is argued that by virtue of the impugned decision taken by the Board of Directors (BoD) of the said Companies, the funds of the Companies would be considerably depleted.
5. Learned senior counsel argues that the defendant nos.8 to 12 companies are primarily investment companies and deal with financial affairs and as such, do not have requirement of greater office space than they already have at their existing tenancy at the fourth floor of the Birla Building. By virtue of the impugned decision, the companies are about to obtain a lease in respect of the seventh floor for about one hundred times the rent of their existing tenanted premises which would regularly siphon off a massive chunk of the funds of the companies unnecessarily.

6. It is argued that during pendency of the present suit, Birla Corporation Limited (BCL), the owner of the fourth floor and the present landlord of the Companies, have offered to grant tenancy in respect of an extended portion on the fourth floor itself, which would cover the need for additional space, if any, at almost half the rate at which the Companies are going to take rent on the seventh floor. Hence, the decision is not commercially viable as well.
7. Learned senior counsel contends that the APL Committee formed by the Testamentary Court is comprised of three members, one of whom is a judicial member. The majority members prevailed over the BoD of the companies, being themselves Nominee-Directors in the said Boards. Upon a written communication of the minority member, who oppose such decision of the Board, which is also annexed to the pleadings of the plaintiffs, the plaintiffs became aware of the situation and filed the present suit.
8. Learned senior counsel seeks to take the court through the respective shareholdings of the estate of late PDB in the five companies to impress upon the Court that the estate has direct and legal control over the companies. Hence, the present decision would be detrimental to the interest of the estate, which confers *locus standi* on the plaintiffs, as universal legatees of the estate, to initiate the present legal action.
9. As per the observation of the Division Bench referred to above, the Testamentary Court cannot grant injunctions in respect of third parties, including the defendant nos. 8 to 12 companies. As such, the plaintiffs have approached the regular civil court for the present reliefs.

- 10.** It is contended by the plaintiffs/appellants that the reliefs of declaration and other consequential reliefs sought in the suit cannot be granted by the National Company Law Tribunal (NCLT) as those do not come within the purview of the Companies Act, 2013 (hereinafter referred to as “the 2013 Act”). As such, neither the Testamentary Court nor the NCLT can grant the reliefs sought here, thus justifying the filing of the suit.
- 11.** It is argued that the BCL is fully controlled by the estate of Late PDB through her shareholding and, as such, the tenancy under BCL would enure to the benefit of the estate’s interest, as there can be mutual reciprocity between the tenant companies and the landlord/BCL even in respect of the rent payable. Hence, it is argued that going to a third-party company, which owns the seventh floor, seeking a fresh tenancy would cause attrition on the funds of the Companies, thereby depleting the estate. Also, the removal of records to the prospective new tenanted premises on the seventh floor of the Birla Building would be detrimental to the estate’s interest, since the owner of the seventh floor is a company not under the direct control of the estate of late PDB.
- 12.** Apart from the intended transaction not being commercially viable, it is hinted by the appellants that the control asserted by the estate of late PDB over BCL, the landlord, which in turn confers bargaining power on the tenant companies, also controlled by the estate, would be lost.
- 13.** Learned senior counsel appearing for the respondent nos. 8 and 10, two of the defendant-Companies, argues that if the plaintiffs have a grievance with the functioning of the APL, the appropriate remedy would be to approach the Testamentary Court and not filing a civil suit.

14. It is argued that in view of the APL being in charge of the estate of Late PDB in terms of the orders of the testamentary court, the universal legatees do not have any *locus standi* to initiate a legal action in respect of the estate.
15. It is contended that the Division Bench clearly mentioned in its judgment that the majority decision of the APL would prevail, the third (judicial) member of the APL being the arbiter having veto power in case of differences of opinion between the APL members. Thus, the plaintiffs cannot challenge the decision of the majority APL members and bypass the APL to seek relief in respect of the estate.
16. It is further pointed out that Section 104 of the Indian Succession Act, 1925 (for short, “the 1925 Act”) does not confer any right *in praesenti* on the universal legatees. Rather, Section 211 of the 1925 Act, vests the property of the estate on the Executor or Administrator, as the case may be.
17. It is argued that no civil right of the plaintiffs has been infringed and the Civil Court cannot interdict any internal affair of the defendant-Companies, who are independent juristic entities in their own right. It is argued that in the event there is any grievance over perceived oppression, mismanagement or control of the Company, it is for the members of the Company to move the appropriate forum under Sections 241 and 242 of the 2013 Act. The plaintiffs are strangers and not members of the companies.
18. The Civil Court cannot look into the commercial viability of a valid decision taken by the BoDs of Companies which are independent juristic entities.

19. Since the Division Bench has held that the Testamentary Court cannot interfere with the day-to-day affairs of third-party companies or pass any directions/injunctions in respect of them, the universal legatees do not have such right, standing on lesser legal footing than the APL.
20. Learned counsel appearing for the respondent no.9, one of the other defendant Companies, argues that the impugned order is not patently perverse and as such, there cannot be any interference in an intra-court appeal, that too at the interim stage.
21. Apart from reiterating the submissions of the respondent nos. 8 and 10 in respect of Section 104 and Section 211 of the 1925 Act, learned counsel for the respondent no.9 places reliance on Section 247 of the said Act and argues that it is the APL Committee which has been duly appointed by the Testamentary Court and thus has all the rights and powers of a general administrator over the estate of the deceased testatrix late PDB, of course, other than the right of distributing the estate. The APL is subject to immediate control of the Testamentary Court and is to act under its direction. Thus, the universal legatees do not have any right whatsoever to assert any interest to the estate directly. The sole charter of representation of the estate lies with the APL.
22. Since the APL cannot interfere with the management of the defendant companies, the plaintiffs/universal legatees, claiming a lesser legal character, cannot have *locus standi* to initiate the suit.
23. In any event, it is argued that the Testamentary Court can direct the APL to reverse the decision of the Boards of the defendant-companies if

in its opinion the same is unlawful or otherwise detrimental to the estate.

- 24.** Learned senior counsel appearing for the respondent no.7, the minority member of the APL, supports the cause of the appellants and points out that the premise of the Minutes of the BoD dated August 23, 2024, was that there were disturbances from the BCL employees to the enjoyment to the tenancy at the existing fourth floor, which has been disbelieved by the learned Trial Judge.
- 25.** It is submitted that no decision was taken previously to the effect that the Companies need any extra office space at all.
- 26.** It is argued that the said decision is a mere ploy to ensure that the funds of the Companies, which belong to the estate, are resourced out for the benefit of the owner of the seventh floor, which is primarily controlled by the Birla family and not the estate of late PDB.
- 27.** Learned counsel for the respondent nos. 11 and 12, apart from adopting the arguments of respondent nos. 8, 9, and 10, contends that the estate of late PDB, represented by the APL, does not have any majority shareholding in the respondent nos. 11 and 12-Companies. As such, the said companies are not under complete control of the APL. The Board of Directors of the companies are comprised also of other members than the APL nominees and as such, acted independently to take the impugned decision.
- 28.** If aggrieved by the action of the APL Committee, it is always open to the plaintiffs to approach the Testamentary Court. However, the Board decisions were taken fully in accordance with law. Learned counsel places reliance on Section 179 of the 2013 Act, which lays down the

powers of the Board of Directors of a company. The decision impugned in the suit having been taken by the respective BoDs of the defendant-companies in consonance with Section 179, it is argued that third-parties/strangers to the Companies do not have the right to maintain any legal action against the same.

- 29.** Learned counsel relies on Section 430 of the 2013 Act, which precludes the Civil Court's jurisdiction to entertain any suit or proceeding in respect of any matter which the NCLT is empowered to determine by the said Act or any other law. The Section further provides that 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 the 2013 Act or other any law for the time being in force by the Tribunal.
- 30.** Thus, it is contended that Learned Single Judge rightly refused the plaintiffs' prayer for interim injunction.
- 31.** Heard learned counsel for the parties.
- 32.** Before proceeding to decide the present appeal, we take note of the limited scope of interference in a Letters Patent appeal, which is a unique power vested in the High Courts, more particularly, Chartered High Courts.
- 33.** It is to be noted that the Chartered High Courts, while exercising such charter, may act through Benches of different strength. Thus, a learned Single Judge and a Division Bench exercise the same power, both as the 'High Court'. As such, the notional appellate power of a Division Bench over the decision of a learned Single Judge cannot be assumed to create a hierarchical superiority of the Division Bench over the

concerned learned Single Judge, as opposed to the hierarchical structure as embodied in the Bengal, Agra and Assam Civil Courts Act and similar other statutes, which embodies a pyramidal concept, whereby the High Court exercises appellate authority over the District Courts and the District Courts, in turn, over Civil Judges (Senior Division) and Civil Judges (Junior Division).

34. A similar exercise is not desirable between Benches of different strengths of the same High Court. Hence, unless there is perversity, patent illegality or palpable lack of jurisdiction, there cannot be any interference in intra-court appeals.
35. Another aspect of the matter has to be kept in mind. Although the issue of maintainability of the suit has been kept open by the learned Single Judge for being decided at the final hearing of the suit, the question of maintainability can be incidentally looked into for the limited and tentative purpose of ascertaining whether the party seeking injunction has a *prima facie* case, even at the stage of grant of interim injunction.
36. Seen in such context, we are to ascertain whether the learned Single Judge adopted the correct approach in passing the impugned order.
37. The first issue which crops up is the *locus standi* of the plaintiffs/appellants to initiate the suit. The issue of *locus standi* has two components – from the perspective of the Indian Succession Act, 1925 and from the Company Law perspective.
38. Taking first things first, Section 104 of the 1925 Act provides that the legatee has a vested interest in the estate of the deceased testator from the date of death of the testator. However, the said Section is

circumscribed by Section 211 of the said Act which operates to vest all the property of the deceased person in the Executor or Administrator, as the case may be. Since the APL Committee has been appointed by order of the Testamentary Court in respect of the estate of late PDB, Section 211 vests the property of the estate in the said APL. Also, as per Section 211(1) of the 1925 Act, it is the APL which is the legal representative of the estate for all purposes. Thus, the plaintiffs, in the capacity of universal legatees of the estate, cannot jump the queue bypassing the APL and directly assert their rights in respect of the estate.

- 39.** Section 332 of the 1925 Act provides that the assent of the executor or administrator is necessary to complete a legatee's title to his legacy. Thus, although the rights of legatees relate back to the date of death of the testator, such right/title is conferred only upon probate/Letters of Administration being granted and assent to the legacy being completed by distribution of the property by the Executor or Administrator as the case may be.
- 40.** Hence, it is premature for the universal legatees to assert their rights by bypassing the total control of the APL over the estate through the testamentary court.
- 41.** Section 247 of the 1925 Act, under which the APL has been appointed, stipulates that the APL shall have all the rights and powers of a general administrator other than distribution of the estate and shall be subject to the immediate control of the (testamentary) court and act under its direction. Hence, the appropriate remedy for the universal legatees, if at all aggrieved by the functioning of the APL, would be to approach the

testamentary court. The mere fact that as per the Division Bench order passed in connection with the testamentary matter no injunction can be passed or intermeddling can be undertaken by the testamentary court or the APL in respect of third-party properties is not sufficient justification for approaching the Civil Court. What the APL or the testamentary court cannot do cannot indirectly be done by universal legatees, who have an inferior legal right than the APL, as rightly argued by the respondent-companies, till assent to legacy happens and the property is distributed among the beneficiaries of the Will of late PDB.

- 42.** Another aspect of the matter is to be considered. The Division Bench, in its judgment, specifically sealed the issue as to the APL being entitled to function by virtue of majority decision of its members. In terms of the said judgment, the third (judicial) member of the APL would act as the arbiter in case of any difference of opinion between the APL members and shall also have veto power in such cases. In the present case, both the third (judicial) member and another member, in their capacity as nominees of the APL in the Boards of the concerned five defendant-companies, took the decision impugned in the suit. Thus, the dissenting/minority APL member could not seek to achieve indirectly through the plaintiffs/universal legatees what he could not obtain directly by contravening the majority decision of the APL. Admittedly, one of the major components of the cause of action pleaded in the plaint by the plaintiffs/appellants is the instigation caused by the letter of the dissenting member of the APL with regard to difference of opinion with the decision of the majority members. The Civil Court

cannot grant its blessings to such attempt on the part of the dissenting member to frustrate the majority decision of the APL. At best, if aggrieved and otherwise entitled in law, the legatees could approach the testamentary court in that regard.

- 43.** In fact, the Division Bench judgment also stipulates that the Testamentary Court could be approached by the APL only in case of major differences of opinion and not regular day-to-day decisions; however, whether a decision is “major” or not would be at the discretion of the third (judicial) member of the APL to decide. Hence, the attempt of the dissenting member to thwart the majority decision of the APL members in an oblique manner through the plaintiffs cannot be given a premium by the Court.
- 44.** From the Company Law perspective, the plaintiffs are not “members” of the defendant-companies and, as such, cannot invoke the jurisdiction of the NCLT under Sections 241 and 242 of the 2013 Act.
- 45.** The Legislature, in its wisdom, conferred powers only on the “members” of a company to take out such challenge, deliberately precluding third-parties to the company, obviously to prevent unnecessary and frivolous intermeddling with the internal affairs of a company at the drop of a hat, which might have the effect of paralyzing the functioning of the company.
- 46.** Again, Section 430 of the 2013 Act clearly debars a Civil Court from having jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal is empowered to determine or to grant any injunction in that regard.

- 47.** Section 9 of the Code of Civil Procedure also provides that the Civil Courts' jurisdiction can only be assumed if there is no express or implied bar. Section 430, read with Sections 241 and 242 of the 2013 Act, operate as an express bar, precluding the Civil Court from entertaining the issues regarding internal management and affairs of the Company.
- 48.** The defendant nos.8 to 12-Companies run their business, whether investment or otherwise, from their office space and it is essentially the prerogative of their legitimately appointed BoDs to decide as to what would be their requirement of office space.
- 49.** We cannot also lose sight of the fact that the plaintiffs/appellants repeatedly assert that the decision taken by the BoD of the five defendant Companies was an APL decision, which automatically clothes the Testamentary Court with jurisdiction.
- 50.** However, as per several decisions of the Testamentary Court in the present matter, as upheld lastly by the Division Bench, the APL can exercise its powers over the estate through the direct shareholding of late PDB, the testatrix, in the Companies where the testatrix held shares. The said process was adopted in the present case and the shareholders, including the APL exercising right by virtue of the testatrix's shares, have spoken their mind and formed BoDs of the five Companies in consonance with the provisions of the Company Law. The BoDs of the respective Companies are at the helm of their affairs. Although, incidentally, the BoDs include nominees of the APL as Directors, they have taken the impugned decision to take a tenancy on

the seventh floor of the Birla Building not as an APL but as Directors of the respective Companies, in such capacity.

- 51.** Notably, the estate of late PDB does not have direct majority shareholding in defendant nos.11 and 12-Companies which are also two of the five companies in respect of whom relief has been sought in the suit. In any event, the BoDs of the companies include other Directors than the APL nominees and, being legitimately appointed Boards, have full control over the functioning of the companies within the contemplation of Section 179 of the 2013 Act.
- 52.** The plaintiffs, being utter strangers to the companies, cannot intermeddle, or seek directions from the court to so intermeddle at their instance, or even look into the commercial prudence of the decisions of the companies. If aggrieved in that regard, only members of the companies can sue.
- 53.** The bogey of 'derivative action' raised by the appellants is not germane or applicable in the instant case. Such concept evolved in Company jurisprudence primarily to protect the interest of the Company and its shareholders – be it majority or minority. The plaintiffs, being complete third-parties to the defendant-companies, claiming on the basis of their rights as universal legatees of one of the shareholders, cannot have any say at this stage over the functioning of the companies. As clarified by the Division Bench, the control of the estate has to be exercised by virtue of the direct shareholding of the testatrix and that too, exercised by the APL duly appointed by the Testamentary Court and not universal legatees, having an inferior legal status than the APL so to say.

- 54.** Insofar as the validity of the impugned resolution of the five Companies is concerned, the same is not hit by any contravention of the provisions of the Company Law.
- 55.** That apart, the impugned decision is justified inasmuch as it is evident from the documents relied on by the plaintiffs/appellants themselves before the suit court that the lease with the existing landlord BCL expired on March 31, 2024 and despite repeated reminders of renewal on behalf of the tenant-Companies, there has been no response from end of the BCL. Such inaction on the part of the BCL/landlord justifies the worst apprehension in the mind of the tenant-Companies and their consequential action of seeking a tenancy on the seventh floor under a different landlord. In any event, such justification need not be furnished before the Civil Court in view of the discussions above.
- 56.** A careful perusal of the impugned order refusing interim relief shows that all the above aspects were duly considered by the learned Single Judge. Hence, let alone meet the strict yardsticks and parameters of interference in an Intra-Court Appeal, the order impugned before us does not call for interference even by way of a regular first appeal. The learned Single Judge having taken a plausible and justified view backed by cogent reasons, there arises no occasion to interfere with the same.
- 57.** Accordingly, APOT No. 371 of 2024 and the connected IA GA No. 1 of 2024 are dismissed on contest without any order as to costs, thereby affirming the impugned order dated November 7, 2024 passed in IA GA No. 1 of 2024 in connection with CS No.214 of 2024.
- 58.** A word of caution here: all the above observations are tentative and have been arrived at for the limited purpose of deciding the present

appeal and shall not have any binding effect at any subsequent stage of the suit.

- 59.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)