

Herbertsons Ltd. Vs. Kishore Rajaram Chhabria and ors. and Shaw Wallagce and Co., Ltd. and anr.

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Court : Mumbai

Decided On : Mar-24-2000

Reported in : (2000)102BOMLR269a

Judge : H.L. Gokhale, J.

Appeal No. : Chamber Summons No. 1637 of 1999 and Suit No. 6826 of 1999

Appellant : Herbertsons Ltd.

Respondent : Kishore Rajaram Chhabria and ors. and Shaw Wallagce and Co., Ltd. and anr.

Advocate for Def. : Mr. Madon

Advocate for Pet/Ap. : Mr. Seervai

Judgement :

H.L. Gokhale, J.

1. This is a chamber summons taken out by two Companies seeking to join as party defendants in a suit which is filed by the plaintiff Company against one K.R. Chhabria and 10 others. Mr. Kadam has appeared for the applicants in support of this chamber summons. Mr. Seervai has appeared for the plaintiff Company which

opposes this prayer. Mr. Madon has appeared for defendants No. 1 to 4, 6 and 11 and Mr. Thakkar has appeared for defendants No. 7 to 10. Nobody has appeared for defendant No. 5 one Mr. Ganguli though served.

2. This chamber summons is supported by the affidavit in support of the Company Secretary of intervenor No. 1 i.e. Shaw Wallace and Co.

3. Before I deal with the averments in the affidavit in support as also the submissions of Mr. Kadam, it is desirable to refer to the suit in a nutshell. This suit filed by the plaintiff- Herbertsons Ltd. seeks principally two fold relief. The first relief is a declaration that the notice dated 2nd December, 1999 convening the 13th Annual General Meeting of the defendant No. 11 - BDA Ltd. on 27th December, 1999 is valid and is binding on defendant No. 2. The second principal relief is for a declaration that defendant No. 5 will cease to be a director of BDA Ltd., defendant No. 11 herein on and from 27th November, 1999. It is relevant to note that in this suit, interim prayers were also sought pertaining to these two principal prayers. Notice of Motion No. 3802 of 1999 was taken out for that purpose, which came up before my brother Lodha, J. on 13th December, 1999. As far as the meeting which was proposed through the notice dated 2nd December, 1999 is concerned, a statement was made by Mr. Madon, learned Counsel for defendant No. 11. before Lodha, J. that the said meeting shall be held on 27th December, 1999 as convened and hence the notice of motion was made absolute with respect to prayer (a) of that motion which was seeking a direction to hold that meeting. Thus, as of now, what substantially remains in the suit is the declaration that defendant No. 5 will cease to be a director of BDA Ltd. after holding of the meeting on and from 27th December, 1999, That prayer is made on the footing that the term for which Mr. Ganguli was elected is over. Mr. Ganguli term was to expire in pursuance to the meeting notified in that notice. What we have to examine is as to whether the presence of the intervenors is necessary for deciding this declaration.

4. Mr. Kadam, learned Counsel appearing for the intervenors, drew my attention to an earlier suit which was filed by intervenor No. 1 in the Calcutta High Court being Suit No. 373 of 1992 which is still pending. The submission of Mr. Kadam is that

the present suit and the one which is filed in Calcutta High Court are having interconnection. In the suit filed in the Calcutta High Court, the intervenors herein have prayed amongst others for a perpetual injunction through prayer (k) thereof restraining defendants No. 1 to 5 to that suit from acting as directors of defendant No. 6 in that suit. The defendant No. 6 in that suit is present defendant No. 11 Company and defendant No. 2 in the suit is same Mr. Ganguli who is defendant No. 5 in the present suit. What is however relevant to note is that the submission of the plaintiffs in the present suit is on the basis that the term of office of Mr. Ganguli will expire after the meeting and therefore he has no reason to continue as a director after holding of the Annual General Meeting in pursuance to the notice dated 2nd December, 1999. The submission of the present intervenors in their Calcutta suit is on different footing. It is on the basis that Mr. Ganguli represents the group of one Kishore Chhabria and that the transfer of shares of defendant No. 6 in that suit to Kishore Chhabria group is bad and illegal.

5. The submission of Mr. Kadam is that though in both these suits relief is sought against Mr. Ganguli (and although the reasons for the removal of Mr. Ganguli in the two suits are different), there is an inter-group rivalry amongst the parties and the intervenors would like to have their say in the present matter also. Mr. Kadam submits that the intervenors have a commercial interest as far as the present litigation is concerned and he presses into service the statements made in para 8 of the plaint in the present suit by the plaintiff which refers to the suit filed in the Calcutta High Court. Alternatively Mr. Kadam submits that the intervenors are necessary parties to effectually and completely adjudicate upon the questions involved in this suit.

6. Mr. Seervai, on the other hand, points out that both the suits are quite different. The one filed in this Court is principally on the footing that the term of office of Mr. Ganguli will now be over whereas the one which is filed in the Calcutta High Court by the intervenors is on the footing that the acquisition of shares by Kishore Chhabria group is illegal. Mr. Seervai also draws my attention to the fact that in the Calcutta High Court suit, injunction was sought which was declined all throughout initially by a single Judge and then by a Division Bench and then by the Hon'ble Supreme Court by its order dated 19th November, 1993. He pointed out that a

second attempt was made once against recently for similar relief by the intervenors in their Calcutta suit and they failed once again in the Supreme Court. Now this is the third attempt towards the same end. In any case, Mr. Seervai submits that whatever order the present plaintiff may obtain in the present suit, the suit which is filed by the intervenors in the Calcutta High Court will always survive and the reliefs which they are seeking over there would always be available to them.

7. What we are concerned in the present chamber summons is to decide whether it is necessary to join the intervenors to effectually and completely adjudicate the questions involved in the present suit which is what is required to be seen under Order 1 Rule 10(2) of the C.P.C. Mr. Kadam for the intervenors drew my attention to the long standing judgment of the Apex Court in Razia Begum v. Sahebzadi Anwar Begum : [1959]1SCR1111 wherein the Apex Court explained the law with respect to the joinder of parties when there is a dispute relating to property and in matters where a declaration is sought with respect to status. The Apex Court placed the legal proposition in correct perspective by observing as follows:-

In a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of a litigation is a declaration as regards status or legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

Mr. Kadam relied upon this authority to submit that apart from commercial interest of the intervenors, a declaration is sought, and hence they ought to be joined into the present suit. Now as can be seen from the above referred quotation, this authority does not help him. This is because if one looks to a suit relating to property, then a person may be added as a party provided he has a direct interest as distinguished from a commercial interest. It is not disputed by Mr. Kadam that as of now the intervenors do not have any shares in defendant No. 11 Company. That being so, it is difficult to understand as to what direct interest they have in the controversy which is sought to be agitated by the plaintiff in the present suit. The

alternative submission of Mr. Kadam was that a declaration is sought in the suit. Now as far as the declaration of a status is concerned, again as can be seen from the above proposition in Razia Begum's case, what the Court has to see is whether the Court would be in a better position to effectually and completely adjudicate upon the controversy by joining the party concerned. In the present case, all that we are concerned is the continuation of defendant No. 5 - Mr. Ganguli after the expiry of his period of office. It is for the plaintiff to decide whom he should join as the defendants for that purpose. In the view of the plaintiff, these intervenors are not necessary for this declaration. Now it is for the intervenors to point out that they are so necessary for a decision on this controversy,

8. Mr. Seervai, learned Counsel for the plaintiff, drew my attention to a judgment of Vimadalal, J. in the case of Jivanlal Damodardas v. Narayan : AIR1972 Bom148 . where the learned Judge has placed the propositions on this aspect succinctly after dealing with various relevant judgments holding the field including Amon v. Raphael Tuck and Sons Ltd. (1956) 1 All E.R. 273 and Razia Begum's case (supra). When it comes to necessary party, what the learned Judge has observed in para 5 of the various propositions which he has called out is very relevant and it reads as follows:-

(5) A necessary party is, as has been stated in Order 1 Rule 10(2), of the Civil Procedure Code, itself, a party whose addition is absolutely necessary in order to enable the Court to adjudicate effectually and completely on the matter in controversy between the parties. That has been interpreted, in my opinion rightly, to mean that no decree could be passed in the suit without affecting the rights of the party who is sought to be added and the presence of that party is necessary for an effectual adjudication of the questions involved in the suit. It is only when both those conditions are fulfilled that a party could be said to be a necessary party to a suit.

As observed by the learned Judge, it is principally for the plaintiff to decide whom to join as a defendant. It is only with his concurrence that somebody can be added as a defendant. This is because the plaintiff is the dominus litis as far as the litigation started by him is concerned. When however a party is absolutely

necessary, such a party can be added into the litigation, no matter whether the plaintiff opposes joining of such a party. However, as observed by the learned Judge in above referred para (5), that can only be on the touch-stone that the decree sought for could not be passed without affecting the rights of the party which is sought to be added and that the presence or that party is necessary for effectually adjudicating the question involved in the suit. In the present matter, the decree sought against defendant No. 5 does not in an manner affect the rights of the intervenors. Their cause in the Calcutta suit will remain undisturbed, whatever may be the decision in the present suit. The suit by the intervenors in Calcutta is a prior suit. That apart, the effect of expiry of the term of Mr. Ganguli is the issue in the present suit, and on that the intervenors have no role to play. On either of the touch-stones in the above judgment, the intervenors do not have a case.

9. Mr. Kadam then drew my attention to the judgment of the Apex Court in *Neyveli Lignite Corporation v. Special Tahsildar (Land Acquisition)* : AIR 1995 SC1004 which is a judgment on the question as to who could be a person interested. What is however to be noted is that it is a judgment in the context of land acquisition and not in the context of property involved in a suit between a litigant who has come to the Court against another party wherein somebody else is trying to contend that he is interested in that suit. In my understanding, that judgment does not help the case of the intervenors any further.

10. Mr. Seervai drew my attention to a judgment of a Division Bench of this Court in *State Bank of India v. Podar Mills Ltd.* : AIR1991 Bom370 wherein Bharucha, J. (as he then was in this Court) speaking for the Division Bench overruled another judgment of a single Judge earlier given in : AIR1989 Bom215 on this very controversy and amongst, laid down that in a suit by secured creditor against Company for realization of money advanced, workmen's trade union was not necessary or proper party unlike the winding up proceedings. Mr. Seervai also pointed out that the judgment of the Single Judge in : AIR1989 Bom215 had been dissented by a Judge of the Kerala High Court in : AIR1991 Ker221 , where, after referring to these relevant judgments in *Razia Begum* and *Amon's case* (supra), the learned single Judge held that when it comes to interest of a party, the person concerned must be directly or legally interested in the controversy before the

Court.

11. There are two other recent judgments of the Apex Court. In Ramesh Kundanmal v. Municipal Corporation of Greater Bombay : [1992]2SCR1 the law on this controversy has been again explained and where the dispute was with respect to an unauthorised construction, the Court restricted the litigation only to the parties which were directly concerned. In M/s, Alyi Momonji and Co. v. Lalji Mavji. : AIR 1997 SC64 on the other hand in the facts of that case, where the structure was to be demolished, Apex Court took the view that the landlord was a necessary party for effectual adjudication of the dispute.

12. Having seen the judgments cited on both the sides, in my view, as far as the present controversy is concerned, the intervenors are neither necessary nor proper party as far as the present suit is concerned. The chamber summons is therefore dismissed.

13. A copy of this order duly authenticated by the Personal Secretary of this Court be made available to the parties.

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