

Smt. Kaushalaya Chawla Vs. Shri Ashok Taneja and Others

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Court : Delhi

Decided On : Nov-07-2000

Reported in : 2001IIIAD(Delhi)135; 90(2001)DLT335

Judge : Mr. Vikramajit Sen, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : I.A. 5899/2000 in S. No. 206 of 1973

Appellant : Smt. Kaushalaya Chawla

Respondent : Shri Ashok Taneja and Others

Advocate for Def. : Mr. J.N. Aggarwal, ; Mr. Mahinder Nath Dube and ; Mr. P. Na

Advocate for Pet/Ap. : Mr. R.P. Bansal, Sr. Adv. and; Ms. Alka Srivastava, Adv

Judgement :

ORDER

Vikramajit Sen, J.

1. This suit for Partition and Rendition of Accounts has been pending for almost three decades. Fifteen years ago, on 18.11.1985, after recording the statement of Shri Gokul Chand Taneja, Defendant No.4, Messrs Taneja Spin Pvt. Ltd. was restrained from 'recovering the moneys which are receivable from the Jammu &

Kashmir Government.' Taneja Skin Pvt. Ltd. is not a party in the Plaint, but has filed this application Under Section 151 of the Code of Civil Procedure, on 25.5.2000, for recalling and vacating the aforementioned orders. It is Shri Gokul Chand Taneja who has filed the supporting affidavit. It was also candidly admitted by Shri J.N. Aggarwal that Taneja Skip Pvt. Ltd. was fully aware of the said orders at the time when they were passed. It is his contention however, that the reliefs that were contemplated in the suit were in respect of Hindustan Trading Co. and Taneja Trading Co. and not the applicant Company. The order had not been remonstrated against earlier, in the expectation that the suit would be decided shortly thereafter. In essence, Mr. Aggarwal's argument is that since with the exception of Shri Jagdish Mittal no other person in the Schedule has any share holding in the applicant, there is no justification for denying it the fruits of the decree obtained by it. The parties admit, however, that an appeal against the decree is still pending, but the submission is that this fact would have no bearing on the release of amounts lying in this Court under the interdiction contained in the said orders.

2. The first question that arises is whether the present application is maintainable. The applicant was well aware of the passing of the orders dated 18.11.1985 and could have assailed them within the prescribed time by whichever legal process it considered appropriate. The grounds for such challenge would essentially be the same as have been advanced before me, although Learned Counsel for the Applicant has sagaciously attempted to camouflage it by arguing that it has been filed because of the delay in the disposal of the suit. Most often, these delays are occasioned by parties filing vexatious and mala fide petitions intended to procrastinate the final decision. It was pointed out by Learned Counsel for the non-applicants that in this context it is Shri Gokul Chand who has neglected to render accounts despite directions to this end. However, it is hardly relevant who is responsible for the delay since the proper remedy ought to have been initiated in 1985.

3. On merits, the contention is that the substantial shareholding of the applicant was not held by any of the parties hereto. However, a perusal of the statement of Shri Gokul Chand Taneja, Defendant No.4 recorded immediately prior to the

passing of the said order was, inter alia, that he was a Director of the applicant Company: that the erstwhile partnership firm was carrying on business as tenants in 12-13 Dua Wool Market, Sadar Bazar, which tenancy was surrendered and thereupon taken over by the applicant. Even if there is apparently a substantial difference in its shareholding, the presence of Shri Gokul Chand is a thread which runs throughout the fabric of the applicant Company; furthermore the applicant has also succeeded to the possession of the premises earlier with the firm. It is far too incredible in the existing factual situation that the firm relinquished its valuable tenancy rights and that the applicant independently came to acquire them. In my view, prima facie, the applicant succeeded to assets of the erstwhile firms of which rendition of accounts has been prayed for in the suit. This was obviously the reason which persuaded the Court to pass the injunction in 1985. To recall these orders and further to release the amounts deposited by the Government of Jammu and Kashmir to the applicant may well deprive the Plaintiff of moneys through which they can make recoveries of possible dues.

4. The application is without merit and is dismissed with costs of Rs.3000/-, to be paid to the Plaintiff within thirty days.

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