

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. 179 of 2025
IA No: CAN 1 of 2025

Om Prakash Kalla
Vs.
Kalla Properties and Industrial
Corporation Limited and others

For the appellant : Mr. Dwaipayan Banerjee
Mr. Piyush Chowdhury
Ms. Papiya Patra
Mr. Rishav Mazumder
Mr. Ahasnish Ghosh

For the respondents : Mr. Mohit Gupta
Mr. Arijit Chatterjee
Mr. Jit Roy
Mr. Jyotishman Sarkar
Mrs. Pramita Naskar
Mrs. Susmita Mukherjee

Heard on : 21.04.2025

Judgment on : 21.04.2025

Sabyasachi Bhattacharyya, J.:-

1. On consent of the parties and keeping in view the brief ambit of the appeal, the appeal and the application are taken up together for hearing.

2. The present challenge has been preferred against the rejection of the plaint filed by the appellant in his suit.
3. In the plaint, the plaintiff/appellant, *inter alia*, sought for a decree (erroneously mentioned as “order”) of permanent injunction against the defendants restraining the defendant nos. 2 to 4, the Directors of the defendant no.1-Company, and their men and agents from transferring any tenancy right in favour of any new tenant in respect of the property described in Schedule-“A” of the plaint.
4. Further, the plaintiff sought a decree of declaration that the defendants have no power or authority to induct any new tenant, as well as a declaration that the plaintiff is a shareholder and has access and authority to have accounting details over the suit premises described in the schedule of the plaint and is entitled to peacefully use, enjoy and occupy the suit premises without any interference by the defendants and their staff, for permanent injunction restraining the defendants, their staff etc. from interfering with the plaintiff’s right or peaceful user, enjoyment and occupation of the suit premises and for permanent injunction restraining the defendant nos. 2 to 4, the Directors of defendant no.1, from collecting rent of the Schedule “A” property.
5. Thus, apart from the miniscule relief regarding a declaration that the plaintiff is a “shareholder”, no other claim has been

made in the plaint vis-à-vis the defendant no.1-company, apart from all the reliefs revolving around the corporeal rights to the property mentioned in Schedule “A” of the plaint.

6. Learned counsel for the appellant argues that the learned Trial Judge erred in law in rejecting the plaint on the ground that the suit is not maintainable in view of Section 430 of the Companies Act, 2013 (hereinafter referred to as ‘the 2013 Act’), read in conjunction with Section 241 of the 2013 Act, since the reliefs sought primarily pertain to alleged mismanagement of the Company.
7. Learned counsel submits that the plaintiff seeks a declaration as to the plaintiff’s rights as a shareholder of the Company by virtue of the demise of the plaintiff’s mother, which relief is not covered under Section 241 of the 2013 Act.
8. It is further argued that unless and until the share of the plaintiff in the Company is declared, the plaintiff does not come within the purview of Section 241 and, as such, is not entitled to claim reliefs regarding mismanagement under the said provision.
9. As such, the bar of Section 430 is not applicable at all to the plaintiff.
10. Learned counsel cites a Division Bench judgment of this court in the matter of *Eastern Indian Motion Picture Association and others vs. Milan Bhowmik and others*^I, reported at *AIR 2024 Cal 108I*, in support of his contentions.

- 11.** It is further argued that in view of the corporeal rights sought in the property-in-question being related to the share-holding of the plaintiff in the defendant no.1-Company, which is essentially the primary relief sought in the suit, the learned trial Judge erred in law in rejecting the plaint at the threshold without deciding such issue.
- 12.** Learned counsel for the respondents places reliance on several provisions of the Companies Act, 2013, in particular Sections 56, 58 and 59 of the said Act, and submits that the remedy, in the event the plaintiff claims rights in the shares left on the demise of his mother, is to take out an application for inclusion of his name as a member of the Company under the aforesaid provisions.
- 13.** The said provisions, it is argued, provide for an unsuccessful applicant on such count adequate relief before the National Company Law Tribunal (NCLT) and as such, the learned trial Judge was justified in rejecting the plaint.
- 14.** Furthermore, the tenor of the plaint primarily pertains to alleged mismanagement of the affairs of the Company, thus, bringing the matter within the fold of Section 241.
- 15.** As such, the Companies Act itself bars a civil suit under Section 430 and the learned trial Judge was justified in rejecting the plaint on such count as well.

- 16.** Learned counsel for the respondents also submits that the provisions of Section 5(4) of the City Civil Court's Act, 1953, read in conjunction with Entry No. 10(i) of the First Schedule thereof, also debars such a suit pertaining to the Companies Act, 1913 (now the successor Act, that is, the Companies Act, 2013).
- 17.** Upon a perusal of the plaint pleadings and on hearing learned counsel for the parties, we find that the rights primarily claimed by the plaintiff in the suit pertain to an immovable property as described in the schedule of the property.
- 18.** Although the plaintiff has sought for a declaration that the plaintiff is a shareholder in respect of the defendant no.1-Company, no cause of action for such declaration has been disclosed in the plaint.
- 19.** In the event the plaintiff claims to be a right *in praesenti* as a shareholder, it was the incumbent duty of the plaintiff to apply in proper format under Section 56 of the 2013 Act and only upon the transfer/devolution of the rights in the concerned shares in favour of the plaintiff being recorded under Section 56 would a right accrue to the plaintiff to claim as a shareholder.
- 20.** In fact, as rightly argued by learned counsel for the respondents, a conjoint reading of Sections 56, 58 and 59 of the 2013 Act clearly confer power on the National Company Law Tribunal (NCLT) to adjudicate on an appeal against an action or inaction

by the concerned Company in respect of an application made for transfer of name pertaining to shares under Section 56 of the 2013 Act.

- 21.** That apart, the plinth of the plaint pleadings is that the Company and its Directors have been mismanaging the assets of the Company as comprised in the property described in the schedule to the plaint.
- 22.** However, as per the admission in the plaint itself, the plaintiff is yet to be declared as a shareholder of the Company and/or recorded as such. Even if the plaintiff were to be declared as a shareholder in the defendant no.1-Company, the position of law is well-settled that a shareholder of a company cannot claim any right, title or interest in the assets of the company.
- 23.** Thus, the plaint does not disclose any *locus standi* of the plaintiff vis-à-vis the reliefs sought and, consequentially, any cause of action for the plaintiff to seek any remedy regarding alleged mismanagement of the affairs of the Company and/or in respect of its assets.
- 24.** Even otherwise, the suit, as evident from the plaint itself, is bad within the purview of Order II Rule 2 of the Code of Civil Procedure, in view of misjoinder of causes of action, on the one hand in respect of his alleged shares in the company and the perceived mismanagement of its affairs and on the other, in respect of an immovable property without even disclosing clearly

whether such property is an asset of the defendant no.1-Company. The plaint joins separate and independent causes of action regarding the plaintiff's alleged shares in the defendant no.1-Company on the one hand and the alleged rights of the plaintiff in the immovable suit property on the other in a skewed manner, without the two having any identity of genesis.

- 25.** In the same breath, in paragraph no.3 of the plaint, the plaintiff seeks to be a shareholder of the Company and a partial owner of the immovable property described in the plaint.
- 26.** As rightly enumerated in the impugned judgment and deemed decree, the plaintiff does not disclose clearly in the plaint as to how he became such partial owner of the property.
- 27.** Thus, there is a palpable non-disclosure of the right of the plaintiff to the suit property, which forms an essential component of the bundle of facts which comprise of the cause of action for the suit.
- 28.** For a plaintiff to claim a remedy in a suit, the plaintiff has to essentially disclose a legal right to the subject property as well as an infringement of such right, both of which ingredients are absent from the plaint inasmuch as the immovable property is concerned, which is the only subject-matter of the suit as mentioned in the plaint schedule.

- 29.** That apart, the learned trial Judge also proceeded on the premise that if the plaintiff has an axe to grind regarding the alleged mismanagement of the affairs of the Company by inducting third party-tenants, the appropriate remedy would be under Section 241 of the 2013 Act.
- 30.** Thus, the plaint is bad in law and in its present form on several counts.
- 31.** First, the plaint is barred by law *ex facie* for misjoinder of causes of action, mixing up the causes pertaining to the immovable property and the shares in the defendant no.1-Company.
- 32.** Secondly, the plaint does not disclose any cause of action for the reliefs sought in respect of the immovable property or any foundational basis for claiming right in the said property.
- 33.** Thirdly, the declaration that the plaintiff is a shareholder (*in praesenti*) is not maintainable in view of the plaint pleadings disclosing precious nothing as to the transfer of any share of the defendant no.1-Company in the plaintiff's name having been recorded within the contemplation of Section 56 of the 2013 Act or even any application having been filed for such purpose.
- 34.** That apart, the reliefs sought with regard to the plaintiff being declared to be a shareholder/member of the defendant no.1-Company are available to be urged before the NCLT in the event an application to that effect made under the 2013 Act by the plaintiff was rejected by the Company.

- 35.** Nothing to that end has also been disclosed in the plaint, thereby denuding it of cause of action in respect of the claim of declaration regarding the shares as well.
- 36.** We further observe that the reliance of the plaintiff/appellant on the Division Bench judgment of this Court in the matter of *Eastern Indian Motion Picture Association (supra)* by the appellant is also misplaced, since in paragraph no.21 thereof, the coordinate Bench categorically observed that it did not find it necessary to go into the issue whether the dispute therein was covered by Section 241 of the 2013 Act. Thus, the said judgment cannot be said to be a binding precedent on the applicability of Section 241 in the facts of the present case.
- 37.** That apart, the said judgment was rendered in the particular factual matrix of the said case, which are not applicable to the present case.
- 38.** In such view of the matter, we do not find any reason to interfere with the impugned judgment and deemed decree, both on the basis of the observations arrived at by the learned trial Judge and the additional reasons supplied by us above.
- 39.** Since the conclusion in the impugned decree is justified in law, we are not inclined to interfere in the present appeal.
- 40.** Accordingly, F.A. 179 of 2025 is dismissed on contest without any order as to costs, thereby affirming the impugned judgment and deemed decree dated January 20, 2025 passed by the

learned Judge, Third Bench, City Civil Court at Calcutta in Title Suit No. 1923 of 2022.

- 41.** Needless to say, neither this court nor the court of first instance have decided the issues involved in the suit conclusively upon a full-fledged trial but have rejected the plaint on the yardsticks of Order VII Rule 11 of the Code of Civil Procedure.
- 42.** There will be no order as to costs.
- 43.** A formal decree be drawn up accordingly.
- 44.** CAN 1 of 2025 is, accordingly, disposed of as well.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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