

Supreme Court of India

Bloom Dekor Limited vs Subhash Himatlal Desai on 9 September, 1994

Equivalent citations: 1994 SCC (6) 322, JT 1994 (6) 89

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

BLOOM DEKOR LIMITED

Vs.

RESPONDENT:

SUBHASH HIMATLAL DESAI

DATE OF JUDGMENT 09/09/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

SAWANT, P.B.

CITATION:

1994 SCC (6) 322 JT 1994 (6) 89

1994 SCALE (4) 60

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by S. MOHAN, J.- Leave granted.

2. All these matters can be dealt with under a common judgment since the issue involved is one and the same.

3. The appellant-Company was incorporated as a public limited company on 23-3-1992 in the name of "Bloom Decoratives Limited". Subsequently, its name was changed as "Bloom Dekor Limited". The registered office was formerly located at 1/F, Dhanlaxmi Chambers, Ashram Road, Ahmedabad. It was shifted to No. 8, National Highway, Oran, District Sabarkantha, North Gujarat with effect from 10-11-1993. However, it continues to have its corporate office in Ahmedabad.

4. The Company received industrial licence on 21-6-1993 from the Government of India for the

manufacture of decorative industrial laminates. The company went for public issue of 23,65,000 equity shares of which 4 lakh equity shares have been reserved for the NRIs of Rs 10 each for cash at par aggregating to Rs 236.50 lakhs. The company made applications to the Ahmedabad Stock Exchange and the Bombay Stock Exchange for permission to deal in and for an official quotation of the equity shares being offered in terms of its prospectus dated 10-8-1993. The company has filed a copy of its prospectus under Section 60 of the Companies Act, 1956 (for short 'the Act') with Registrar of Companies, Gujarat for registration. The issue opened on 9-9-1993. It was oversubscribed. Therefore, it was closed on 14-9-1993 being the earliest closing date. The latest closing date announced in the prospectus was 20-9-1993.

5. Hereafter strange happenings take place. A group of persons, Viren Thakkar and his associates seem to have entered into large scale out-of-the-ring transactions in the sale and purchase of company shares. On that account, they would be required to make good their speculative losses once the company shares are listed and traded in the market. To delay this the first suit CS No. 90 of 1993, was filed at Morvi. This place was chosen because Viren Thakkar's sister's husband (brother-in-law) Ramniklal Thakkar resides there. The same Ramniklal Thakkar appears to be familiar with the court proceedings. In the said suit CS No. 90 of 1993 the plaintiff Bharat Kherajbhai Chandrana through his advocate Mr Tarun V. Shah of Ahmedabad obtained late in the evening an ex parte order dated 20-11- 1993 restraining the company from making allotment of the shares of the public issue or to take any further proceedings in relation thereto including issue and despatch of share certificates.

6. The appellant moved the High Court. This order of 30- 11-1993 was stayed on 8-12-1993.

7. Viren Thakkar's wife's brother Ramesh Thakkar filed a Civil Suit No. 6630 of 1993 before the City Civil Court at Ahmedabad. He also obtained therein an ex parte ad interim order in terms similar to the ad interim order of Morvi Court dated 30-11-1993. The same advocate Mr Tarun V. Shah appeared for the plaintiff. The said order was served upon the appellant--Company after 6.30 p.m. on 9-12-1993. Thereupon the company filed an Appeal A.O. No. 527 of 1993 before the Gujarat High Court. This was filed on 10-12- 1993. 11-12-1993 and 12-12-1993 were holidays. Hence, the appeal was circulated on 13-12-1993 for orders. On that very date the same advocate Mr Tarun V. Shah filed Special Civil Application No. 13891 of 1993 on behalf of Grahak Suraksha Samiti before the Gujarat High Court. Inter alia, an injunction restraining the Ahmedabad and Bombay Stock Exchanges from granting any permission for trading/dealing the equity shares of the. company in other stock exchanges in any manner and to restrain the company and its Directors from issuing transferring or dealing in any manner the equity shares of the company, was sought.

8. On 14-12-1993, A.O. No. 527 of 1993 was admitted and the ex parte ad interim order was stayed.

9. On the same day, other associates Arvind B. Sheth and Kirtibhai Ghadiya filed Civil Suit No. 6683 of 1993 before the City Civil Court at Ahmedabad at about 7.45 p.m. on 14- 12-1993. An ex parte ad interim order came to be passed. The same advocate Mr Tarun V Shah appeared. A notice of the said order was made returnable on 20-12-1993.

10. On 15-12-1993, the High Court took up Special Civil Application No. 13891 of 1993. Notice was ordered to the respondent returnable on 20-12-1993. The application for interim relief was directed to be posted on 18-12-1993.

11. After midnight of 17/18-12-1993 Rashmin Ghadiya, who is stated to be a relative of the said Viren Thakkar filed a plaint through the advocate Mr Tarun V. Shah before the Civil Judge (J.D.) at Prantij for a declaration that the company's issue was void since the requisite permission of stock exchange under Section 73 of the Act was not obtained. An application for interim injunction restraining the company, the stock exchanges at Ahmedabad, Jaipur, Bombay, Rajkot Shareholders' Association and Rajkot Share Dealers' Association from issuing, transferring, selling or dealing in any manner equity shares of the company and restraining the company from utilising the funds of the public issue in any manner till the disposal of the suit.

12. On this day (18-12-1993) the Morvi Court dismissed the application for interim relief for default. However, Mr Tarun V Shah applied for restoration on the ground that he was delayed in reaching the court on account of the farmers' agitation. That application stood adjourned to 20-1-1994.

13. On 20-12-1994 it appears that the learned Judge of the High Court who was dealing with Special Civil Application No. 13891 of 1993 specifically asked Mr Tarun V Shah whether any suit had been filed. The answer was given in the negative. This was countered by the appellant's advocate that three suits had been filed, one at Morvi and two in Ahmedabad. Thereupon Tarun V Shah had stated that he had nothing to do with those suits nor was he concerned in any manner.

14. It requires to be mentioned that Mr Tarun V Shah appeared in the City Civil Court in Civil Suit No. 6683 of 1993 during the second sitting when the question of extension of ad interim ex parte order came up for consideration.

15. Notwithstanding all the above, another suit Special Civil Suit No. 25 of 1994 came to be filed before learned Civil Judge (Senior Division) Baroda on 2-1-1994. An ex parte order was obtained.

16. The Ahmedabad City Civil Court adjourned the hearing of the application for interim relief in CS No. 6683 of 1993 to 12-1-1994 till the date the ex parte order came to be extended notwithstanding the opposition of the appellant- Company. On 12-1-1994 the application could not be taken up for hearing for want of time and the matter was adjourned to 19-1-1994.

17. On 13-1-1994 the company filed its counter to the application for interim relief in Baroda Suit No. 25 of 1993. Here again, Mr Tarun V. Shah appeared before the Baroda Court and sought time for publication of notice under Order 1 Rule 8 of CPC. On this score, the court was disinclined to adjourn the matter. Therefore, time was sought for a rejoinder whereupon the court adjourned the matter to 17-1-1994.

18. The ground on which the various suits and the writ petition came to be filed was that the appellant-Company did not obtain the necessary permission from the Ahmedabad and Bombay Stock Exchanges to deal in shares or debentures as contemplated under Section 73 of the Act. In

support of this averment reliance was placed on certain letters addressed by the Stock Exchanges of Ahmedabad and Bombay to share broker that the shares of the company had not been listed on the exchange for dealing. It was also alleged that the Registrar to the issue had not made allotments in accordance with SEBI guidelines. There were irregularities both in the matter of applications for shares and making allotments. Further, there was violation of Section 33 of the Act. It is under these circumstances questioning the propriety and the correctness of these interim orders civil appeal arising out of SLP (C) No. 878 of 1994 against the judgment dated 9-1-1994 by the City Civil Judge (Senior Division) Baroda in Special Civil Suit No. 25 of 1984 and civil appeal arising out of SLP (C) No. 874 of 1994 passed by the City Civil Judge, Ahmedabad in CS No. 6683 of 1993 have come to be preferred.

19. TP Nos. 26 to 30 of 1994 have been filed for transferring Special Civil Suit No. 90 of 1993, Civil Suit Nos. 6630 and 6683 of 1993, Civil Suit No. 85 of 1993 and Special Civil Suit No. 25 of 1994 to the High Court of Gujarat at Ahmedabad or in the alternative for an order for transferring the said suits pending at Morvi, Prantij and Baroda to the City Civil Court at Ahmedabad.

20. Learned counsel for the appellant vehemently argues that all the suits and the writ petition are frivolous and vexatious in nature. They have been resorted to by a caucus of individuals with a view to defeat or delay their liability in illegal speculative transactions in the shares of the company. They are determined to see the company shares are not dealt in Ahmedabad and Bombay exchanges or no quotations for them are available with a view to see that the prices of company shares go down in the transaction at the stock exchanges.

21. What is surprising in this case is suits were filed before courts which have no jurisdiction whatever, namely, Morvi and Varodara, though in the name of different persons all backed up by Ramlal Thakkar. No part of cause of action has arisen within the jurisdiction of either of these courts. Then again, the courts are approached at the last minute. Yet an order of ad interim injunction came to be passed without even notice to the appellant. The principles governing the grant of ad interim injunction in matters of this kind have been completely ignored. As a matter of fact, this Court in *Morgan Stanley Mutual Fund v. Kartick Das*¹ has clearly indicated such principles. Tested on those principles, the impugned orders are unsupportable.

22. The main grievance of the respondent was that the requisite permission to deal in debentures and shares had not been obtained from Ahmedabad and Bombay Stock Exchanges. Firstly, the statements of the respondent are clearly false in Civil Suit No. 6683 of 1993. The Ahmedabad Stock Exchange filed a statement that it had approved the list of this appellant for dealing in the exchange on 22-11-1993. The Company Secretary of Ahmedabad Stock Exchange by his letter dated 24-11-1993 informed the company that basis of allotment of the public issue of equity shares of the company was approved by the Ahmedabad Stock Exchange. It also conveyed to the appellant its no objection of the Stock Exchange for utilisation of the issue funds. Again, on 7-1- 1994 the Ahmedabad Stock Exchange approved the appellant's application seeking permission for the listing of the equity shares and to deal in the exchange and granted the 1 (1994) 4 SCC 225 : JT 1994 (3) SC 654 necessary permission under Section 73 of the Act with effect from 22-11-1993. The Ahmedabad Exchange by its circular dated 7-1-1994 notified the new enlistment for information of the members

of the Stock Exchange.

23. Likewise, Bombay Stock Exchange by its letter dated 23- 11-1993 informed the appellant-Company that the Exchange was pleased to approve the Company's listing application seeking permission for equity shares of the company to be dealt in on the exchange and that in order to facilitate commencing of normal and regular trading in the Company's equity shares on the exchange the company should complete without any further delay the formalities mentioned in the enclosure to their earlier letter dated 27-9-1993. An affidavit Exh. 48 dated 8-1-1994 has been filed in the said Civil Suit No. 6683 of 1993 of J.J. Bhat, Joint General Manager of the Bombay Stock Exchange stating inter alia that the stock exchange took a decision to approve the listing application seeking permission for the equity shares of the company to be dealt with on the stock exchange and that the stock exchange accordingly wrote a letter dated 23-11-1993 to the company informing the latter of the said decision, that earlier the stock exchange had written a letter dated 27-9- 1993 to the company enclosing therewith the list of formalities to be completed by the appellant.

24. Even as a question of law in order to comply with the requirements of Section 73 of the Act the annual listing is not required.

25. By resorting to successive suits and obtaining the impugned interim orders the respondents have caused immense damage to the appellant and thereby prevented the appellant- Company's recovery of further call money which comes to about Rs 63 lakhs. Therefore, this is a clear case in which this Court should award heavy costs to the appellant.

26. In meeting these submissions the learned counsel for the respondents submits where the respondents had genuine grievance about the noncompliance with the provisions of the Act certainly they are entitled to approach the court. Their case is Section 73 of the Act has been violated. The court while granting interim orders was satisfied that there was a prima facie case. The fact the same advocate appeared is of little consequence. It cannot be said that the Morvi and Baroda courts did not have jurisdiction since the applicants for the shares were residing in those respective places. In any event, these are interim orders. This Court normally does not interfere under Article 136 of the Constitution of India with the interim orders since the final adjudication can be had from the courts below.

27. From the above narration it is clear that the respondents have been clearly indulging in judicial adventurism. A string of suits comes to be filed one after the other. Late orders are obtained that too on applications filed without notice to the appellant. Unfortunately, the courts below wittingly or otherwise have aided this judicial adventurism without even determining whether they had Jurisdiction. Take for instance the suit in Morvi court. How does the said court get jurisdiction? What is the cause of action?

28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill²). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit. This Court had occasion to refer to the case of Cooke² in A.K. Gupta and Sons Ltd. v. Damodar

Valley Corpn.³ At page 98 it is stated thus:

"The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in *Cooke v. Gill*² in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corporation Ltd.*⁴ and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have understood to mean 'new set of ideas': *Doman v. J. W. Ellis and Co. Ltd.*⁵ This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

29. If the matter is viewed as a contract no part of cause of action has arisen within the jurisdiction of Morvi court. The same principle will be applicable to the suit before the Civil Court (Senior Division), Baroda; more so, in the light of Explanation to Section 20 the appellant-Company having its registered office in Ahmedabad. Therefore, we could expect the court to examine these aspects before granting an interim order. So much for cause of action.

30. The gravamen of charge by the plaintiffs in various suits and the writ petition before the High Court was that Ahmedabad and Bombay Stock Exchanges mentioned in the prospectus of the appellant-Company have not granted permission for the shares or debentures to be dealt with in Stock Exchange as contemplated under Section 73 of the Act. For making this statement reliance is placed on three letters written to a stock broker dated 13-12-1993, 9-12-1993 and 24-12-1993 by the Ahmedabad and Bombay Stock Exchanges respectively. Barring the statement that such information obtained from reliable sources, the source of information is not specified. Leave alone that, the court had not even cared to examine the aspect whether the actual listing under Section 73 of the Act is necessary.

31. A factual examination reveals that on 24-11-1993 the Ahmedabad Stock Exchange wrote the following letter to the appellant:

2 1873 LR 8 CP 107 : 42 LJCP 98 3 AIR 1967 SC 96: (1966) 1 SCR 796 4 (1962) 2 All ER 24: (1962) 1 WLR 520 5 (1962) 1 All ER 303 :(1962) 2 WLR 250: (1962) 1 QB 583 "We refer the Basis of allotment of your company, approved by our Stock Exchange. As desired, we wish to convey the No Objection of the Stock Exchange for utilization of issue funds."

The counter-affidavit of the Executive Director (M.L. Soneji) of the Ahmedabad Stock Exchange inter alia states:

"Since defendant No. 3 has already approved seeking permission for its equity shares to be dealt with on Stock Exchange, Ahmedabad on 22- 11-1993. The prayer for ad

interim injunction to that extent cannot be and may not be granted. defendant No. 3 has also received by FAX a letter No. List/HVD/5238/93 dated 23-11-1993 addressed by the Stock Exchange, Bombay to defendant No. 5 informing the latter that the Stock Exchange, Bombay was pleased to approve the Listing Application of defendant No. 5 seeking permission for its equity shares to be dealt with on the said Exchange."

Again, in paragraph 4 it is stated thus:

"On 22-11-1993, the Governing Board of defendant No. 3 resolved to approve the Listing Application of defendant No. 5 seeking permission for its equity shares to be dealt with on the Stock Exchange, Ahmedabad. It is the practice of defendant No. 3 that after the grant of such permission under Section 73 of the Companies Act, 1956, members of the Stock Exchange are informed by a notice for allowing them to deal in the said equity shares in the market with effect from a date specified in such notice. Such notice is given after a company complies within a reasonable time with the general listing requirements. As per the FAX message received by defendant No. 3, defendant No. 4 has also approved the listing application of defendant No. 5 seeking permission for their equity shares to be dealt in the Bombay Stock Exchange. On 24-11-1993, defendant No. 3 wrote to defendant No. 5 and informed them that the basis of allotment was approved by the Ahmedabad Stock Exchange and conveyed no objection of the Ahmedabad Stock Exchange for utilisation of issue funds."

This is besides the following letter dated 7-1-1994: "The Director, Bloom Dekor Limited, I /F, Dhanlaxmi Chambers, Ashram Road, Ahmedabad 380009.

Sub: Listing of Equity shares of your Company on our Stock Exchange.

Dear Sir, We are in receipt of your letter dated 31-12-1993 along with the enclosures and wish to inform you that the Stock Exchange is pleased to approve your application seeking permission for the above referred equity shares to be dealt in on the exchange and to grant such permission under Section 73 of the Companies Act, 1956 with effect from 22-11-1993 and that members of our Stock Exchange have been allowed to deal in equity shares of your company with effect from 10-1-1994 in the market unit of trading of 100 shares.

Kindly acknowledge the receipt.

Thank you.

Yours faithfully, For the Stock Exchange, sd/-

(K.K. Mishra) Company Secretary"

32. Similarly, Jagdish Jayashankar Bhatt, Joint General Manager of the Stock Exchange, Bombay states:

"I say that as per the practice followed by defendant No. 4, the Stock Exchange has already granted permission under Section 73 of the Companies Act, 1956 to the Equity Shares of defendant No. 5 to be dealt with on the Stock Exchange, Bombay. The actual trading in the said shares has yet not commenced. As per the practice adopted by the Stock Exchange, a notice permitting the actual trading in the said shares is given thereafter and members are intimated accordingly. I say that in reply to a letter dated 2-12-1993 that the shares of defendant No. 5 were not yet listed on the Exchange for dealings."

Therefore, an analysis of facts on this aspect was warranted.

33. This Court had occasion to lay down the principles governing the grant of injunction in such matters in *Morgan Stanley Mutual Fund*¹. At para 44 (of JT) it is stated thus: (SCC pp. 241-42, para 36) "As a principle, ex parte injunction could be granted only under exceptional circumstances. The facts which should weigh with the court in the grant of ex parte injunction are-

"(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court." In this connection reference was made to *United Commercial Bank v. Bank of India*⁶ and *Shiv Kumar Chadha v. Municipal Corpn. of Delhi*⁷.

34. As to venue restrictions, the observations of this Court *Morgan Stanley Mutual Fund*¹ at page 669 are apposite. Paragraph 50 reads thus: (SCC pp. 244-45, para 42) "As far as India is concerned, the residence of the company is where the registered office is located. Normally, cases should be filed only where the registered office of the company is situate. Courts outside the place where the registered office is located, if approached, must have regard to the following. Invariably, suits are

filed seeking to injunct either the allotment of shares or the meetings of the Board of Directors or again the meeting of general body. The court is approached at the last minute. Could injunction be granted even without notice to the respondent which will cause immense hardship and administrative inconvenience. It may be sometimes difficult even to undo the damage by such an interim order. Therefore, the court must ensure that the plaintiff comes to court well in time so that notice may be served on the defendant and he may have his say before any interim order is passed. The reasons set out in the preceding paragraphs of our judgment in relation to the fact which should weigh with the court in the grant of ex parte injunction and the rulings of this Court must be borne in mind."

35. It is not difficult to perceive that all these actions are nothing but attempts by one caucus of persons to baulk the appellant-Company from issuing or dealing with shares or debentures; the plaintiffs or the petitioner in the writ petition having little stake. It is also evident from the orders of this Court dated 28-1-1994 and 31-1-1994 and the cross-examination of Mr Kirti T. Gadhia by this Court. It is not a matter of coincidence that the same advocate had appeared in all the cases at some stage or other. The statement before the High Court during the hearing of the writ petition that the civil court had not been moved for the same relief was false and was clearly intended to mislead the court. In the circumstances, we maintain the order dated 19-1-1994 which is to the following effect:

36. We direct the courts below to examine the case on all the relevant aspects stated above.

6 (1981) 2 SCC 766 7 (1993) 3 SCC 161

37. The action of the respondents calculated to harm the interests of the appellant-Company must be viewed with serious concern and must be totally disapproved.

38. All the said suits mentioned in TP (C) Nos. 26 to 30 of 1994 will stand transferred to the file of seniormost Civil Judge at City Civil Court, Ahmedabad and be tried along with Ahmedabad suit, CS No. 6630 of 1993. The transfer petitions are ordered accordingly.

9. As a token of our disapproval we direct the payment of Rs 10,000 by each of the contesting respondents, Subhash Himatlal Desai (Respondent 1 in Civil Appeal No. 1751 of 1994 arising out of SLP (C) 878 of 1994), Arvind B. Sheth and Kirti Tulshibhai Ghadhiya (Respondents 1 and 2 in Civil Appeal No. 1750 of 1994 arising out of SLP (C) No. 874 of 1994 respectively) to the appellant Bloom Dekor Limited.

40. The civil appeals are disposed of accordingly.