JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1857 OF 2016
IN
SUIT NO. 624 OF 2016

Dhirubhai alias Dhirajlala H. Desai and others ... Plaintiffs
Versus
Lataben Abuwalla and others. ...Defendants

Mr. Snehal Shah, *with Ms. Bindi Dave, Nikita Bhansali i/b M/s. Wadia Ghandy and Co for the Plaintiffs.*
Mr. Zal Andhyarujina, *with Shyam Kapadia, Aditya Khandeparkar, Mr. R.S. Bidkar and Mr. Satchit Bhogle i/b M/s. Hariani and Co for Defendants Nos. 1, 5 and 9.*
Mr. Anirudh Hariani, *i/b Kalpesh Joshi for Defendants Nos.2 and 10.*
Mr. F.J. Thakkar, *i/b Doijode Associates for Defendants Nos. 6 and 7.*

CORAM: G.S. PATEL, J
DATED: 24th October 2016

ORAL ORDER:-

1. I passed an order on 2nd September 2016 on the Plaintiffs' Notice of Motion. At that time, I also framed a preliminary issue under Section 9A of the Code of Civil Procedure, 1908.

2. Today, I have heard Mr. Andhyarujina for Defendants Nos. 1, 5 and 9 in support of the jurisdictional objection and Mr. Shah for the Plaintiffs in opposition. Both sides have agreed that no evidence needs to be led on the preliminary issue.

3. As I have noted in the previous order, the Suit is for administration of the estate of one Dr. Saurabh Desai who died on 28th May 2013. It seeks administration in terms of a Will said to have been made by Dr. Desai on 7th January 2006. The three Plaintiffs claim to have been appointed as executors under this Will. Plaintiffs Nos. 2 and 3 were also co-Trustees with Dr. Desai of a Public Charitable Trust that bore his name.

4. The actual bequests are not material, except to note that these relate *inter alia* to shareholdings that Dr. Desai had in a number of companies he founded. These include Defendant No.3, Pearim Pharmaceuticals Private Limited ("**Pearim**"); Defendant No. 4, Alvaetra Laboratories Private Limited ("**Alvaetra**"); and Defendant No. 5, Saurabh Desai Exports Private Limited ("**SDEPL**"**)**.

5. The reliefs sought in the Suit are, firstly, that the Dr. Saurabh Desai's estate be administered in terms of the Will to the extent of the estate described in the schedule A to the Plaint. Then there is prayer for accounts. This is followed by prayer for then appointment of Commissioner for taking Accounts. From prayer (e) onward, we find a series of prayers that relate directly to Dr. Desai's shareholdings in these companies. The prayers seek restraints against the Defendants from dealing with those holdings, cancellation or reversal of the actions that may have taken since Dr. Desai's death and so on. Prayer (h) (iv) also seeks rectification of

Register of Members of Defendants Nos. 3 to 5. Further prayers seek invalidation of the appointment of Defendant No. 10 as a Director of those companies, the cancellation of an issue of shares to him, and a voiding of directors' actions.

6. Mr. Andhyarujina's submission is that these reliefs —at least those from (e) onwards, and particularly those in prayer (h) — lie directly and exclusively within the remit of the National Law Company Tribunal ("**NCLT**"), and therefore, in view of Section 430 of the Companies Act 2013, the jurisdiction of this Court is ousted.

7. Section 430 read thus:

> "**430. Civil Court not to have jurisdiction.**— No Civil Court shall have jurisdiction to entertain any Suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

8. Mr. Andhyarujina accepts that prayers (a) to (d) are ones that only a civil Court could possibly grant. He does not suggest that the whole of the reliefs in the suit are such that only the NCLT can grant them. In his submission, the purpose of the 2013 Act was to consolidate all company-related disputes in one place and to bring them before the NCLT. That purpose, I imagine, is singularly ill-served by carving up Plaints in this fashion, so that some reliefs are brought in a Civil Court, where they must be, and others are driven to the NCLT, thus risking conflicting and contradictory orders, and spawning multiple litigations.

9. There is, I think, fundamental flaw to Mr. Andhyarujina's construction of this argument. I do not see that what he submits as a jurisdictional bar to the Suit is of the kind contemplated by Section 9A of the Code of Civil Procedure, 1908 at all. This is a Suit for administration, one in which the Plaintiffs seek to establish first and foremost that they have an *entitlement* to certain estate assets. These assets include shares of Defendants Nos. 3 to 5. That declaration of entitlement, title, bequest, administration and ownership is one that only a Civil Court can grant. The NCLT is utterly bereft of all jurisdiction in that regard. Without that declaration, the Plaintiffs have no standing before the NCLT. The other reliefs, from (e) onward, are entirely consequential and dependent on the Plaintiffs succeeding on the declaration. If the Plaintiffs are unable to prove their entitlement, no question of grant of any subsequent relief could ever arise. This is not, therefore, a case where the Plaintiffs *qua* existing shareholders seek to agitate rights or raise grievances about the shareholdings in or affairs of Defendants Nos. 3 to 5. To put it differently: for all their huffing and puffing, the Plaintiffs are firmly outside corporate houses of the three little Defendants, threatening to blow them all down; they are not within those houses, seeking to do that which the NCLT alone could let them do.

10. I do not think Mr. Andhyarujina's cause is assisted in any way by his reliance on the decision of the Supreme Court in *Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) through Legal Representatives*.[1] As against this, I think Mr. Shah correctly points out that the issue is well-settled by at least three decisions. Though all pre-date Section 430 of the 2013 Act, the principle remains. While *Prabodh Jamnadas Kothari v. Vikram Jamnadas Kothari*[2] saw seriously disputed questions of fact, the fundamental dispute was as to the title to certain shares. That, the Court held, was a matter exclusively within the jurisdictional dominion of a Civil Court. The Court rejected the submission that since this involved a question of rectification of Register, the Suit was incompetent and could only be brought as a Petition before the Company Law Board (the immediate precursor to the NCLT).

11. Not only am I am bound by this decision but I am most respectful agreement with it. I do not see how it is materially different from the case at hand, simply because even before me today, the Plaintiffs' entitlement to these assets, including the shares of Defendants Nos. 3 to 5, is seriously disputed and will need to be tried. The decision in *Prabodh Jamnadas Kothari* cites the Supreme Court decision in *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. and another*[3] and *National Insurance Company Ltd. v. Glaxo India Ltd.*[4]

---

1. 1971(3) SCC 124.
2. 2013(1) Mh.L.J. 825.
3. (1998) 7 SCC 105.
4. (1999) 98 Comp Cases 378.

12. No question arises of a lack of jurisdiction such as would make the entire Suit incompetent before this Court. Even on Mr. Andhyarujina's showing, the first four reliefs are ones that can only be granted by a civil Court and never by the NCLT.

13. As to what is to be done in respect of the reliefs at prayers (e) to (h), that is surely a matter of moulding relief. Perhaps the Court that finally hears the Suit, should it find for the Plaintiffs, may then decide that rather than issuing any directions directly it is more appropriate to leave parties to make the necessary applications before the appropriate forum and tribunal. That can always be done; but that certainly does not strike at the root of jurisdiction, which is what Section 9A of the Code of Civil Procedure 1908 contemplates.

14. In this view of the matter the preliminary issue under Section 9A is answered in the affirmative. This Court has jurisdiction to entertain the Suit.

(G. S. PATEL, J.)