

Ram Autar Jalan vs Coal Products P. Ltd. on 20 December, 1968

Equivalent citations: [1970]40COMPCAS715(SC)

Bench: J.M. Shelat, C.A. Vaidialingam

JUDGMENT

Vaidialingam, J.

1. These appeals, by the defendant in the suit concerned, arise by special leave, out of the orders passed by the Division Bench of the Calcutta High Court dated March 1, 1968, and March 25, 1968, respectively. Civil Appeal No. 1412 of 1968 is directed against the order of the Division Bench in Appeal No. 196 of 1967. Civil Appeal No. 1413 of 1968 is directed against the order of the said Division Bench refusing to grant a certificate for leave to appeal to this court against the decision in Appeal No. 196 of 1967. The High Court refused to grant the certificate on the ground that the order dated March 1, 1968, in Appeal No. 196 of 1967 is not a final order and hence the party is not entitled to the grant of a certificate.

2. The short facts leading up to Civil Appeal No. 1412 of 1968 may be stated. The respondent-company was incorporated in or about August 25, 1945, under the Indian Companies Act, 1913. The registered office of the company is at Victory Colliery, in West Bengal. The authorised capital of the company is Rs. 20,00,000 divided into 2,00,000 ordinary shares of Rs. 10 each, of which Rs. 15,10,000 is stated to have been fully paid and subscribed. The company owned four collieries, compendiously known as Victory Collieries. About September 2, 1945, Kishorilal was appointed managing agent but from about December 26, 1950, the company ceased to appoint managing agents. Thereafter, Kishorilal was appointed the managing director of the company. On or about March 1, 1952, Jagan Mohan Goenka, brother of Kishorilal, ceased to be a director and also a shareholder as he had transferred his shares. When Jagan Mohan Goenka ceased to be a director, his wife, Bhagwati Debi, became a director. In or about 1952 the management of the collieries was divided between two groups, which, for the sake of convenience, may be called the G. L. group and the M. J. group. Since about October, 1953, the Jagan Mohan group has been in the management of the G. L. group and Kishorilal's group has been in management of the M. J. group. We have already mentioned that Bhagwati Debi is the wife of Jagan Mohan Goenka. They have two sons, Uma Shankar Goenka and Hari Shankar Goenka. Kishori Lal's wife is Parameshwari Debi and their two sons are Shiv Rattan Goenka and Nav Rattan Goenka. On June 20, 1966, Hari Shankar Goenka filed an application for winding up of the company and an interlocutory order was made by Mitra J. on June 27, 1966.

3. The learned judge had directed by that order that " the account in the Bank of India shall be operated by Kishorilal Goenka and Nav Rattan Goenka as it is being done now; the account in the

United Commercial Bank Ltd. shall be operated by Ram Autar Jalan in the same manner as it is now being done ". Ram Autar Jalan, mentioned in this order, it may be stated, is the appellant before us. The respondent, on coming to know that the appellant was acting as a director of the company, asked for information, on or about June 28, 1966, from the United Commercial Bank as to how Ram Autar Jalan was operating the bank account on behalf of the company. The bank, by its letter dated September 12, 1966, ultimately furnished to the respondent a copy of an extract of the resolution of the company dated August 31, 1964, which had been furnished to them and on the basis of which Ram Autar Jalan was operating the bank accounts.

4. The respondent herein instituted, on the Original side of the High Court of Calcutta, on September 12, 1966, Suit No. 1871 of 1966. The defendant to the action is Ram Autar Jalan, the appellant before us. The respondent-company, after setting out the particulars about the incorporation of the company, its authorised capital, etc., referred to certified copies of the returns filed by the company with the Registrar of Joint Stock Companies, West Bengal, from which the names of the shareholders and the names and particulars of the directors of the company will appear. According to the plaintiff, since the last return filed by it before the Registrar of Joint Stock Companies, there has been no change in the board of directors which comprised of Kishorilal Goenka, Parameshwari Debi Goenka, Nav Rattan Goenka, Bhagwati Debi and Sunil Kumar Ganguli. The plaintiff further stated that the defendant, Ram Autar Jalan, was wrongfully claiming to be a director of the company and was professing to act as such since August 31, 1964. The plaintiff further averred that the defendant was neither appointed as a director in any meeting of the company, nor co-opted as a director of the company and the claim of the defendant came to be known by the plaintiff only in or about August-September, 1966. It was further stated by the plaintiff that Article 104 of the articles of association of the company deals with the qualifications of a director. It is the plaintiff's case that the defendant did not hold, on August 31, 1964, any shares in the company, nor has the defendant obtained any shares till the date of the suit. Therefore, it was averred that even if the defendant had been appointed as a director on August 31, 1954, as claimed by him, inasmuch as he had not acquired the qualification shares within two months, the defendant should be treated as having vacated the office of a director. The plaintiff further alleged that the defendant had been wrongfully and without any authority purporting to act as the director of the company and had been wrongfully dealing with the funds and interfering with the management of the plaintiff by opening bank accounts in the name of the company and operating the same, which acts, according to the plaintiff, were detrimental and prejudicial to the interests of the plaintiff. The plaintiff ultimately sought in the suit reliefs by way of perpetual injunction against the defendant restraining him from acting as director and from operating bank accounts or dealing with the funds of the company or using the seal or otherwise interfering with the management of the plaintiff-company.

5. On the same day, the plaintiff filed an application in the suit asking for an injunction restraining the appellant from, in any manner, operating the current account in the name of Coal Products Private Ltd. in the United Commercial Bank Ltd., Burrabazaar Branch, Calcutta, and also for an injunction restraining him from acting as a director and dealing with the funds of, or using the seal or otherwise interfering in the management of the company, till the disposal of the suit and also for other reliefs. It may be stated here that the plaintiff was the company, Coal Products (P) Ltd., and

the plaint was verified by Basudev Jhajharia, the manager and as such the principal officer of the company.

6. The defendant opposed the application for injunction on various grounds by his counter-affidavit dated July 19, 1966. The grounds of opposition were as follows : Basudev Jhajharia is not the manager nor the principal officer of the company and, as such, he is not entitled to institute the suit. Only directors have power under Article 131(9) of the articles of association to institute legal proceedings on behalf of the company and the directors have no power to delegate their authority. The directors of the company are Kishorilal Goenka, Parameshwari Debi Goenka, Bhagwati Debi Goenka and Ram Autar Jalan (defendant). The defendant held 1,000 shares at the material time. In or about 1963, Kishorilal Goenka arbitrarily divided the collieries of the company into two groups, viz., the G. L. Group and the M. J. Group. The management of the M. J. Group was directly controlled by Kishorilal and the G. L. Group was being controlled by the defendant under the instructions of Kishorilal. Kishorilal Goenka, in order to facilitate the grouping of the collieries, suggested that the defendant should be a director of the company and that 1,000 shares out of the shares held by the defendant's sister, Bhagwati Debi, were to be transferred in the name of the defendant. Accordingly, 1,000 fully paid up shares of Rs. 10 each, bearing numbers 48001 to 49000, covered by Certificate No. 5, were transferred by Bhagwati Debi to the defendant on October 30, 1963. At the board meeting held on August 31, 1964, Bhagwati Debi transferred the said shares in the name of the defendant by a deed of transfer dated October 30, 1963. Certificate No. 5, together with the deed of transfer duly executed in favour of the defendant by Bhagwati Debi and signed by him were lodged by the defendant with the plaintiff company for necessary transfer being effected in his name. Kishorilal Goenka, the managing director, informed the defendant that the transfer of the shares in his name had been effected in the books of the company and that the share certificate would be forwarded in due course; but the defendant had not received from the company the said certificate in spite of the promise made by the managing director. The defendant has been and continues to be a shareholder of the company, holding 1,000 fully paid up shares since October 30, 1963. Prior to August 31, 1964, one Sunil Kumar Ganguli was a director of the company holding 500 equity shares of Rs. 10 each. Sunil Kumar Ganguli, to the knowledge of Kishorilal, transferred, by a deed dated August 31, 1964, his shares in favour of Bhagwati Debi Goenka and upon such transfer he ceased to be a member and, consequently, a director of the company. At the meeting of the board held on August 31, 1964, the defendant was appointed a director in place of the said Sunil Kumar Ganguli and since that date he has been a director and acting as such, to the knowledge of Kishorilal. On August 31, 1964, another resolution was passed authorising the opening of the current account in the United Commercial Bank Ltd., empowering the defendant and Bhagwati Debi to operate the said account, singly and severally. On September 2, 1964, the Chief Inspector of Mines, Dhanbad, was informed about the defendant having been appointed as a director in the place of Sunil Kumar Ganguli on August 31, 1964. The nominated owner, under Section 76 of the Mines Act, for G. L. group was also intimated to be the defendant. On September 12, 1964, the Registrar of Joint Stock Companies, West Bengal, was intimated about the appointment of the defendant as director on August 31, 1964. The United Commercial Bank Ltd. was furnished, on September 28, 1964, with a certified copy of the resolution dated August 31, 1964, appointing the defendant as a director of the company and also authorising the opening of an account in the said bank in the name of the company and further authorising the defendant and Bhagwati Debi, directors of the company, to

operate the said account, singly and severally. On September 29, 1964, a lease deed was executed by the defendant, as director on behalf of the company in favour of the Coal Mines Labour Housing Board. A further communication was sent on December 19, 1964, by the defendant, as a director of the company, to the Chief Inspector of Mines, in respect of which certain information was asked for from the M.J. group colliery, which was under the control of Kishorilal. The sending of the said communication, by the Chief Inspector of Mines, to the M.J. group credits Kishorilal with knowledge of the defendant functioning as a director of the company. The defendant being a shareholder and a lawfully elected director of the company, cannot be restrained by any injunction, as asked for by the plaintiff.

7. From the stand taken by the defendant it is clear that he (i) claims to have 1,000 shares transferred by Bhagwati Debi in his favour by a transfer deed on October 30, 1963, and that he lodged the same with the company for effecting the necessary changes in its registers; (ii) that Sunil Kumar Ganguli, who was a shareholder and director till August 31, 1964, transferred on that date his entire holding of 500 shares in favour of the defendant's sister, Bhagwati Debi, and, as such, S.K. Ganguli ceased to be a director; (iii) that at the board meeting held on August 31, 1964, the defendant was appointed as director in the place of Ganguli; and (iv) that the various communications referred to by him will establish that he has been acting as a director from August 31, 1964.

8. From the facts stated above it is evident that the question that arose for consideration before the learned trial judge was whether the plaintiff, to entitle it to get an order of interim injunction, has prima facie established that the defendant did not have the necessary share qualification on August 31, 1964, to make him eligible for directorship and that the defendant, in law, had no right to function as a director. A consideration of this question will also involve the subsidiary aspect, namely, whether Sunil Kumar Ganguli ceased to be a director on August 31, 1964, because it is the claim of the defendant that it was in the place of Sunil Kumar Ganguli that he was elected as a director.

9. Before we refer to the orders of the learned trial judge and the Division Bench on appeal, it is necessary to note that the parties appear to have fallen apart and are fighting several litigations. On June 20, 1966, Harishankar Goenka, son of Bhagwati Debi, filed Company Petition No. 147 of 1966 for winding up the plaintiff-company. Harishankar filed Company Application No. 164 of 1966 for the appointment of a provisional liquidator and for other reliefs, in the said company petition. On June 20, 1966, the company judge had appointed the official liquidator as the special officer of the company. On June 27, 1966, the company judge gave certain further directions in which it is stated " that the account in the Bank of India shall be operated by Kishorilal and Nav Rattan Goenka as it is being done now ; the account in the United Commercial Bank shall be operated by Ram Autar Jalan in the same manner as it is now being done ".

10. The said Harishankar Goenka has instituted Suit No. 1272 of 1966 in the Calcutta High Court challenging the issue of new shares by Kishorilal in his name and in the names of his wife and son, Nav Rattan Goenka. He has also obtained an order of injunction of June 27, 1966, restraining Kishorilal, Parameshwari Debi and Nav Rattan Goenka from exercising any rights or powers in

respect of the new shares so issued.

11. On September 10, 1966, the appellant before us instituted in the City Civil Court, Calcutta, Title Suit No. 573 of 1966 for an injunction restraining the company and its directors, including Kishorilal, from conducting the board meeting scheduled to take place on September 12, 1966. His claim was that, though he was a director of the company, no notice had been given of the board meeting for September 12, 1966, and he came to know about the meeting from his sister, Bhagwati Debi, who received a notice on September 9, 1966.

12. The fourth suit is the present suit, filed by the company on September 12, 1966.

13. On November 21, 1966, the present appellant instituted Suit No. 2304 of 1966 in the Calcutta High Court against the company, Kishorilal and Bhagwati Debi for a declaration that he is the holder of a thousand ordinary (equity) shares of the company, represented by Certificate No. 5 relating to share numbers 48001 to 49000 and that he is a director of the company since August 31, 1964. In the suit he further asked for rectification of the share register of the company by including his name as a shareholder of the company. He further claims an injunction restraining the company and Kishorilal from interfering with his right to act as a director and shareholder of the company and also asks for damages.

14. Another suit has also been brought to our notice, and that is Suit No. 2103 of 1968 filed by Bhagwati Debi in the High Court, against the company and its directors. She also appears to have obtained some interim orders on August 14, 1968.

15. In support of their claim for injunction, the plaintiff produced before the learned trial judge the registers of the company to establish that the defendant was not a shareholder and that he has never been appointed a director. They also produced materials to show that Sunil Kumar Ganguli who, according to the defendant, had ceased to be a director with effect from August 31, 1964, continued to be a director of the company. The minutes of the board meeting dated October 30, 1963, produced by the plaintiff showed that the said meeting was attended by Kishorilal Goenka, Bhagwati Debi and Parameshwari Debi. At that meeting in the place of one Hari Shankar Mahesheka, the board co-opted Sunil Kumar Ganguli as a director of the company and he was authorised to operate the bank account with the Bank of India Ltd. At the board meeting on August 31, 1964, the directors who were present were Kishorilal Goenka, Bhagwati Debi, Parameshwari Debi and Sunil Kumar Ganguli. The board, by resolution of that date, authorised the opening of a bank account with the United Commercial Bank Ltd., Burrahbazaar Branch, Calcutta, and authorised Bhagwati Debi, director, to operate the account singly. The plaintiff also produced copy of the letter addressed by it on June 28, 1966, to the United Commercial Bank asking for information as to how a bank account was opened in the name of the company and how it was being operated by the defendant. Though the bank appears 'to have declined to give this information, later on, by its letter dated September 12, 1966, the bank furnished the plaintiff with a copy of the resolution which had been furnished to it at the time of opening of the account. That copy of the resolution appears to have been certified by the defendant. It is on the basis of all these materials that the plaintiff urged that the defendant is not a shareholder, that he has not been appointed a director and that he has no right to act as such.

16. The learned trial judge was not prepared, at this stage, to accept the contention of the defendant regarding the competency of the suit, as that question will have to be decided at the trial. In this connection, the learned judge adverted to the fact that no application had been filed by the defendant to strike out the suit on the ground that the suit, as instituted, was not competent. Regarding the contention of the plaintiff that the defendant had not acquired and did not possess the necessary share qualification, the learned judge disposed of it by stating that it was a question of fact. The learned judge referred to the allegations made by the defendant charging Kishorilal with various fraudulent acts, including tampering with the books of the company. While accepting the fact that the register of shareholders of the company, produced by the plaintiff, is undoubtedly prima facie evidence of matters directed or authorised to be stated therein under Section 164 of the Companies Act, the learned judge stated that he did not consider it proper to rely entirely on that prima facie evidence in this case and to act on the same. The learned judge then proceeded to consider the de facto claim made by the defendant of having acted as a director from 1964 and held that it was very improbable that Kishorilal would not have known about this till 1966, as claimed by him.

17. The learned judge then refers to the order of Mitra J. passed on June 27, 1966, in the company petition, authorising the defendant to operate the account in the United Commercial Bank and takes the view that if an order is passed restraining the defendant from functioning as a director, such an order will come into conflict with the order of Mitra J. dated June 27, 1966. The learned judge further proceeds to state that as the defendant has been functioning as a director from August 31, 1964, the balance of convenience is for permitting him to continue as such.

18. The learned judge, so far as we can see, has neither adverted to nor considered the question as to whether the plaintiff has prima facie established that in law the defendant was not entitled to function as a director for the reasons stated by them. It is more or less on the reasoning set out above that the learned trial judge dismissed the application filed by the plaintiff.

19. On appeal, the Division Bench has not agreed with the decision of the learned trial judge. The learned judges refer to the order of Mitra J, dated June 27, 1966, and advert to the fact that because of this order the plaintiff has confined the relief of injunction only to restraining the defendant from acting as a director. The learned judges consider the claim made by the defendant about his having become a shareholder and appointed as a director and also the case of the plaintiff that such a claim cannot be recognised in view of the articles of association and the registers of the company produced by it.

20. The learned judges are of the view that as the plaintiff has impeached the appointment and authority of the defendant, the plaintiff will have to make out prima facie that those allegations are justified, so as to entitle them to get an order of injunction. The learned judges, after a fairly elaborate consideration of the relevant articles of association and the provisions of the Companies Act, and the documents produced by the company are satisfied that the plaintiff has made out a case that the defendant is not a shareholder of the company and that he has not been appointed as director. In support of this conclusion the learned judges rely upon the minutes, dated August 31, 1964, produced by the company wherein there is no resolution appointing the defendant as a

director. The learned judges also accept the case of the plaintiff that Ganguli continued to be a director of the company even as late as June 30, 1965. For this purpose the learned judges rely on the returns filed by the plaintiff before the Registrar of Joint Stock Companies on June 30, 1965. The learned judges also refer to the return, dated April 4, 1966 regarding the appointment of Nav Rattan Goenka as a director on December 28, 1965, and this return was signed by Sunil Kumar Ganguli, as a director. Therefore, the learned judges reject the claim of the defendant that Sunil Kumar Ganguli ceased to be a director with effect from August 31, 1964, and that he has been appointed as director in the place of Sunil Kumar Ganguli. The learned judges are also of the view that there is no delay in the institution of the suit as the plaintiff knew about the defendant claiming rights as a director only as per the letter dated September 12, 1966, of the United Commercial Bank.

21. The letter dated December 19, 1964, to the Chief Inspector of Mines, sent by the defendant and which, according to him, had been sent to Kishorilal Goenka has been adverted to by the learned judges and they are of the view that the copy of the letter sent by the Chief Inspector to Kishorilal does not refer to the defendant as a director of the company. The learned judges also refer to the fact that Bhagwati Debi has not filed any supporting affidavit to establish about the resolution of August 31, 1964, regarding the appointment of the defendant as a director. They also refer to the fact that the defendant himself has not given any particulars as to how exactly he lodged the transfer deed stated to have been executed in his favour by Bhagwati Debi in October, 1963. The learned judges are also of the view that if the defendant had really got a transfer of shares, as claimed by him, on October 30, 1963, he would have taken early steps to have the necessary changes effected in the books of the company and he would not have waited, as he has done, till November, 1966, for obtaining relief for rectification of the share register. Having due regard to the order of Mitra J., dated June 27, 1966, the learned judges have granted an order of interim injunction in terms of prayer (g) with the modification that the defendant will be at liberty to operate the banking accounts in terms of the order dated June 27, 1966. The learned judges have also made it clear that the order of injunction will not prevent the defendant from acting as agent or authorised attorney of Bhagwati Debi if she wants to appoint the defendant as agent or authorised attorney on her behalf. That is, the defendant has been restrained from functioning as a director of the company.

22. Mr. Sarjoo Prasad, learned counsel for the defendant-appellant, urged that the appellate court was not justified in reversing the order of the learned trial judge. Counsel urged that instead of considering whether the plaintiff had made out a prima facie case for the grant of an interim injunction, the entire burden had been cast on the defendant. The learned counsel also commented upon the fact that Kishorilal or any other director of the company had not come forward to controvert the allegations made by the defendant. He also urged that from 1964 the appellant had been functioning as a director as the various communications relied on by him would clearly show. These aspects have not been properly dealt with by the appellate court.

23. Mr. Daphtary, learned counsel appearing for the company, has drawn our attention to the fact that the appellate court has made a very correct approach in considering whether the plaintiff has made out a prima facie case for the grant of injunction and it is from that point of view that the various items of materials placed before the court, by both parties, have been considered and a conclusion arrived at that the defendant must be restrained from functioning as a director.

24. We are not inclined to accept the contentions of Mr. Sarjoo Prasad. The learned trial judge has not directly considered the question, having due regard to the share registers and other documents produced by the company, whether the plaintiff cannot be considered to have prima facie established that the defendant is not a shareholder of the company and that he has not been validly appointed as a director of the company. When the whole question was whether the defendant was in law entitled to function as a director, the learned trial judge, instead of considering this important aspect, has given more weight to the fact that the defendant has been de facto functioning as a director. The learned trial judge was not also justified in brushing aside the share registers and other minutes books produced by the plaintiff to establish that the defendant was neither a shareholder nor had he been appointed a director. We are not able to appreciate the reasoning of the learned trial judge. The learned trial judge has been very much influenced by the order of Mitra J., dated June 27, 1966, and, according to the learned judge, this order practically recognises the defendant as a director. A close reading of the entire proceedings before the company court, which have been placed before us, will show that the order of Mitra J. has been passed without prejudice to the rights of the parties. In fact even the plaintiff restricted the relief for injunction under Clause (g) to the defendant being not allowed to act as a director because of the fact that he has been allowed to operate the bank account under the orders dated June 27, 1966. When once from the records produced by the company it is evident prima facie at this stage that the defendant is not shown as a shareholder and that he has not been appointed a director, as claimed by him, and that Sunil Kumar Ganguli did not cease to be a director from August 31, 1964, in our opinion, the appellate court was perfectly justified in granting the injunction restraining the defendant from functioning as a director. The appellate court was also perfectly justified in drawing an adverse inference against the defendant about his having become a shareholder, having due regard to the fact that he had instituted a suit for rectification of the share register only as late as November 21, 1966, though he claimed to have obtained a transfer of shares as early as October 30, 1963. His plea that he delivered the transfer deed to Kishorilal Goenka and that the latter assured him that the necessary changes had been effected in the registers of the company, are all matters to be investigated in the trial of the suit.

25. We are in entire agreement with the conclusions arrived at, at this stage, by the appellate Bench as we are satisfied that a correct approach has been made by it for considering the matters arising at the interlocutory stage of the proceedings. The result is Civil Appeal No. 1412 of 1968 fails, and is dismissed with costs. As the merits have been gone into by us in Civil Appeal No. 1412 of 1968, the other appeal, C.A. No. 1413 of 1968, becomes unnecessary and that appeal is dismissed. We make it clear that we express no opinion on the order of the High Court, dated March 25, 1968, out of which C.A. No. 1413 of 1968 arises. There will be no order as to costs in C.A. No. 1413 of 1968.