

T.G. Jog vs Sri Ram Sarup And Ors. on 7 May, 1954

Equivalent citations: AIR1955ALL31, AIR 1955 ALLAHABAD 31

Author: V. Bhargava

Bench: V. Bhargava

ORDER

1. These two civil revisions under S. 115, Civil P. C., are against two orders passed by the First Civil Judge of Kanpur on 16-4-1952, in a suit pending in his Court. The suit was filed on 24-8-1950, by Ram Sarup Bhartiya and Anandi Lal Bhartiya against the Kanpur Muir Mills Company, Ltd., Indian Textile Syndicate, Ltd., and 13 others. The reliefs claimed in the plaint are as follows:

(1) For a declaration that the special resolutions 1 and 2 passed on 20-10-1947, appointing defendant 2 as Managing Agents and amending the Articles of Association of the Company are void and inoperative.

(2) For a declaration that the appointment of defendant 2 as Managing Agents is void, inoperative and not binding on the company and on its shareholders.

(3) For a declaration that the appointment of defendant 13 Cotton Textile Corporation, Ltd., and thereafter of the Kanpur Agencies, Ltd., defendant 15 as the Selling Agents is void, inoperative and not binding on the company and on its shareholders.

(4) For a declaration that the appointment of Textile Distributors, Ltd., as distributors of the company's products, is void, inoperative and not binding on the company and its share-holders.

(5) For a declaration that, in any case, the present Article 99 does not debar or disentitle a shareholder from casting one vote for each share held by him on a poll.

(6) For an injunction restraining the company and the defendants from giving effect to and acting on the above special resolutions.

(7) For an injunction restraining defendant 2 from acting as Managing Agents of the company.

(8) For an injunction restraining defendants 13 and 15 from acting as Selling Agents of the company.

(9) For an injunction restraining defendant 14 from acting as distributors of the company's products.

(10) For an injunction restraining defendants 3, 4, 7, 8, 9, 10 from taking any step to act as such Board of Directors or from passing any resolution as such Board of Directors for issue of any such debentures by or on behalf of the company.

(11) For a declaration that the defendants Nos. 3, 4, 7, 8, 9 and 10 do not constitute a valid and proper Board of Directors of the Company.

(12) For appointment of a Receiver or a Manager or a Committee of Management.

(13) For account of such profits as have been made by defendants by using the position and offices referred to above and for a decree for Rs. 5,000/- or for such sums as may be found due to the company from the defendants.

(14) For costs of the suit.

(15) For such other relief or reliefs as may be deemed fit and proper.

2. The plaintiffs are the share-holders in the Muir Mills Company Ltd., Kanpur, defendant 1 and on 24-8-1950, they filed an application that they were filing the suit on behalf of themselves as also on behalf of other share-holders of the said company, except those who had been arrayed as defendants in the case. Since the number of shareholders of the Kanpur Muir Mills Company, Ltd., was very large and aggregated several hundreds and it was not possible to implead all of them either as plaintiffs or as defendants, the plaintiffs prayed for permission under Order 1, Rule 8, of Civil P. C., to institute this suit in a representative capacity on behalf of share-holders other than the share-holders who had been impleaded as defendants.

Information regarding this suit was published in the Statesman, and in other newspapers, such as, the Citizen of Kanpur, the Amrit Bazar Patrika, the Hindustan Times, Kanpur Edition, the Pratap, the Jagran and the Vir Bharat. These publications were made in August and September, 1950. An application was filed by Shri T. G. Jog and Shri Subhkaran, who held ordinary shares in the Muir Mills Company, Ltd., Kanpur, on 31-1-1951, and another application was filed by 51 share-holders of the mill on 2-2-1951.

In the first application filed by Shri T. G. Jog and Shri Subhkaran, it was claimed that the plaintiffs had not asked for all the reliefs that could be asked and that not only certain resolutions passed on 20-10-1947, were bad but the resolutions passed earlier on 26-5-1947, were also invalid. Shri T. G. Jog and Shri Subhkaran, therefore, wanted to be added as co-plaintiffs and they also wanted that certain further reliefs should be asked for by amendment of the plaint.

In the other application filed on behalf of 51 share-holders, it was pleaded that they may be impleaded as defendants since they had acquired shares in the company after 20-10-1947, and they

were not prepared to challenge the resolutions of that date. They claimed that the plaintiffs did not represent their interest.

3. It is not necessary for us, in this case, to go into the facts in greater detail. We may, however, briefly mention that, on 26-5-1947, Articles 4 and 161 of the Articles of Association were amended and preference share-holders were placed on a footing of equality with the ordinary share-holders in the matter of payment of dividends. On 20-10-1947 certain other amendments were made in the Articles of Association and Article 161 was re-numbered as 166 and a new set of Articles were adopted though most of them were similar to the old ones.

We may also briefly indicate that the plaintiffs have challenged the amendments made on 20-10-1947, while Shri T. G. Jog and Shri Subhkaran have claimed that they want to go beyond the reliefs asked for by the plaintiffs and have challenged the amendments made on 26-5-1947, placing the preference share-holders on the same footing as the ordinary share-holders in the matter of participation in the division of dividends. We have already indicated that the other 51 share-holders claim that since they had acquired their shares after 20-10-1947, it was not to their interest to challenge those resolutions. This position has been accepted by the learned Civil Judge. Dealing with the application of Shri T. G. Jog and Shri Subhkaran, the learned Judge has remarked:

"It is clear that the plaintiffs and the present applicants do not have the same interest in the present suit. The applicants want to introduce allegations and reliefs which are diametrically opposed to the allegations and the reliefs of the plaint and which are really aimed against the plaintiffs rather than against the defendants. It is thus clear that the applicants are not at all interested in obtaining the reliefs sought in the plaint, but they are interested in getting other reliefs in which the plaintiffs are not interested. The reliefs claimed in the plaint and the reliefs sought to be added by the applicants are really aimed at each other. The addition of the reliefs proposed by the applicants would change the nature of this suit and would start a dispute amongst the share-holders."

Dealing with the other application, the learned Civil Judge has said:

"The applicants Hira Lal Sootwala and fifty others do not assert in their application that the suit has been instituted for their benefit, but they alleged on the other hand that the plaintiffs are not entitled to get the proceedings of the general meeting of the Company held on 20-10-1947, set aside to the detriment of the applicants amongst others and that the applicants became shareholders of the Company after the said date in the belief that the acts of the Company on that date were valid and proper."

4. In spite of these findings, the learned Judge dismissed the applications on the ground that there were no allegations that the plaintiffs were not prosecuting the suit diligently. The result, however, of thy decision of the lower Court is that though the lower Court has held that the plaintiffs' interest is not identical with the interest of the applicants, the plaintiffs have been allowed to represent them and obtain a decree which either they do not want or which is different from what they want. In the

circumstances, we consider that it would have been proper for the lower Court to implead the applicants as defendants to the suit.

On behalf of the applicants, Shri T. G. Jog and Shri Subh Karan, the learned Advocate General has pleaded that the applicants should have been impleaded "as co-plaintiffs and Shri S. N. Katju on behalf of the Muir Mills Company, Ltd., Kanpur, has urged that the plaint should have been allowed to be amended as otherwise it might lead to multiplicity of suits.

5. It is, however, not possible to impose on the plaintiffs a person who claims that his interests are adverse to those of the plaintiffs and to force the plaintiffs to amend their plaint and claim a relief which they do not want. All that we can do in the circumstances of the case is to make it clear that the plaintiffs do not represent these objecting share-holders who should be impleaded as defendants. In the plaint, it is mentioned that the suit is on behalf of all the share-holders, except defendants 2 to 15. It is necessary to indicate that the suit is not only not on behalf of defendants 2 to 15 but also not on behalf of Shri T. G. Jog and Shri Subhkaran and Shri Hira Lal Sootwala and 50 others who have made the other application.

6. The above order proposed by us is in line with the course adopted by the Courts in England in such circumstances. In -- 'Wilson v. Church', (1878) 9 Ch D 552 (A), Jessel, M. R., observed:

"As regards the latter claim, inasmuch as Order 14, Rule 9, requires that there shall be 'numerous parties' where one defends on behalf of others, and as he has not proved that there is anybody who dissents but himself, it is quite clear that I cannot make him a party in a representative way, and he cannot be a representative without a constituency. That is not the modern practice of legislation or pleading; but it does not at all follow that he is not entitled to be made a party. He has an interest even as an individual. He says, in effect, 'my rights will be affected', and they certainly will, if judgment is given in favour of the plaintiffs, 'and I insist that I should be here to dispute the contention of the plaintiffs'. I think that is too plain for argument."

His Lordship, after this observation, directed that the applicant should be impleaded as a defendant. In -- 'Fraser v. Cooper', (1882) 21 Ch D 718 (B), the plaintiff, a bondholder of a railway company, sued on behalf of himself and all the bondholders of the company other than defendant B but did not obtain an order under Order 16, Rule 9, that B should be should as representing all bondholders who dissented from the plaintiff's claim, One of the bondholders took out a summons whereby he stated that neither the plaintiff nor the defendant B properly represented the interest of himself and certain other bondholders, and applied to be made a defendant. The learned Judge held that the proper order would be to direct that the applicant be made a defendant.

7. Since it is necessary that all the share-holders, who want to be represented in the case, be parties before the court, we direct that Shri T. G. Jog and Shri Subhkaran be impleaded as defendants to the suit.

8. In the other application filed by Hira Lal Sootwala and 50 others, who all claim to have the same interest, an order impleading them all will result in unnecessary delay. It will be enough if these 51 persons are represented by one or two of their number who may be impleaded under Order 1, Rule 8 of the Code as representing others. It will be for the lower Court to decide which of these applicants out of 51, not exceeding two, shall represent that body.

9. Counsel have complained to us that there has been some delay in the conduct of this case. We are informed that though the suit was instituted on 24-8-1950, it has not made much progress. It appears to us, therefore, to be necessary that we should give some directions to the lower Court so that the hearing of the suit may not be unnecessarily delayed. The record, we understand, has been summoned to this Court. It shall be sent down to the lower Court as early as possible. On receipt of the record, the lower Court will grant reasonable time to Shri T. G. Jog and Shri Shubhkaran to file their written statement and, after the learned Judge has decided as to who should be brought on the record out of the 51 applicants (Hira Lal Sootwala and others), he shall grant them reasonable time to file their written statement.

The learned Judge will not grant unnecessary adjournments nor should he allow parties to delay the proceedings. It is necessary that he should be in a position to finish this suit as early as possible. If the other defendants want to file supplementary written statements, they may also be given reasonable time for that purpose. After the written statements have been filed, the learned Judge will fix an early date for filing all papers and framing of issues. After that, an early date should be fixed for the hearing of the suit which should proceed from day to day. Shri Pathak has prayed that a Special Judge be appointed for the trial of the case. We consider that it is a fit case where if possible a Special Judge may be appointed to hear the case after it is ready.

10. We do not think it necessary to make any orders as to costs.

11. The stay order is discharged.