

RAJASTHAN HIGH COURT

Dullar Enterprises Pvt. Ltd.

Vs.

Bhagwan

Civil Revn. Petn. Nos. 490 to 493 of 1998

(J.C. Verma, J.)

13.09.2000

ORDER

J. C. Verma, J.

1. These connected revision petitions have arisen out of the orders passed in Civil Suit Nos. 256/91, 218/89, 245/91, 243/91 filed against the same defendant and pending in the same Court and arising out of similar set of facts and, therefore, are being decided together.

2. Identical suits were filed by the plaintiffs, now the respondents in the revision petitions, for recovery of amounts as mentioned in the suit from the defendant, now the petitioner, which is a registered private limited company under the Companies Act and its Directors and the Managing Director. The plaintiffs had alleged that they had applied for purchase of certain shares of the company by depositing money and obtaining receipts. Neither the shares were allotted nor any information in regard to shares was given to the plaintiff and repeated requests made to the concerned persons of the company also did not bring any fruit except that false promises were given. It is stated that because the shares had not been allotted, the company was duly informed by the plaintiffs that they are not now interested in the allotment of shares. This intimation was given by telegram on 7-4-1987.

3. Till the filing of the suits, according to the plaintiff, neither any shares were allotted nor the money was returned and, therefore, a notice was also issued on 1-12-1988 through counsel which notice was returned back. For the reasons that neither the shares were allotted nor money was returned, the plaintiffs filed a suit for recovery of the amount along with interest as mentioned in the plaint. In the written statement

filed by the respondent, a defense was taken that the shares had actually been transferred in the name of the plaintiffs, i.e. certain shares were transferred from other share holders. In paras 12, 13, 14, 15 and 16, plea was taken that in case the plaintiffs are aggrieved of the fact that shares had not been transferred or allotted, in that situation, they should have resorted to the provisions under section 113(3) of the Companies Act.

4. Issues were framed including the issue whether the suit is not maintainable for the reasons mentioned in paras 9, 13, 14, 15 and 16 etc. All these paras contained the averments in the written statement that for the reasons that the suit relates to the allotment of the shares, therefore, the plaintiffs should have resorted to the remedies of the provisions of the Act.

5. Application was moved by the defendants under Order 14 Rule 2 Civil Procedure Code for deciding certain issues as preliminary issues for the reason that it went to the root to determine the jurisdiction of the civil Court. That application was has been dismissed by the order dated 26-2-1998. Admittedly, after framing the issues the plaintiff had already completed his evidence. The court observed that the question involved in the plaint was whether the shares had been allotted to the applicant within one year or not and in case of failure whether the plaintiffs were entitled to demand their money back. The Court had observed that after recording the evidence of the plaintiff, the moving of such an application cannot be said to have been moved *bona fide* for deciding any issues as preliminary issue and dismissed the application. This order has been challenged. Similarly, identical orders have been challenged by the defendant petitioner in the present cases.

6. It is the contention of the petitioner that as soon as any point in regard to jurisdiction of the civil Court is raised, it is incumbent duty of the civil Court to decide such issue as preliminary issue to the effect whether the civil Court has jurisdiction or not. Per contra, the respondents in the present revision petitions state that the plaintiffs are not raising any dispute in regard to validity of the allotment of the shares, but are asking their money back for the reason that the shares were not allotted to them and if any transfer is said to have been made, intimation of which was not given to the plaintiffs, nor any such shares have been passed on to the plaintiffs even up to filing of the suit, in such situation, the plaintiffs are entitled to file a suit for recovery of the amount simplicitor.

7. Counsel for the petitioner relies on a judgment of this Court in the case of *Eternit Everest Ltd. v. Neelmani Bhartiya*¹ where the relief claimed by the plaintiff that he be declared the owner of the shares and cancellation of registration of shares in the name of the transferees obtained by misrepresentation or fraud or any other reason was held to be not proper. The Court had held that such powers were vested only in the authorities under the Companies Act. This authority has no bearing in the present case.

8. The case of *Stridewell Leathers (P) Ltd. v. Bhankerpur Simbhaoli Beverages (P) Ltd.*,² being relied upon by the learned counsel for the petitioner has also no bearing on the case as the matter related to the jurisdiction of the High Court in relation to the place at which registered office of company concerned was situated.

9. In the case of *Lufthansa German Airlines v. Vij Sales Corporation*,³ where the suit was dismissed by the High Court on the point of limitation as a preliminary issue, the Supreme Court had held that the case was not of that nature that the preliminary issue ought to have been decided and dismiss the suit.

10. Learned counsel for the respondent relies on a Full Bench authority of Allahabad High Court in the case of *Sunni Central Waqf Board v. Gopal Singh Vishrad*⁴ to the effect that under Order 14 Rule 2, as it stood prior to 1976 amendment, wherein it was held that after the amendment it is the discretion of the Court to decide the issue of law as a preliminary issue or to decide it along with other issues. It is no longer obligatory to decide the issue of law as preliminary issue. It was further held that a point in regard to 'bar to the suit', cannot be tried as preliminary issue. It was further held that even though certain issues did fall within the ambit of clause (a) and (b) of Rule 2(2) of Order 14, the Court has its own discretion to try the suit as preliminary or otherwise.

11. In the case of *M.D. Nanjundaswamy v. Basic Education Society*,⁵ a Single Bench of Karnataka High Court had held that the order passed by the trial Court under Order 14 Rule 2 (2) and the discretion used by the trial Court cannot normally be interfered with.

12 In the case of *Usha Sales Ltd. v. Malcolm Gomes*⁶ it was held that after the amendment of the Civil Procedure Code in the year 1976 even though a case may be disposed of on a preliminary issue the Courts shall subject to the provision of sub-rule

(2) pronounce the judgment on all the issues. In other words, the obligation to decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court and rather a duty has been cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same and also in regard to the issue relating to the jurisdiction of the Court and to the legal bar, it was held that this is more in the nature of discretion rather than a duty and the Court is not bound to try any issue despite the provisions as contained under Order 14 Rule 2 (2) as the words 'it may try' are clearly indicative of the fact that discretion is given to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue.

13. Counsel for the petitioner also relies on number of judgments of this Court reported in *Panchayat Shri Digamber Jain Mandir, Bagruwala v. Shri Chiranji Lal Patni*,⁷ - *Amir Chand v. Harji Ram*,⁸ *M/s Hyderabad Asbestos Cement Products Ltd., Hyderabad v. Mohammad Argobasi Enterprises and another*,⁹ which case related to the pre-amendment of Order 14 Rule 2 Civil Procedure Code on the point that the preliminary objection raised in regard to the jurisdiction of the Court must be decided as a preliminary issue. He also relies on AIR 1972 Calcutta 50 Aslatic Oxygen Ltd., wherein it was held that Section 113 does not provide for delivery of certificate of the shares or debentures, but only enjoins upon the Company to have them for delivery. In *R. Venkataswamy Naidu v. The Director, Enforcement Directorate, New Delhi*¹⁰ wherein the declaration by way of writ petition was sought of the controversy about the transfer of interest (shares) in the company to the effect that they were violative of Section 26(4) of the Foreign Exchange Regulation Act. This authority has no relevancy to the facts of the case.

14. In the case of *Shripal Jain v. Torrent Pharmaceuticals Ltd.*¹¹ in regard of duplicate certificate for the loss of original ones, it was held that it is not the civil court but the Registrar who should have held an enquiry under section 84 (4) of the Companies Act.

15. The above cited cases by the petitioner either the case relate to the rights of the parties as enshrined in the Companies Act or to the unlamented provisions of Civil Procedure Code. In the present case, the parties are at variance in regard to transfer of shares which is to be proved on evidence. No question of law is involved, but the suit is totally based on facts.

16. Applying the above dictum of law, it is clear that after the amendment of Civil Procedure Code in the year 1976, the word 'shall' has been replaced by the word 'may' in Order 14 Rule 2 and now it is not necessary that even the legal issue be decided as preliminary issue. The objections being raised by the defendants can only be determined by leading evidence. The suits are pending since 1989 onwards. The plaintiff has already completed his evidence. To move an application after the conclusion of the evidence of the plaintiff for deciding any issue as preliminary issue, cannot be said to be a justified application or with any *bona fide* intention. Had the defendant, present petitioner, had any grievance of such nature, he could have moved such application immediately on framing the issues which admittedly he had not done. This clearly shows that the defendant is more interested in delaying the suits. More than 10 years have passed, the defendant is still to produce the evidence. Revisions are being filed against the interim orders made on the applications despite the clear dictum of law on the facts of the case. The trial Court had jurisdiction under the law to decide all the issues at the same time specially when the evidence has already been led partly by the plaintiff even before moving the present application.

17. For the reason that the suits are pending for last 10 years and the parties are still on the stage of evidence, it shall be appropriate that the trial Court is bound down to conclude the trial within a period of six months from the date of receipt of the certified copy of this order. The plaintiff shall finish all his evidence within 45 days , and thereafter the respondents shall be given four months to finish all his evidence. No time shall be extended without the express permission of this Court.

18. I do not find any merit in the revision petitions as no jurisdictional error has been committed by the trial Court.

19. For the reasons mentioned above, all the revision petitions are dismissed with a cost of Rs. 1,000/- in each case.

Revision dismissed.

Cases Referred.

1. (1999) 2 Raj LW 831

2. AIR 1994 SC 158
3. (1998) 8 SCC 623
4. AIR 1991 All 89
5. AIR 1990 Kar245
6. AIR 1984 Bom 60
7. (1998) 2 WLN 565
8. 1986 RajLR 985
9. AIR 1989 And Pra 286
10. AIR 1992 Mad 235
11. 1995 Supp. (4) SCC 590