

Moolchand Gupta

Vs

Jagannath Gupta and Co. (P) Ltd.

Civil Appeal No. 1700 (N) of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

30.01.1979

JUDGMENT

SARKARIA, J. –

1. This appeal by certificate is directed against a judgment dated July 26, 1968 of the High Court of Judicature at Calcutta. The facts leading to this appeal are as follows :

1a. Jagannath Gupta & Co. (P) Ltd. the respondent herein, (hereinafter referred to as the Company) was incorporated in the year 1940 under the Indian Companies Act as a private company limited by shares with its registered office in Calcutta. Its nominal capital was and still is Rs. 25,00,000 divided into 1000 ordinary shares of Rs. 2500 each with the entire capital paid up or credited as paid up.

2. Prior to 1940, Jagannath Gupta used to carry on business under the name and style of Jagannath Gupta & Co. as karta of a joint Hindu family business. Subsequently, as a result of the family arrangement, the joint Hindu family trading partnership was converted into a contractual partnership under the name and style of Jagannath Gupta & Co. It was thereafter converted into a private limited company in 1940 as aforesaid.

3. Jagannath Gupta had four sons : Bidya Bhushan Gupta, Padam Chand Gupta, Moolchand Gupta and Bhim Sen Gupta. Bidya Bhushan Gupta had a son, Mahadev Pradesh Gupta who died in 1945 and a daughter Bimla who was married to Uma Shankar Shroff. Uma Shankar Shroff was adopted in May 1967 by the widow of Mahadev Prasad Gupta. Moolchand Gupta had two sons : Gopal Krishan and Inderjeet. Bhim Sen Gupta had two sons : Devi Prasad and Shukla.

4. The shares of the company were originally held by Jagannath Gupta, as follows :

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(a) Jagannath Gupta	495 shares
(b) Bidya Bhushan Gupta	125 shares
(c) Padam Chand Gupta	125 shares
(d) Moolchand Gupta	125 shares
(e) Bhim Sen Gupta	120 shares

(f) Bhuran Devi, wife of Jagannath Gupta 5 shares

(g) Krishna Devi, wife of Bhim Sen Gupta 5 shares

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5. The appellant is a share-holder of the company, which was a domestic concern of the family of Jagannath Gupta. He is a holder of 125 fully paid up shares from the very inception of the Company.

6. It is alleged on behalf of the respondents, by Bidya Bhushan Gupta, that during his life time, the said Jagannath Gupta at a meeting of the Board of Directors, presided over by him, initiated and passed a resolution, whereby he nominated his successors to or bequeathed or transferred his 495 shares in the event of his death as follows :

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| (a) | To Padam Chand Gupta | 125 shares |
| (b) | To Bidya Bhushan Gupta | 250 shares |
| (c) | To Gopal Krishan Gupta (son of the appellant) | 65 shares |
| (d) | To Debi Prasad Gupta (son of Bhim Sen Gupta) | 55 shares |

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7. Another distinctive feature of the case is that the Company was formed with 19 properties specified in Schedule 'A' to the Memorandum of Articles of Association.

8. On July 19, 1967, Moolchand Gupta filed a petition under Sections 433, 434 and 439 of the Companies Act, 1956, in the High Court of Calcutta. This was registered as Petition No. 158 of 1967. A two-fold prayer was made in the petition : (a) The Company be wound up by the High Court; (b) A professional liquidator be appointed. The petition was admitted on August 1, 1967 and directions were given for publication of the advertisements in the Calcutta Gazette and other papers. The petition was fixed for hearing on September 25, 1967 in the said High Court. The allegations made in the petition were as under :

8a. That the respondent's allegation that prior to his death, Jagannath Gupta had transferred/bequeathed his 495 shares as aforesaid, was wrong and the said minutes of the alleged meeting of the Board of Directors under the Chairmanship of Jagannath Gupta purporting to be held on September 6, 1946, are false and fabricated. This was also the stand taken by Bhim Sen Gupta in his affidavit filed before the High Court. It is also alleged that prior to the death of the said Bhuran Devi, Bhim Sen Gupta had sold and/or transferred his 120 shares to this Bhuran Devi and said 120 shares along with the 5 shares originally allotted to her, stood registered in the name of Bhuran Devi (since deceased). It was further stated that after the death of Jagannath Gupta and Bhuran Devi, Bidya Bhushan Gupta and Padam Chand Gupta wrongfully and illegally took possession of the said shares and purported to divide the shares standing in the name of Jagannath Gupta, by allotting 250 shares to

Bidya Bhushan Gupta, 125 shares to Padam Chand Gupta, 65 shares to Gopal Krishan Gupta and 55 shares to Devi Prasad Gupta.

9. According to the petitioner (Moolchand Gupta), the purported allotment and/or transfer of the said shares, is in contravention of the provisions of law and/or the Articles of Association of the Company and in deprivation of the legal rights of the petitioners to the said shares. His further stand was that Bidya Bhushan Gupta is wrongfully and falsely contending that the share certificates are with him (Moolchand Gupta). He further contended that the said Directors and/or the Company have, in any event, failed, neglected and refused to deliver the share certificates in respect of the said 65 shares and 55 shares to Gopal Krishan Gupta and Debi Prasad Gupta, respectively.

10. It was further pleaded that, at the material time, Bidya Bhushan Gupta and Padam Chand Gupta were at the helm and control of the affairs and management of the Company. Between 1940 and 1966, all the properties of the Company except Premises No. 8, Murlidhar Sen Lane, was sold or transferred at under-value. It was further contended that the Company has been continuously incurring losses and thus the substratum of the Company has disappeared. The Company had never declared any dividends and is continuously incurring losses. The affairs of the Company are conducted in a manner oppressive to the appellant.

11. On September 4, 1967, the respondent filed a Company Application being No. 229 of 1967 in the High Court for an order restraining the appellant herein from taking steps upon the said petition of advertising the same. An interim order was passed by the High Court on September 4, 1967, staying the publication of the said advertisement till the disposal of that application. The appellant contested that application which came up for hearing before R. N. Dutta, J. who concluding the hearing on February 1, 1968 and reserved the judgment. Before the judgment was announced, certain facts came to the knowledge of the appellant. He brought those facts to the notice of the learned Judge by filing an affidavit and charging the respondent with suppression of facts. Bidya Bhushan Gupta replied by an affidavit, dated April 20, 1968.

12. The learned Judge dismissed the said Company Application (No. 229 of 1967) by his Order, dated April 23, 1968 and declined to stay winding up proceedings. Thereafter, the appellant proceeded to cause the advertisement to be published in the newspapers and the same were duly published, as directed by the High Court.

13. The respondent, however, on May 27, 1968, preferred an appeal (No. 96 of 1968) before a Divisional Bench of the High Court which by its order dated July 26, 1968, allowed the appeal and granted stay of the proceedings in the said company petition (158 of 1967).

14. After obtaining a certificate, under Article 133(1)(a) and (b) of the Constitution, from the High Court, Moolchand Gupta has preferred this appeal against the aforesaid stay order passed by the Division Bench.

15. Although, the High Court has, in the order under appeal, made extensive observations with regard to the merits of the petition for winding up of the Company made by the appellant, the proceedings for winding up have been stayed by the High Court on the ground that on a complaint of the appellant, Moolchand Gupta, a parallel investigation into the affairs of the Company under the provisions of Section 235 of the Companies Act, 1956 is pending.

16. After hearing the learned counsel on both sides, we are of opinion that the High Court was in

error in making the stay order it did. Counsel for the appellant has taken us through the correspondence annexed to the petition for winding up. It is evident therefrom that although the Registrar and/or the Company Law Board had made certain enquiries of an exploratory nature from the Company, yet no investigation contemplated under Section 235 or 237 or any other provision of the Companies Act, has in fact been commended. Rather, it seems that on account of the winding up proceeding the authorities have stayed their hands.

17. The learned counsel for the appellant has submitted that the Central Government has not appointed any inspectors as envisaged by Sections 235/237 and the matters are in a stalemate. The High Court's order, it is maintained has led to a stand still situation where for the appellant both the avenues for seeking redress are lying frozen.

18. It may be observed that under Section 235, it is not obligatory for the Central Government to direct an investigation. It has a discretion to appoint or not to appoint inspectors for investigating the affairs of the Company, the word used in the section being "may". Before the Government can take such action under Section 235, certain pre-conditions including those specified in Section 236, must be satisfied. Furthermore, unlike the power of the Court in a proceeding for winding up of a Company, the discretionary power of the Central Government to direct investigation is neither judicial nor quasi-judicial. It follow therefrom, that investigation on a complaint under Section 235/237 may not be an adequate substitute for proceedings in Court on a winding up petition. In other words, a petition under Section 235/237/239 may not afford an equally efficacious and alternative remedy as a petition under Section 439 to Court for winding up of the Company.

19. The intention of the Legislature as discernible from Section 243 of the Companies Act, seems to be that when the Court is already seised of the matter, at the instance of a party the Central Government should refrain from taking the initiative. Even where it appears to the Central Government from the report of the investigating inspectors appointed under Section 235/237 that it is expedient to move the court for winding up of the Company on the ground that it is just and equitable to wind it up, or that an application for an order under Section 397 or 398 be made, then also it must stay its hands from doing so if proceedings for winding up of the Company are already being taken by the Court.

20. It is, however, true that in view of Section 258 an investigation under Sections 235, 237 etc. cannot be stopped merely because a company has passed a resolution for voluntary winding up. But, such is not the case here.

21. Be that as it may, in the instant case, no inspectors had been appointed under Section 235 or 237 of the Act, and no parallel investigation by the Central Government or its authorities under the Act into the affairs of the Company was continuing. Nor was it a case where the High Court thought that for a proper and effectual adjudication of the petition pending before it, it was necessary to get the matter investigated through the agency of the Central Government.

22. In the circumstances of the case, therefore, the High Court should not have stayed the proceedings on the petition for winding up filed before it by Moolchand Gupta, but should have disposed it of on merits. For the foregoing reasons, the appeal is allowed, the order of the High Court is set aside and the case is sent back to the High Court for disposal of the appellants petition in accordance with the law. Costs to abide the result.

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