

Rajendra Kumar Gupta and ors. Vs. Shivraj Gupta and anr.

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Court : Delhi

Decided On : May-28-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : [Delhi High Court Act, 1966](#) - Section 10(1); Companies Act; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 15A; Code of Civil Procedure (CPC) - Order 6, Rule 17

Appeal No. : FAO (OS) No. 350 of 2010

Appellant : Rajendra Kumar Gupta and ors.

Respondent : Shivraj Gupta and anr.

Advocate for Def. : Vikas Dhawan and; Abhimanyu Mahajan, Adv.

Advocate for Pet/Ap. : A.M. Singhvi, Sr. Adv.,; Girish Misra,; N. Nidhiram a

Disposition : Appeal dismissed

Judgement :

A.K. Sikri, J.

1. In this appeal preferred by the appellants under Section 10(1) of the [Delhi High Court Act, 1966](#), the appellants impugned the validity of orders dated 11.03.2010 passed by the learned Single Judge in IA No. 168/2007. That was an application

preferred by the respondent herein (plaintiffs in the suit, hereinafter referred to as 'the plaintiffs') under Order VI Rule 17 for amendment of the plaint. By the aforesaid reasoned order dated 11.03.2010, the learned Single Judge has accepted the prayer made by the plaintiffs in the said application, which permitted the plaintiffs to amend the plaint as desired. The appellants herein are the defendants (hereinafter referred to as 'the defendants'). Their submission that the suit had become infructuous; the amendments pleaded and further relief sought based thereon furnished afresh cause of action, which could be agitated by filing fresh suit, has not been accepted by the learned Single Judge. Arguments in the appeal remain the same. Before we take note of the arguments in detail and put them in perspective, we deem it proper to narrate the background in which the occasion to file application for amendment arose.

2. The plaintiff No. 1 and the defendant No. 1 are the brothers, both of whom are sons of Late Lala Hansraj Gupta. Plaintiff No. 2 is the son of plaintiff No. 1; defendant Nos. 2 & 3 are the sons of defendant No. 1 and Defendant No. 4 is a company incorporated under the Indian Companies Act (hereinafter referred to as 'the Act') known as M/s. Hansraj Gupta & Co. Private Limited. Without mentioning the present status of the plaintiffs and defendant Nos. 1 to 3 in defendant No. 4 Company as that is the subject matter of dispute, we may mention that both the plaintiffs and defendants 1 to 3 at one point of time were the Directors in the Company. They continued to be the share-holders of the said company as well. A meeting of the Board of Directors of the company was held on 06.01.2005. In fact, in the Annual General Meeting convened on 10.12.2003, plaintiff No. 2 and defendant No. 3 were appointed as Directors, plaintiff No. 1 was reappointed as Director, as defendant Nos. 1 and 2 were already the Directors as their terms as Directors had not come to an end by that date. In this manner, after the AGM held on 10.12.2003, the Board of Directors of the company consisted of plaintiffs as well as defendant No. 1.

3. Bone of contention in the CS (OS) 43/2005 filed by the plaintiffs is the validity of the meeting held on 06.01.2005. According to the plaintiffs, the term of defendant No. 1 as Director of the company expired on 31.12.2004. Since no AGM was held after 10.12.2003 till 31.12.2004, which should have been held by 31.12.2004, the

defendant No. 1 stood retired from office on 31.12.2004. He, therefore, could not attend the meeting of Board of Directors held on 06.01.2005, as he had ceased to be the Director of company as on that date. On this ground aforesaid suit for declaration and permanent injunction has been filed by the plaintiffs, seeking decree of declaration to the effect that the defendant No. 1 ceased to be the Director of the company with effect from 31.12.2004 and thus meeting held on 06.01.2005 as well as resolutions passed in the said meeting are null and void and cannot be given effect to. The plaintiffs have also sought decree of permanent injunction against the defendants restraining them from acting in furtherance of and/or pursuant to the resolution passed in the meeting held on 06.01.2005. Along with this suit, the plaintiffs also sought ad interim injunction.

4. The Suit was filed on 11.01.2005, i.e., within five days of holding the aforesaid meeting of the Board of Directors. This suit and IA came up for preliminary hearing on 14.01.2005. While issuing summons in the said suit in the application for injunction (IA No. 295/2005), the Court issued notice for 18.01.2005 and also passed the order 'Status quo as of today be maintained by the parties till the next date of hearing'. Counsel for the defendant No. 1 had appeared on that date and had accepted the summons on behalf of the defendant No. 1. and after 18.01.2005, the status quo order was extended from time to time by giving short dates and at the same time awaits the service of summons to defendant Nos. 2 to 4.

5. We may mention, at this stage, that one of the resolutions passed in the meeting held on 06.01.2005 was to convene AGM for 05.02.2005, as the status quo order would have prevented holding of the AGM. When the matter came up for hearing on 31.01.2005, defendants 1 to 3 argued that status quo order be modified to enable the company to hold AGM as scheduled. Following order was passed on that date:

In the meanwhile, the status quo orders dated 14th January, 2005, are modified to the effect that the A.G.M. scheduled to be held on 5th February, 2005, may be held but the decisions in regard to the Directorship of the plaintiffs, if any taken in the A.G.M. shall not be given effect till the next date of hearing.

6. In view of the aforesaid order, the AGM meeting scheduled on 05.02.2005 was duly held. On that day, the defendant No. 1 was in the said meeting and the defendant No. 1 was reappointed as the Director. Plaintiff No. 2 was also made to retire by rotation.

7. Thereafter, Extraordinary General Meeting (EGM) was held on 04.06.2005, wherein plaintiff No. 1 was purportedly to be removed. According to the plaintiffs, plaintiff No. 2 called a meeting of the Board of Directors of the company to be held on 20.06.2005. One of the agenda item to be considered in the said meeting was the notice dated 15.06.2005 sent by the defendant No. 1, acting as the Director of the company for convening the meeting of Board of Directors on 21.06.2005. Plaintiffs' case is that Board meeting was held on 20.06.2005, but was not attended by the defendant Nos. 1 to 3. A resolution was passed whereby the defendant No. 1 was called upon by the company to withdraw the notice dated 15.06.2005. A further resolution that was passed whereupon it was resolved that the powers entrusted to the Directors, prior to the status quo order shall continue to operate. According to the plaintiffs, contrary to the resolution was passed on 20.06.2005, defendant Nos. 1 to 3 held a meeting of the Board of Directors on 21.06.2005 as per the notice given by the defendant No. 1. In this meeting, resolutions were purportedly passed whereby powers of the plaintiff No. 1 enjoyed as Director were sought to be removed. Instead power to call and/or convene a Board Meeting was exclusively conferred upon Defendant Nos. 1 and 2. According to the plaintiffs, at no point of time, they were ever informed about the said resolution allegedly passed in the alleged meeting held on 21.06.2005. They were informed about this only on 21.06.2005 when another purported meeting of Board of Directors was held. According to the plaintiffs, they had proposed additional agenda items for the meeting held on 21.06.2005, which was not included or discussed on the specific ground that the plaintiff had no power to call and/or convene board meeting or to propose additional agenda items.

8. It is these subsequent events, viz., holding of AGM dated 05.02.2005, Extraordinary General Meeting dated 04.05.2005, purported Board Meetings on 21.06.2005 and 26.09.2005, which led the plaintiffs to file application for amendment of the pleadings with a view to incorporate those subsequent events

and on that basis add following three prayers:

(ca) pass a decree of declaration in favour of the Plaintiffs and against the Defendants declaring that Plaintiff No. 1 continues to be a 'Director-In-Charge' of the Defendant No. 4 Company till his status is changed and/or is removed by a special resolution passed in a General Meeting of the Defendant No. 4 Company;

(cb) pass a decree of declaration in favour of the Plaintiffs and against the Defendants declaring that the resolution passed in the Extraordinary General Meeting of the Defendant No. 4 Company held on 4.6.2005 as well as the resolution passed in the meetings of the Board of Directors of the Defendant No. 4 Company held on 14.2.2005, 21.6.2005 and 21.9.2005 are null and void and cannot be given effect to;

(cc) pass a decree of permanent injunction against the Defendants, their agents and employees restraining them from acting in furtherance of and/or pursuant to and/or giving effect to and/or implementing any of the resolutions passed in the meeting held on 14.2.2005, 21.06.2005 and 26.09.2005 purporting to be a meeting of the Board of Directors of the Defendant No. 4 Company.

9. The defendants did not file reply to this application even after last opportunity was granted for this purpose vide orders dated 01.04.2008 passed by the learned Single Judge. However, at the time of hearing this application was hotly contested. We may also mention at this stage that when this application was heard by the learned Single Judge, various other applications were pending, details whereof are enumerated by the learned Single Judge in the impugned order. The learned Single Judge has also recorded that three other applications were also heard along with aforesaid IA No. 168 of 2007 under Order VI Rule 17 of the Code of Civil Procedure. However, the learned Single Judge was of the opinion that before taking up other applications, it was necessary to decide application for amendment, as the outcome of this application would have bearing on other applications. This is how impugned order is passed on this application thereby allowing the same.

10. As pointed out above, the plank of attack launched by the defendants 1 to 3 was that the suit filed by the plaintiffs challenging the validity of meeting held on 06.01.2005 had become infructuous inasmuch as the grievance of the plaintiffs was that the defendant had ceased to be the Director of the company whereas the defendant No. 1 was in any case re-elected in AGM held on 05.02.2005. It was also argued that AGM was convened with the permission of the Court granted vide orders dated 31.01.2005. It was also argued that agenda of the meeting dated 06.01.2005 was very limited to the extent that it was for taking a decision as regards the illegal occupation by plaintiff No. 1 of the farmhouse which belongs to the company. Since plaintiff No. 1 was in illegal occupation Criminal Contempt as well as Suit for this purpose had already been filed by the defendants. The plaintiffs, on the other hand, argued that all these subsequent meetings held by the defendant and resolution passed thereon was illegal and in violation of status quo passed by the Court. Therefore, it was permissible for the plaintiffs to bring these subsequent events on record in order to determine the real controversies between the parties. While accepting these submissions of the plaintiffs, the learned Single Judge observed as under:

17. After considering the rival submissions of the parties I agree with the learned Counsel for the plaintiffs that at the stage of amendment of the plaint, merit of the case may not be looked into. As regards the objections raised by the defendants that the ambit of the suit is very limited therefore amendment should not be allowed, I am of the view that since the plaintiffs have sought amendment on the basis of subsequent events which have occurred after passing of the status quo order, there is no impediment in bringing the said facts on record as the main controversy between the parties is already mentioned in the plaint. Whether the suit is maintainable or not, the said issue is a matter of merit which cannot be decided at this stage, therefore, the amendment application cannot be rejected on the objections raised by the defendants.

11. The learned Single Judge has also taken support from the following judgments while allowing the amendment:

(i) Sarbjyot Kaur Saluja and Ors. v. Rajender Singh Saluja : 148 (2008) DLT 650;

(ii) Rajesh Kumar Aggarwal and Ors. v. K.K. Modi : (2006) 4 SCC 385;

(iii) Lakha Ram Sharma v. Balar Marketing Pvt. Ltd. : 2006 (2) SCALE 363.

12. Dr. A.M. Singhvi, learned Senior Counsel appeared for the appellants/defendants. His submission was that with the reappointment of the defendant No. 1 as Director in the AGM held on 05.02.2005, bottom of the cause of action which led to filing of the suit itself had been knocked out and therefore, it was not permissible for the Court to allow the amendment in respect of the events which took place subsequent to the filing of the plaint. He buttressed the submission by pointing out that the AGM was held pursuant to the orders dated 31.01.2005 passed by the learned Single Judge vide which the status quo order granted earlier was modified and thus when the AGM was held with the permission of the Court, the resolution passed thereon was not even challenged even on the application for amendment, there was no ground to make challenge to subsequent Extraordinary General Meeting or the meetings of the Board of Directors. He also submitted that in any case, if the plaintiff wanted to question the legality of the EGM held on 04.06.2005 or the meeting of the Directors held on 14.02.2005, 21.06.2005 and 26.09.2009, this provided fresh cause of action to the plaintiffs for which proper course was to file another suit and it was not permissible to amend the present suit. In support of this submission, he referred to the judgment of Supreme Court in Usha Balashaheb Swami and Ors. v. Kiran Appaso Swami and Ors. : AIR 2007 SC 1663 and particularly Paras 18 and 19 thereof, which reads as under:

18. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

16. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K. Narayana Pillai v. Parameswaran Pillai : 2000 (1) SCC 712 and Baldev Singh and Ors. v. Manohar Singh : AIR 2006 SC 2832. Even the decision relied on by the plaintiff in Modi Spinning (supra) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhanandan Ramdas Chaudhary (Dead). In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi's case (supra) as follows: As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action.

13. Mr. Vikas Dhawan, learned Counsel appearing for the plaintiffs/respondents countered the aforesaid arguments and submitted that the approach of the learned Single Judge was perfectly in order and there was no reason to interfere with the exercise done in allowing the application for amendment. His arguments proceeded on the premise that it was a continuing cause of action and in order to avoid multiplicity of proceedings, the plaintiffs were within their rights to bring the subsequent events emanating from same cause of action on record by filing the application for amendment. He further submitted that the challenge to the validity of these meetings was led, inter alia on the ground that these meetings were held in violation of the status quo order granted on 14.01.2005 inasmuch as modification thereof was limited only to the convening of AGM and not any further

meetings.

14. We have considered the aforesaid submissions of the learned Counsel for the parties. The first question which arises for consideration is as to whether suits filed by the plaintiffs have become infructuous. We think that it is not so. In this suit, business transacted in the meeting held on 06.01.2005 is challenged on the ground that defendant No. 1 could not have attended that meeting, as he ceased to be the Director on 31.04.2004. The Court had granted status quo order as prayer of the plaintiffs in the suit was to restrain the defendants from acting any furtherance of the resolution passed in the meeting held on 06.01.2005. What would be the effect if this suit is decreed ultimately? Naturally, any action taken pursuant to the resolutions passed on 06.01.2005 shall be rendered legally. One of the resolutions passed in that meeting was that AGM be held on 05.02.2005. Thus, if the suit is decreed, it would have direct bearing of the outcome of AGM which was held on 05.02.2005. In this view, we have to take note of the interim orders dated 14.01.2005 and 31.01.2005. On 14.01.2005 status quo as on that date was directed to be maintained by the parties. Moreover, it is also to be borne in mind that according to the plaintiffs, these meetings are held in violation of status quo order and therefore for this purpose, even contempt application is filed which is pending in the Court. This order was modified only to the extent that AGM could be held on 05.02.2005, as scheduled. However at the same time, it was also clarified that the decision in respect of the Directorship to the AGM, if any, shall not be given effect to, in the meantime. No doubt, Dr. Singhvi argued that the only embargo put by the Court were limited to the decision with regard to the directorship of the plaintiffs and no other business, which was to be transacted on 05.02.2005, we have to keep in mind that these are the interim orders. That would not mean that all other decisions taken on 05.02.2005 automatically become legal only because the Court had permitted the AGM to go ahead. It is stated at the cost of repetition that this AGM convened on 05.02.2005 is a sequel to the resolution passed on 06.01.2005, validity whereof is the subject matter of the suit. Therefore, the outcome of the suit will have direct bearing on the AGM held on 05.02.2005. Subsequent meetings, viz., EGM held on 04.06.2005 and board meetings held on 14.02.2005, 21.06.2005 and 26.09.2005 are the off shoots of the said AGM. Thus, it is clear that the events which have taken place subsequent to the board meeting

held of 06.01.2005 form one single chain. These are the incessant and continuous events arising out of the same transaction. Amendment based on such subsequent events is permissible and is to be allowed to do complete justice in the matter (See S.N. Kapoor (dead) by LRS v. Basant Lal Khatri and Ors. (2001) 1 SCC 329 and Bajaj Auto Limited v. Vikram Singh Mehta and Anr. : 91 (2001) DLT 593.

15. In these circumstances, it cannot be said that either the suit has become infructuous or the subsequent events form separate cause of action interconnected with cause of action pleaded in the suit. The judgments cited by the learned Counsel for the appellant, therefore, would not apply to the present case.

16. We, thus, hold that the amendment has rightly been allowed. Finding no merit in this appeal, we dismiss the same with costs quantified @ Rs. 25,000/-.

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