

Prafulla Kumar Rout Vs. Orient Engineering Works P. Ltd. and ors.

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Court : Orissa

Decided On : Mar-01-1985

Reported in : [1986]60CompCas65(Orissa)

Judge : P.C. Misra, J.

Acts : [Companies Act, 1956](#) - Sections 41, 108(1A), 193, 397 and 398; ;[Indian Stamp Act, 1899](#) - Sections 12

Appeal No. : Company Act Case No. 4 of 1984

Appellant : Prafulla Kumar Rout

Respondent : Orient Engineering Works P. Ltd. and ors.

Advocate for Def. : Jagannath Das, ;I.C. Das, ;R. Ch. Mohanty and ;R.K. Mohanty, Advs.

Advocate for Pet/Ap. : Asok Mohanty, ;Bimal Pr. Das and ;Sashi Das, Advs.

Disposition : Application dismissed

Judgement :

P.C. Misra, J.

1. This is an application under Sections 237, 397, 398 read with Section 402 of the Companies Act of 1956 (for short, hereafter ' the Act '), praying for appointment of

a special officer or administrator to take custody of the books, papers, documents and assets of M/s. Orient Engineering Works (P.) Ltd. (hereafter called ' the company ') and also to take over the affairs and management of the company. A further prayer has also been made for directing an investigation to be made into the dealings of the funds, assets and affairs of the company by opposite parties Nos. 2 to 6 and for other consequential reliefs.

2. The petitioner claims to have become a shareholder of the company in the year 1975-76 and after acquiring 460 equity shares of Rs. 100 each became a full time executive director in the year 1979 with a remuneration of Rs. 1,500 subject to an enhancement of Rs. 250 per year. Opposite party No. 2, Trailokyanath Mohanty, is the managing director of the company. According to the petitioner, the company after its incorporation took various loans from the Orissa State Financial Corporation and from the State Bank of India which were to be operated by the managing director and/or the petitioner. The company engages itself in manufacturing various agricultural equipments and in the interest of the company, the petitioner went to Japan, Philippines, Malaysia, Singapore, Hong Kong and Taiwan in December, 1980, and came back in January, 1981. After his return, the petitioner alleges that he is being treated indifferently by opposite party No. 2, instead of allowing him to implement his knowledge and ideas acquired during the visit to the foreign countries. He has further alleged that opposite party No. 3, who is the son-in-law of the managing director-opposite party No. 2, and opposite party No. 4, who is the wife of opposite party No. 2, started interfering in all the affairs of the company and opposite party No. 3 was appointed as a full-time manager of the company. Various acts of mismanagement have been alleged and it has been stated that both opposite parties Nos. 2 and 3 are maintaining the accounts of the company in an irregular manner and there has been no audit of the company since 1980. They have also withdrawn a huge amount of money of the company under false vouchers and it is alleged that the general body meeting of the company has not been conducted since September, 1980. When the petitioner went to the office of the Registrar of Companies for verification of the records of the company, he found that Form No. 32 has been filed under the signature of the managing director on March 11, 1983, wherein it has been shown that the petitioner has resigned from the directorship which, according to the petitioner, is not a fact. The

petitioner alleges that all these acts are being done to defraud the petitioner and the company for which the present application has been filed.

3. A preliminary counter-affidavit has been filed on behalf of opposite parties Nos. 1, 2, 4 and 5 denying all the allegations made in the application. It has been stated in the counter-affidavit that the petitioner not being a member or a shareholder of the company on the date of filing of the application has no locus standi to maintain the same.

4. I need not make a mention of all the objections taken in the counter-affidavit as by order dated December 14, 1984, an inquiry was directed on the preliminary issue as to whether the petitioner has the locus standi to maintain this application. In the counter-affidavit, it has been alleged that the petitioner has transferred all his shares in the company and has voluntarily resigned from the directorship of the company more than a year back and thus he was not a shareholder of the company on the date of presentation of this application on March 23, 1984. Both the parties were allowed to lead evidence, both oral and documentary, on this preliminary issue. Admittedly, the petitioner was a shareholder of the company at some point of time. The opposite parties have alleged that the petitioner has transferred all his shares in the company in favour of opposite party No. 2 which became effective from March 8, 1983, by necessary entry in the share register whereafter the petitioner ceased to be a shareholder of the company. The petitioner disputes the fact of transfer of shares as also of the validity thereof. In these circumstances, the burden of proof that the petitioner has transferred all his shares in the company in favour of opposite party No. 2 as alleged in the counter-affidavit lay on the opposite parties and, therefore, the opposite parties were directed to lead evidence first.

5. The opposite parties have examined three witnesses including opposite party No. 2 himself whereas the petitioner has examined himself as the sole witness on his behalf. Several documents have been exhibited on behalf of the opposite parties.

6. Before I go into the evidence adduced by the parties, it may be mentioned that this is a composite application in which reliefs under Sections 397 and 398 of the

Act have been claimed. Unless the petitioner is found to be a shareholder of the company, he would have no locus standi to maintain this application and in such an event, the court need not go into the merits of the allegations made in the application.

7. The first witness examined on behalf of the opposite parties is opposite party No. 2 who is the managing director of the company--opposite party No. 1. According to him, the petitioner joined the company in the year 1979 and initially purchased 60 shares each of Rs. 100 from one Gopinath Das and thereafter purchased 400 shares for which he partly paid the money. In the meeting held on November 24, 1982, the managing director of the company informed the board of directors that the petitioner was no more interested to continue in the company and had been intending to offer his resignation from the company. It was, however, agreed in that meeting that the managing director would persuade the petitioner to continue in the company and to remain in charge of some of the affairs of the company. The minutes of the proceedings dated November 24, 1982, have been marked as exhibit 1 which are in the handwriting of O.P.W. 1. The minutes of the proceedings were confirmed in the next meeting held on February 8, 1983, the minutes of which have been marked as exhibit 2. In the meeting held on February 8, 1983, opposite party No. 2 intimated the board of directors that the petitioner intended to sell away his entire share as he no longer wanted to remain in the company. Opposite party No. 2 also expressed his desire to purchase the said shares as no others in the company came forward to purchase the same. It was resolved in the said meeting that opposite party No. 2 would be permitted to purchase the said shares. According to this witness (O. P. W. No. 1), he and the petitioner both went to the house of Shri G. Pande, the chartered accountant, who has been examined in this case as O. P. W. No. 2, to consult him as to how the transfer of shares should be effected. In accordance with the advice of O. P. W. No. 2, the prescribed form was presented before the Registrar of Companies on March 1, 1983, and was brought back by this witness (O. P. W. No. 1), from the Registrar of Companies after the same was duly sealed and signed by the Registrar of Companies. Opposite party No. 2 thereafter went to the house of Shri Pande (O. P. W. No. 2) on the following day along with the accountant of the company, who has been examined in this case as O. P. W. No. 3, and the

petitioner where the form was filled up and signed by the petitioner and by opposite party No. 2 in the presence of O. P. W. No. 2. The form was thereafter kept with the petitioner and all of them, namely, opposite party No. 2, the petitioner and the accountant of the company (O. P. W. No. 3), proceeded to the office of the company, where opposite party No. 2 claims to have paid Rs. 26,000 to the petitioner in cash. On receipt of the said amount, the petitioner made over the form to the opposite party No. 2 along with the letter of resignation from the directorship of the company. The prescribed form containing the signatures of the petitioner, opposite party No. 2 and the witnesses has been marked as exhibit 3, in this case. The letter of resignation said to have been typed and signed by the petitioner has been marked as exhibit 4. The transfer of shares thus made in favour of opposite party No. 2 was approved in the meeting of the board held on March 8, 1983, the minutes of which have been marked as exhibit 5 in the resolution book. Opposite party No. 2 has proved the certified copy of the intimation in Form No. 32 to the Registrar of Companies (exhibit 8) in which the resignation of the petitioner has been intimated to the Registrar of Companies. The annual general body meeting was held on September 30, 1980, the proceedings of which are exhibit 9. Opposite party No. 2 has also proved exhibit 10, the certified copy of the annual return of the company made up to September 30, 1983. O. P. W. No. 2 is the chartered accountant who has deposed that the petitioner and the opposite party No. 2 came to him in connection with the transfer of shares and he advised them as to how the statutorily prescribed form was to be filled up. He also deposes that the form was filled up in his presence and both the petitioner and opposite party No. 2 signed thereunder. He is one of the witnesses to the statutory form in exhibit 3 and his signature appearing thereon has been marked as exhibit 3/a. The last witness examined on behalf of the opposite parties is the accountant of the company who has stated that he had accompanied the petitioner and opposite party No. 2 to the house of O. P. W. No. 2 in connection with the transfer of shares and on the advice of O. P. W. No. 2, the prescribed form was filled up and signed in his presence. He has further deposed that prior to their visit to the house of O. P. W. No. 2, he had applied for the statutory form to the Registrar of Companies and had obtained the form which was taken with them to the house of O. P. W. No. 2 on March 2, 1983. He is also one of the witnesses to exhibit 3 and his signature

appearing on exhibit 3 has been marked as exhibit 3/b. The petitioner in his affidavit dated December 14, 1984, denies having signed any instrument of transfer on March 2, 1983, or at any point of time as alleged. The receipt of Rs. 26,000 by him as alleged by opposite party No. 2 has also been denied in the said affidavit. But in his evidence, the petitioner has admitted his signatures appearing in exhibit 3, the statutory transfer of shares form, and in exhibit 4, the letter of resignation, which have been marked as exhibits 3/c and 4/a respectively. It was suggested to O. P. W. No. 1, that the signature of the petitioner was taken in the share transfer form (exhibit 3) without his knowledge and nothing was suggested to him so far as his signature in exhibit 4 is concerned. Similarly, nothing was suggested to O. P. W. No. 3 relating to the petitioner's signature in exhibit 3 though he purports to be a witness to the execution of exhibit 3. In his evidence, the petitioner does not explain as to how his signatures were obtained in exhibits 3 and 4.

8. Section 41 of the Act defines who is a member of a company. According to the said definition, the test of membership of a company is whether the name of the person appears on the register of members of the company. Section 164 of the Act provides that the register of members of the company and the returns, etc., thereof shall be the prima facie evidence of any matter authorised to be inserted therein by this Act and the court shall accept the same as correct until it is rebutted. Exhibit 6 is the relevant entry relating to the petitioner in the register of shareholders of the company. In the said entry, it has been mentioned that the transfer of the shares of the petitioner has been registered on March 8, 1983, and exhibit 10 which is the certified copy of the annual return of the company made up to September 30, 1983, omits to mention the name of the petitioner as a shareholder of the company. Therefore, under the circumstances, the presumption would be that the petitioner no more continues to be a shareholder of the company until the same is rebutted by the petitioner. Section 155 of the Act provides for rectification of the register of shares if the name of a person is entered in the register or omitted therefrom without sufficient cause. On an application made under this section, the court may decide any question relating to the title of the person aggrieved by the improper omission of his name from the register. Evidently, the petitioner has not filed any application for such relief.

9. The evidence of the managing director (O. P. W. No. 1) has been fully corroborated by O.P.W. Nos. 2 and 3. Nothing substantial has been brought about in the cross-examination of O.P.W. No. 2 to disbelieve his testimony. O.P.W. No. 2 is admittedly the statutory auditor of the company. It was argued on behalf of the petitioner that O. P. W. No. 2 is highly interested in opposite party No. 2 and he had borne a grudge as the petitioner had pointed out to him that he had not audited the accounts of the company for 10 years. But the petitioner in his evidence does not breathe a word about the same. In these circumstances, the evidence of O. P. W. No. 2 cannot be disbelieved. O. P. W. No. 3 is the accountant of the company who is admittedly interested in opposite party No. 2, the managing director of the company. His presence at the time of execution of the document of transfer cannot be disbelieved and he is one of the witnesses to the same. I have already stated that the petitioner does not dispute his signature in exhibit 3, the share transfer form, and no explanation has been furnished in his evidence as to how his signature appears therein. In the circumstances, there is no other alternative than to hold that the share transfer form (exhibit 3) was signed by the petitioner with the full knowledge of its contents. The petitioner is admittedly an educated person having passed M.Sc. and was looking after the affairs of the company as one of its directors from 1979. It cannot be believed that he has put his signature in exhibit 3 without going through its contents and even if he has done so, he would be bound by the document he has executed. So far as exhibit 4 is concerned, the only explanation that has been offered by the petitioner is that he does not know typing and the evidence adduced on behalf of the opposite parties that he himself typed out that document and had put his signature thereon should not be believed for that reason. I have already mentioned that the petitioner has not offered any explanation as to how his signature in exhibit 4 came into existence. The learned counsel appearing for the petitioner has argued that the petitioner was required to put his signature on various forms, papers and registers during his continuance as a director of the company and in that process, his signature was obtained in a piece of paper which was later on converted into the letter of resignation. Such a story cannot be believed on the basis of the evidence of the petitioner in court where he says that on exhibit 4, the signature and the date have been given in his hand. The petitioner does not say that on March 2,

1983, he had signed any other paper of the company. But on the other hand, his definite case is that after his return from foreign tour in January 1981, he was not allowed to participate in the management of the company. Though there are no materials to believe that the contents of exhibit 4 were not typed out by the petitioner himself, but assuming that it is so, it cannot be believed that the petitioner put his signature on exhibit 4 without going through its contents. Consequently, the petitioner will be bound by the effect of the documents in exhibits 3 and 4 to which he is a party.

10. Exhibit 5 is the minutes of the proceeding of the meeting of the board of directors held on March 8, 1983, in which a resolution was adopted accepting the transfer of shares by the petitioner in favour of the opposite party No. 2 and directing recording of necessary entry in the register of members of the company maintained under Section 150 of the Act. The letter of resignation of the petitioner was placed before the board and the board accepted the same. An objection was taken by the petitioner that it is opposite party No. 2 who alone has signed the said resolution and it does not contain the signatures of all the members of the board of directors. The said objection is misconceived in view of the provisions in Section 193 of the Act. Section 193 of the Act requires the minutes of the proceedings of the meeting of the board of directors to be signed by the chairman of the said meeting or by the chairman of the next succeeding meeting. It does not require that all the members of the board of directors should sign the same. Section 194 of the Act provides that the minutes of the meetings kept in accordance with the provisions of Section 193 of the Act shall be the evidence of the proceedings recorded therein and Section 195 of the Act provides that the meeting in which the said minutes were recorded shall be deemed to have been called and held until the contrary is proved. Thus, the transfer of shares effected under exhibit 3 shall be taken to have been duly accepted and given effect to in pursuance of which a correction was made in the share register (exhibit 6). Nothing has been pointed out by the petitioner that the transfer of shares as per exhibit 3 does not comply with the requirements of Section 108 of the Act except that the same was not duly stamped on the date of execution. According to the petitioner, the stamps were obtained from the treasury on March 8, 1983, whereas exhibit 3 is purported to have been executed on March 2, 1983. An application was filed on January 18,

1985, in this court praying to call for the (stamp) register from the Treasury Officer, Main Treasury, Cuttack, to show that the stamps were obtained for the purpose on March 8, 1983. By order dated January 18, 1985, this court did not pass any order and allowed the said application to He over till the next date as the learned counsel for the petitioner wanted some time for obtaining the certified copy of the relevant entry in the said register. The learned counsel for the petitioner argued that he had applied for the certified copy but the same was not granted by the concerned authority. Accepting that the stamps were obtained on March 8, 1983, the learned counsel for the opposite parties had stamps to be affixed on the document prior to its execution. He refers to Section 108(1A)(b) of the Act which provides that every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company within the time specified in the said section. According to the learned counsel for the opposite parties, all that the aforesaid provision in Section 108(1A)(b) of the Act requires is that before delivery, the stamps should be affixed and it does not require the stamps to be affixed prior to execution of the document. This argument of the opposite parties appears to be acceptable in view of the language used in this section. Some arguments were also advanced as to the due compliance of the requirements of Section 110 of the Act. In my view, unless an application is made by the transferor, no notice under the said section is required to be issued to the transferee.

11. The learned counsel for the petitioner has pointed out some discrepancies in the evidence of the witnesses examined on behalf of the opposite parties to build up an argument that the incident deposed to by the said witnesses leading to the execution of exhibit 3 and payment of consideration thereunder cannot be believed being highly discrepant. Having recorded the evidence of each of the witnesses and having gone through the same carefully, I do not find any material discrepancy in the evidence which would discredit the intrinsic evidence of the said witnesses.

12. It has been argued by the learned counsel for the petitioner that the board of directors has not issued any notice in writing offering to sell the shares to the existing members of the company and, therefore, the transfer made under exhibit

3 must be held to be invalid being violative of Clause 9 of the articles of association of the company. This argument advanced on behalf of the petitioner is not acceptable in view of the fact that the petitioner cannot be said to be aggrieved even if it is held that Clause 9 of the articles of association of the company has been violated. Besides, there has been substantial compliance of the said clause inasmuch as the matter was discussed in the meeting of the board of directors and the proposal for transfer in favour of opposite party No. 2 was accepted. The learned counsel for the petitioner has next contended that the stamps affixed to exhibit 3 have not been duly stamped. For the aforesaid proposition, the learned counsel has relied upon a decision in *Coronation Tea Co. Ltd., In re* AIR 1961 Cal 528 ; [1962] 32 Comp Cas 568. It is not the case of the petitioner that exhibit 3 has been insufficiently stamped. Adhesive stamps have been affixed on the reverse of exhibit 3. The said stamps have been cancelled by putting 'cross' (' X ') marks in ink over the same. The learned counsel for the petitioner relying on the aforesaid decision of the Calcutta High Court has urged that the adhesive stamps used in exhibit 3 have not been properly cancelled as putting of cross (' X ') marks is not sufficient cancellation. Section 12 of the [Indian Stamp Act, 1899](#), provides the mode of cancellation of adhesive stamps. It says that whoever affixed any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again. In the Calcutta case, the State Government issued a notification under Section 75 of the [Indian Stamp Act, 1899](#), prescribing the mode of cancellation of share transfer stamps under which it was stated that the stamps shall be cancelled by the company by means of a punch which can perforate either the word 'cancel' or an abbreviation thereof. Nothing has been brought to my notice that in this State any such rule has been issued by the State Government. The manner in which the 'cross' ('X') marks have been put on the stamps in exhibit 3 renders the same unfit for use and, therefore, amounts to proper cancellation in the language of Section 12 of the Indian Stamp Act.

13. On a discussion of the evidence on record, I, therefore, come to the conclusion that the petitioner has duly transferred his shares in the company in favour of opposite party No. 2 which has taken effect in the relevant registers of the company. The petitioner was, therefore, not a person having any share in the

company and the petition filed by him under Sections 397 and 398 of the Act is, therefore, not maintainable.

14. In the result, the application is dismissed, but in the facts and circumstances of the case, there would be no order as to costs.

15. The order of stay granted on December 14, 1984, by this court in M.C. No. 27 of 1984 is hereby vacated. The amount of rent damages so far deposited by the petitioner shall be continued to be in deposit until the fixation of the quantum, if any, payable by the petitioner for the house he is occupying, is decided by an appropriate court in which event the said amount shall be withdrawn and adjusted by the company.

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