

Rajasthan High Court

Dr. G.S. Bali vs Babulal Jain And Anr. on 7 February, 2000

Equivalent citations: 2000 (2) WLC 463, 2000 (2) WLN 13

Author: A Madan

Bench: A Madan

JUDGMENT Arun Madan, J.

1. This revision petition has been preferred against the order dated 9.4.1996 passed by learned ADJ No. 3. Jaipur City, Jaipur in CMA No. 29/95 against the order dated 2.3.1995 passed by Civil Judge (Junior Division) Jaipur City (East) Jaipur in Case No. 304/94 by which the said court dismissed the appeal of the petitioner.

2. The facts which are relevant for deciding the controversy between the parties briefly stated are that the petitioner is a retired Lt. Colonel from the armed forces and after his retirement in the year 1982, he established a Tannery in the name and style of Excusite Enterprizes in Faridabad (Haryana) as a partnership concern. In August 1992, the petitioner was introduced to respondent No. 1 who is NRI. The latter had approached the petitioner for technical and administrative help to re-start the sick industry namely: Rajasthan State Tannery Tonk Pvt. Ltd. at Tonk. He also asked the petitioner to join his company as above. The petitioner accepted this offer and was allocated 35% shares on 6.9.1992 and he was also made one of the Directors of the said company. There was one more Director namely Major Vijay Bhatnagar since expired, his widow Mrs. Asha Bhatnagar respondent No. 2 has been made Director without any shares.

3. The Rajasthan State Tannery Pvt. Ltd. Tonk which was a State Government Enterprise and was established in 1973, was never run properly. Its paid up capital and reserves, etc. were Rs. 1,79,00,000/-, while upto 1985 it had suffered a total loss of Rs. 3,19,000/- and it was closed in 1985. The State Govt. tried to hand over this industry to a private sector, but it could not be given. In 1992, respondent No. 1 offered to take this industry from the State Govt. on the following basis:

1. IDBI DUES-Rs. 88 lacs to be paid TTPL in 14 half yearly installments, with interest @ 15% from the start up of production with one year moratorium.

2. Bank of Baroda-Rs. 75 lacs to be paid as above.

3. Other Creditors-Other creditors including Government of Rajasthan and labour etc. Rs. 30.15 lacs.

4. In pursuance of the aforestated proposal, the State Govt. issued a letter of intent through its Department of Public Enterprize in August, 1992 containing the following conditions:

(A) Government agrees to transfer the entire share holding of Rajasthan State Tanneries Ltd. of the face value of Rs. 194.16 lacs at a token consideration of Rs. 1000/- in favour your newly formed Company M/s. Tonk Tanneries Pvt. Ltd. (TTPL) on their terms and conditions are set out below:

(a) an agreement to transfer shall be entered between the State Government, Rajasthan State Tanneries Ltd. and M/s. Tonk Tanneries Pvt. Ltd. for the implementation within a period of 90 days of the date of agreement.

(b) a security of Rs. 5 lacs (inclusive of Rs. 50,000/- already received the earnest money) shall be given by M/s. Tonk Tanneries Pvt. Ltd. to the State Government. The security shall be liable to be forfeited in case of non compliance of the agreement within the stipulated time. Time could be extended on reasonable grounds by the State Government on the request of M/s. Tonk Tanneries Pvt. Ltd. after enhancing the security to a reasonable limit as decided by the Government.

(c) M/s. Tonk Tanneries Pvt. Ltd, will settle outstanding liabilities of IDBI to their entire satisfaction, government shall, however, assist for getting the relief from IDBI as far as possible. Government shall not be responsible for any controversy in finalisation of the agreement between IDBI and M/s. Tonk Tanneries Pvt. Ltd. The Government shall not be responsible for any outstanding liability towards IDBI.

(d) M/s. Tonk Tanneries Pvt. Ltd. will settle outstanding liabilities of Bank of Baroda to their entire satisfaction as stipulated in para (c) above.

(e) M/s. Tonk Tanneries Pvt. Ltd. will pay Rs. 30.15 lacs to the State Government against current liabilities. Rs. 10.00 lacs will be paid by the Tonk Tanneries Pvt. Ltd. at the time of agreement and remaining Rs. 20.15 lacs in a period of six months of the starting of production. Payment of Rs. 10.15 lacs will be secured by way of Bank Guarantee or an irrevocable letter of Credit from a scheduled Bank in stipulated period.

5. After executing the aforesaid agreement, the State Govt. vide its letter No. F. 70(3) LT/CSE/85/Vol. II/3456 dated 19.9.1992 permitted the respondent No. 1 to enter the industry and take initial action to start the Industry. The company has paid an amount of Rs. 20,15,000/- to the State Govt. till date and an amount of Rs. 10 lacs is still to be paid, and only after this amount is paid, the transfer of company will be complete. The petitioner started re-construction of this factory in September 1992 with his own skill and ability. Thereafter, since it was running in loss and has been lying closed since then, it has been contended that the petitioner put in hard labour in building of the factory and its machinery which had to be repaired so as to bring factory to the proper shape or re-production. As a result of his efforts, the factory which was closed earlier started its re-production again. The petitioner had invested a sum of Rs. 27,05,641/- in this factory. He also arranged a limit of Rs. 2.5 Crores from Canara Bank by way of Credit Facility as well as Rs. 1 Crore by way of loan from the said Bank. The petitioner gave his personal surety alongwith respondent No. 1 but, despite his efforts the said respondent neither made any investment nor put any labour on the said factory. Since, the factory started reproduction, behavior of respondent No. 1 changed and as a result of his malafide intentions, he wanted to dispose of this factory for a huge amount by involving some foreign buyers so that he could repay the amount of loan for Rs. 10 lacs to the Rajasthan State Tannery Ltd. He also made a plan to drive out the petitioner from the factory in connivance with respondent No. 2 with a view to become its owner, in June, 1994 the respondent No. 1 told the petitioner to return his shares so that he may arrange to pay all the money due from him to the

respective parties. It may be mentioned in this connection that this Tannery situated at Tonk is one of the best Tanneries of Asia. As a result of non-payment of Rs. 27,05,641/-, the factory stopped working. The petitioner had also given some machines to this factory on lease from his factory at Faridabad for which, a lease agreement was executed on 10.1.1994. This machinery belong to his wife and was given on lease to the factory situated at Tonk due to the efforts of the petitioner. The rent of the machinery had not been paid to her till date which is about Rs. 10,07,880/-. Thereafter, the petitioner came to know that respondents are negotiating to sell this factory to some other persons surreptitiously. The petitioner has further contended that apprehending the risk at the instance of respondents, he filed a civil suit before the learned Civil Judge (Junior Division) and Judicial Magistrate, Jaipur (East) Jaipur alongwith an application for the relief of ad-interim injunction under Order 39 Rules 1 & 2 CPC with a view to restrain the respondents from causing any hindrance to the petitioner going to the factory and doing his job. He further sought the relief of restraining the respondents against from transferring the said factory/company or its shares to any other person.

6. However, the learned Civil Judge (J D) and JM (East) Jaipur dismissed, the stay application petitioner vide order dated 2.3.1995 against which, the petitioner preferred an appeal before the learned District and Sessions Judge, Jaipur City, Jaipur which came to be transferred to the court of Additional District and Sessions Judge No. 3, Jaipur City, Jaipur which also came to be dismissed by the said Court vide order dated 9.4.1996. It is in the aforesaid circumstances, the petitioner has come up by way of this revision petition challenging the impugned orders of the trial Court dated 2.3.1995 and 9.4.1996 of the Appellate Court.

7. During the course of hearing. Mr. N. Bhatt, learned Counsel for the petitioner has vehemently contended at the bar that petitioner was one of the Directors of M/s. Raj. State Tannery Tonk having 35% shares in the said company. Hence, the legal right had accrued to him but, the trial Court as well as the appellate court have not taken material aspect into consideration that the petitioner's suit was against other two Directors of the company who were creating hindrance in exercise of his legal rights and were also causing financial loss to him and hence, the dispute do not fall within the ambit of the Companies Act, 1956 (for short "the Act of 1956") but, within the jurisdiction of the civil courts as so erroneously not considered by the courts below. With regard to agreement executed between' the petitioner and the company, the learned Counsel has contended that it is an irrelevant consideration which could not have been given effect to by the courts below since the petitioner was one of the Directors of the company, he automatically gets legal right and to enforce the same before the civil court in accordance with law. He further contended that his suit was not against the company but was against the other two Directors and hence maintainable. His alternative contention is that even from the perusal of the documents submitted by him including the balance sheet of the company, it would be clearly established that he was Director having holding 35% shares and that he had invested huge money in the said company with a view to rehabilitate and restart its factory.

8. I have heard the learned Counsel for the petitioner at length and also perused the findings recorded by the courts below with reference to the legal position on the subject. Prima-facie, I am of the considered opinion that neither the trial Court nor the appellate court have committed any

illegality, perversity, impropriety or jurisdictional error in having recorded a finding to the effect that no proceeding could be initiated by the petitioner by way of a civil suit against the respondents in view of the fact that no prima-facie case was set out by him nor any balance of convenience could be construed in his favour since on the aspect of Jurisdiction, there is a clear bar to filing of such civil suits which are specifically triable by the courts constituted under any enforcing provisions for the dispute pertaining to the violation of the provisions of the Companies Act of 1956 for which, the Company Court having the jurisdiction in the matter is alone competent to deal with the same with regard to the finding which has been recorded by the learned trial Court to the effect that in the course of business dealing with, the petitioner had suffered financial loss and since there was an apprehension to the petitioner that the bank concerned from which the petitioner had taken loan, there was likelihood of criminal proceedings being initiated against him as a result of non payment of the loan amount, in accordance with the provisions of Section 284 of the Act of the Companies Act 1956, the petitioner had already been dispossessed from the movable and immovable property which was subject matter of attachment with the bank concerned i.e. Canara Bank and the petitioner having himself being deprived of the said possession in view of the acts of omissions or commissions and since the criminal proceedings also having been initiated by the respondents for the offence under Sections 467, 468, 471, 406 and 420 IPC, no action can be taken with the aid of Section 284 of the Act of 1956. Plea was also raised by the respondents by way of preliminary objection to the maintainability of the suit in view of a specific bar contained in Section 9 of the Code of Civil Procedure, 1908 hence, the relief sought for by way of a suit cannot be entertained by the civil courts, the civil courts would obviously have no jurisdiction to entertain the suit. Section 9 C.P.C provides, thus:

9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation (I)-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II.-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

9. I have heard the learned Counsel for the petitioner at length, examined the findings recorded by the courts below with reference to provisions of Section 9 of the Code of Civil Procedure, 1908 as well as Section 284 of the Act of 1956. Section 284 prescribes a procedure with regard to removal of Directors of the Company. According to Sub-section (2) of Section 284, if any person has grievance against a Director of the Company then, special notice is required to be served with regard to removal of such Director by way of resolution to remove the director or to appoint somebody else instead of Directors so removed at the meeting to be specially convened by the Board of Director and it is only after a proper resolution is passed by the Board that the Director can be removed. Further, the Director whose removal is sought for by the aggrieved party, the company has to sent a

notice by way of a resolution to the Director concerned and he has to be heard on the resolution at the meeting specially convened for the said purpose. In the instant case, the findings recorded by the trial Court are to the effect that there were allegations of gross financial irregularities consequent upon which financial loss has been suffered by the company consequently, the Board of Directors had initiated proceedings against him and the property belonging to M/s. Tonk Tanneries Pvt. Ltd. was seized pursuant to the resolution of the Board. If the petitioner had suffered any financial loss on account of investment made by him or if there is any dispute regarding rendition of accounts by other directors, nothing would have prevented the petitioner to have taken the action in accordance with law by seeking proper relief which admittedly he has not done. Consequently, having regard to the specific provisions of Section 284 of the Act of 1956 since the jurisdiction of the civil courts could not be invoked by way of a suit for injunction as so done by the petitioner and also in view of other facts and circumstances of the case, since the petitioner had failed to establish prima-facie case, balance of convenience and also irreparable loss as well as injury which could not be compensated by way of relief sought for by the petitioners in the suit, the suit was rightly dismissed by the trial Court vide its order dated 2.3.1995 being not maintainable. These findings of the trial Court were confirmed in appeal by the appellate court viz. ADJ No. 3, Jaipur City, Jaipur, in my view are not open to challenge. It is against the concurrent findings recorded by the courts below that the petitioner has thus come by way of this revision petition which is now being disposed of finally at the admission stage itself.

10. Prima-facie, I am of the view that in view of the specific provisions of Section 284 of the Act of 1956, which provides adequate mechanism for removal of directors and also safeguards to a director of a company against whom resolution has been drawn up by the Board, since the said alternative remedy was available to the petitioner which admittedly he has not invoked, the petitioner was not entitled to agitate this issue by way of a suit for injunction before the learned trial Court. I am further of the view that right to remove a director by a share holder is available under the Act of 1956 which also lays down the mechanism for exercise of its rights. From the scheme of the said Act, it is also clear as well that matters of internal management of the company which in my considered view should be dealt with in accordance with law and the procedure laid down under the said Act. Hence, the civil courts could not interfere in such matters relating to internal management of the company. I am fortified in my observations from the judgment of the Bombay High Court in the matter of Khetan Industry v. Manju Ravindra Prasad Khetan , The same view was taken by this Court in the matter of Rajkumar Bahel v. FCI:, 1990 (1) WLN 313.

11. As a result of above discussion, the revision petition is dismissed.