

In Re: Colaba Land and Mill Co. Ltd.

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Court : Mumbai

Decided On : Jan-27-1976

Reported in : [1968]67ITR399(Bom)

Judge : Aggarwal, J.

Acts : [Companies Act, 1956](#) - Sections 391; Companies (Court) Rules, 1959 - Rules 67, 68 and 69

Appeal No. : Company Petition No. 165 of 1975

Appellant : In Re: Colaba Land and Mill Co. Ltd.;vasant Investment Corporation Ltd.

Respondent : ;colaba Land and Mill Co. Ltd.

Advocate for Pet/Ap. : I.M. Chagla, Adv.;M.J. Mistree, Adv.;G.K. Munshi, Adv.

Judgement :

Aggarwal, J.

1. The liquidator is strenuously opposing the summons for directors. According to the liquidator the present application under section 391 of the Companies Act is not a bona fide one. The matter has been argued at some length to demonstrate this aspect. After hearing, I have given liberty to the liquidator to put in a further affidavit within two weeks and also granted liberty to the applicants to make further

affidavit within a period of three weeks thereafter and fixed the hearing of summons for directions on 2nd March, 1976.

2. Mr. Chagla object to the joint affidavit Alimohamed K. Porbunderwalla and others in reply to the judge's summons dated 15th November, 1975, being taken on file. Alimohamed K. Porbunderwalla and other hold 605 shares of the Colaba Land and Mill Company Ltd. (in liquidation).

3. According to Mr. Chagla, the scheme under section 391 read with rules 67 and 68 of the Companies (Court) Rules, 1959, is that at an ex parte stage only the applicants and the liquidator should be heard and not any other members. Now, rule 67 refers to summons for directors to convene a meeting. Subject to rule 68, the summons shall be moved ex parte. Rule 68 makes provision for service on a company or where the company is being wound up, on its liquidator. Normally, no motion is made without previous notice to the parties affected thereby. But the court, if satisfied that the delay caused by [proceeding in this normal way would or might entail irreparable or serious mischief, may make an order ex parte either on conditions or without conditions and the party affected by such order may apply to the court to set it aside. This is ex parte motion. Merely because a rule makes a provision for ex parte application, it cannot debar a party interested in the action from placing its view-point that the proposed order should or should not be made. It is the essence of justice to give a hearing. Natural justice requires it. I do not see any valid reason to gag the mouth of the Porbunderwalla who held 605 shares. I would permit them to have their say before me. The interest of justice requires that if a party desires to make any submission, even at the stage of ex parte hearing, the court should hear him. In the present case, the Liquidator is opposing the summons for directions, and ought I know that the Porbunderwalla may be able to throw some light for the liquidator or be of assistance to the court. Mr. Mistree, the learned counsel for the Porbunderwallas, referred to the form of the summons which open with the words 'Let all parties concerned ...' and submitted that they were very much concerned with the present application. I find merit in this submission.

4. In the circumstances, I allow the Porbunderwalla to make their affidavit. The affidavit is ordered to be taken on file.

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