

Jyoti Bhusan Mukherjee Vs. Eastern Tea Company Ltd.

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Court : Kolkata

Decided On : Sep-17-1980

Reported in : AIR1981Cal192

Judge : Padma Khastgir, J.

Acts : [Companies Act, 1956](#) - Section 372

Appeal No. : Suit No. 308 of 1979

Appellant : Jyoti Bhusan Mukherjee

Respondent : Eastern Tea Company Ltd.

Advocate for Def. : Nag, Adv.

Advocate for Pet/Ap. : S.B. Mukherjee and ;Tarun Basu, Advs.

Judgement :

ORDER

Padma Khastgir, J.

1. This application has been taken out by the Eastern Tea Co. Ltd. and its directors, the defendants Nos. 1, 6 and 9 for an order that the leave granted under Clause 12 of the Letters Patent be revoked and for stay of all further proceedings taken with this suit. It is the petitioner's case that the plaintiff has filed this suit

against the defendants including the petitioners praying inter alia for a declaration that the investments made and/or maintained by the defendant company is in excess of the maximum provided under Section 372 of the [Companies Act, 1956](#) hence those investments are illegal, wrongful, ultra vires the act, declaration that the defendants are not entitled to exercise their voting rights in respect of the said shares, direction for appointment of a receiver and also sale by the receiver of the investments, mandatory injunction directing the defendants for disposal of the said investments in accordance with the orders to be passed by this Court and for other consequential reliefs. Before filing this suit, the plaintiff obtained leave under Clause 12 of the Letters Patent. From the perusal of the plaint and the prayers framed thereunder it would appear that no relief has been claimed against the defendant No. 12 the Chartered Accountant and the plaint also does not disclose any cause of action against the defendants Nos. 2 to 11. The plaintiff has obtained leave under Clause 12 of the Letters Patent on the basis of the averments made in paragraphs 15 and 19 of the plaint which read as follows:

'15. The aforesaid representation of the company and its Auditors that the accounts (together with notes thereon and documents annexed hereto) give the information required by the [Companies Act, 1956](#) is wrongful, incorrect, mala fide and the same does not disclose the correct state of affairs in connection with the investments made by the defendant company and the company and/or its Auditors deliberately made the aforesaid misrepresentation and/or misleading comments to the shareholders and also to the plaintiff and such misrepresentation and/ or misleading comment which tantamounts to fraud on shareholders and the said Act was in fact made by the defendant company to the plaintiff who received the said balance-sheet within the jurisdiction of the Hon'ble Court.'

'Para 19. The defendant company however through its letter dated 23rd August, 1978 addressed to Shri Lalit Kumar Khettry, Advocate, represented that the defendant company made investment in conformity with the provisions of the [Companies Act, 1956](#). The said letter was received by the said Lalit Kumar Khettry on or about the 28th Aug., 1978 at his office at No. 10, old Post Office Street, Calcutta-700 001, within the jurisdiction of this Hon'ble Court. By the said letter the defendant company made fraudulent representation to the plaintiff and other

share-holders in connection with the investment position of the defendant company in other bodies corporate including the bodies corporate in the same group as it would ex facie appear from the balance-sheet that the investments made exceeded the maximum limit provided in Section 373 of the said Act and holding of such investment is illegal and wrongful and the defendant company is not competent to legally hold such investment save for the self-aggrandisement and personal benefit of the defendants Nos. 2 to 11 and not in the interest and for the benefit of the defendant company and its share-holders.'

2. In para. 27 it has been pleaded that the part of the cause of action has arisen within the jurisdiction of this Court as pleaded in those two paragraphs being paras. 15 and 19 respectively. It would appear from those averments that the plaintiff has alleged that it has received a copy of the balance-sheet within the jurisdiction of this Court. Secondly, it has been alleged that Mr. L. K. Khettry appearing on behalf of a person named Mr. Sukumar Bose wanted certain clarifications of the balance-sheet dated 31st Mar., 1977 from the defendant No. 1 Messrs, Eastern Tea Co. Ltd. at Jalpaiguri in answer to that a letter was sent to Mr. L. K. Khettry at No. 10 Old Post Office Street, Calcutta within the jurisdiction of this Court. It would appear from the cause title that the present suit has been filed not by Sukumar Bose but by Jyoti Bhushan Mukherjee. Hence so far Jyoti Bhushan Mukherjee is concerned the only fact which is relevant is the receipt of the balance-sheet within the jurisdiction of this Court. It would appear from the pleadings as also from the prayers that Jyoti Bhushan Mukherjee has not challenged the balance-sheet nor has he claimed any relief in the nature of cancellation, setting aside or in any other way making the said balance-sheet ineffective. Although there are averments that the auditors have deliberately made misrepresentations and misleading statements to the share-holders and also to the plaintiff which tantamounts to fraud on the shareholders but no relief has been claimed against the auditors. In none of the prayers starting from (a) to (i) the said balance-sheet has not been challenged, nor any relief has been claimed in respect of the said balance-sheet. It is the positive case of the petitioner that the receipt of the balance-sheet is no part of the plaintiff cause of action, nor the letter received by Mr. L. K. Khettry on behalf of Mr. Sukumar Bose. Secondly, it is the petitioner's case that considering the balance of convenience this Court should revoke the

leave granted in favour of the plaintiff in as much as the defendant company is situated outside the jurisdiction of this Court and all the offices, documents, books of accounts are also lying outside of this Court at the registered office of the defendant No. 1 which is situated at Jalpaiguri outside the jurisdiction of this Court. Considering that the plaintiff has challenged the various investments made by the defendant company starting from the year 1964, although it has been submitted by the counsel on behalf of the plaintiff that for the purpose of proving his claim in the suit he will be required only to prove the balance-sheet and nothing else but for the purpose of proving the investments from the year 1964 the defendant No. 1 will have to produce all the books of accounts, papers and documents to show what investments have been made by the defendant No. 1 as some of the investments have also been made prior to 1960 before the amendment of the section came into effect. Hence the defendant will have to bring down enormous documents papers and also number of officers of the company who are all residing outside the jurisdiction of this Court. Hence considering the balance of convenience this Court should revoke the leave granted in favour of the plaintiff.

3. It would appear that in the cause title it has been stated that the defendant No. 1 has its registered office at Jalpaiguri outside the aforesaid jurisdiction but it has a subordinate office at Nilambar, 28B, Shakespeare Sarani, Calcutta within the jurisdiction of this Court. It is the petitioner's case that it does not have a sub-office but it has only a liaison office where-from very little work is discharged and or carried out by the company. Moreover there are no averments in the body of the plaint that the defendant No. 1 has a sub-office in Calcutta within the jurisdiction of this Court. From the language of the Clause 12 it would appear that the requirement for invoking jurisdiction of this Court is that the defendant must reside or carry on business within the jurisdiction of this Court in order to give jurisdiction to this Court to entertain, try or decide the suit. Hence from the language used in the cause title it would not appear that the defendant company carries on business at 28B, Shakespeare Sarani within the jurisdiction of this Court hence on that ground also leave should be refused.

4. Mr. S. B. Mukherjee appeared on behalf of the petitioner with Mr. Tarun Basu relied on the case reported in AIR 1930 Cal 159 and submitted that Mere

statement of fact in a plaint does not amount to a cause of action but the said fact must have a distinct connotation to the expression 'cause on action'.

5. In the case reported in AIR 1949 Cal 495 certain tests have been laid down to be applied in an application for revocation of leave granted under Clause 12 of the Letters Patent and one of the test is that where only a part of a cause of action arises then it is a question of discretion with the Court to grant or refuse leave or to revoke or maintain leave which has already been granted taking into consideration the balance of convenience and if the balance is definitely in favour of the defendant the Court should apply the doctrine of forum 'convenience'. The same view was affirmed by a division bench of this Court presided over by Chief Justice SankarProsad Mitra in the case reported in 0043/1978 : AIR1978 Cal211 .

6. It would appear from Section 20 of the Civil Procedure Code that although suits can be instituted against a defendant where a corporation carries on business at its sole office or principal office or in respect of any cause of action arisen at any place where it has also a subordinate office, the said provision of law cannot be applied in this case as Section 20 of the Civil P. C. has no application thereof suits filed in the Original, Side of this High Court. Hence the averments that the defendant has a subordinate office at Calcutta is of no avail to the plaintiff. The substratum of the plaintiff's case or the cause of action is violation of Ss. 372, 373 and 374 of the Companies Act by the defendant No. 1 and its directors. It is true that the copy of the balance-sheet was served on the plaintiff at Calcutta within the jurisdiction of this Court but the plaintiff has thereby merely obtained the knowledge of such investment from the copy of the said balance-sheet. The plaintiff has not challenged the balance-sheet itself. In the case reported in : AIR1952 Cal645 Chief Justice Harries (as he then was) held that the receipt of a notice is a part of the cause of action but there the notice itself was challenged being tricky and not in conformity with the provisions of the Companies Act. Moreover by non disclosure of proper facts in the notice amounted to misrepresentation and fraud. Such misrepresentation contained in the notice itself, so made at Calcutta. Hence definitely in that case the plaintiffs part of the cause of action was the receipt of the Notice which was being challenged arose within the jurisdiction. According to Mr. Nag a corporation carries on business at its branch

office and he relied on a case reported in AIR 1943 Cal 199. Hence according to Mr. Nag the defendant No. 1 carries on business at its sub-office within the jurisdiction of this Court, but it would appear that there is no averment in the cause title as also in the body of the plaint that the defendant carries on business at such sub-office while granting or revoking leave under Clause 12, the averments made in the plaint to be taken into consideration. Mr. Nag further submitted that the defendants have acquiesced and permitted this suit to go on by applying before this Court for an order directing them added as party defendants. Hence after submitting to the jurisdiction of this Court and allowing this court to pass orders, now the defendants cannot turn round and ask this Court to revoke the leave. It would appear that this suit has been filed under Order 1, Rule 8 hence 41 shareholders have come and been added as parties. It is true that the point of jurisdiction should be taken at the earliest opportunity and a party who has acquiesced or has submitted to the jurisdiction of the Court and have obtained orders in favour of them should not be allowed at a subsequent stage to challenge the jurisdiction, of this Court. In this case an application was taken out by the plaintiff under Section 155 of the Companies Act the said application was adjourned sine die on the ground of pendency of this suit. Considering these facts Mr. Nag also urged that the Court should not revoke the leave on this ground also. But it would appear that this suit was filed on 28th Apr., 1979 and an interlocutory application was taken out on 7th of May, in the affidavit-in-opposition, at the earliest opportunity the petitioners have challenged the point of jurisdiction in the said application and in June, 1979 this application itself has been taken out for revocation of the leave. While this application for re-vocation of leave was pending an application under Section 155 of the Companies Act for rectification of the share register was taken out by the plaintiff. Mr. Nag also submitted that where there are complicated questions of law and fact regarding jurisdiction, limitation and other points it would be proper for a Court not to decide such questions on interlocutory application except in clearest cases while revoking leave under Cl. 12 of the Letters Patent the Court will have to look into the averments as made out in the plaint. From the perusal of the plaint it seems that no part of the plaintiffs cause of action has arisen within the jurisdiction of this Court. From the cause title it would appear that it is not the case of the plaintiff that the defendant carries on

business at its sub-office. Considering the balance of convenience it would appear from the cause title that most of the defendants are residents of Jalpaiguri and the registered office of the company being at Jalpaiguri all the statutory books and other documents would remain at the registered office. Hence by asking the company to produce all those documents and papers and books of accounts to show as and when and for whatever such investments were made by the Company, it appears to me that would cause great inconvenience not only to the company but also to the other shareholders to come and defend the suit before this Court. Although the plaintiffs are the 'domimis litis' but his right of choice of forum is not absolute and the Court has in proper case the right to interfere with such choice.

7. Taking all these facts into consideration I am of the view that the petitioner is entitled to the reliefs as prayed for. Hence I pass an order in terms of prayers (a), (b). Costs could be cause in the cause. There will be a stay of operation of this order for a fortnight from date.