

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

IA No. GA 03 of 2022

In

CS 28 of 2019

Ayussh Rathhi

Versus

Ashok Kumar Rathi & Ors.

Mr. Mainak Bose

Ms. Manju Agarwal

Mr. Rishi Agarwal

Ms. Anju Manot

... For the plaintiff.

Mr. Reetobrata Mitra

Mr. Ayan Dutta

Mr. Rudrajit Sarkar

Ms. Aruna Ghosh

Mr. Abhishek Sikder

... For the defendants.

Hearing Concluded On : 14.03.2024

Judgment on : 04.04.2024

Krishna Rao, J.:

1. Defendant no. 6 has filed the present application being G.A. No. 3 of 2022 in C.S. No. 28 of 2019 praying for deletion of its name from the case being C.S. No. 28 of 2019. Defendant no. 6 says that the plaint does not disclose any cause of action against the defendant no. 6 and the defendant no.6 being the Company, an independent and separate juristic entity, is not bound by any partition and is squarely covered by the Companies Act, 2013.
2. Mr. Reetobrata Mitra representing the defendant no. 6 submitted that the defendant no. 6 is an independent juristic entity in which the plaintiff never held any shares, nor is there any pleading in the plaint that the plaintiff held any shares in the defendant no.6 at any point of time. He submits that there is nothing on record in so far as the defendant no.6 is concern being the part of the family company, assets, properties etc.
3. Mr. Mitra submitted that the defendant no.6 cannot under any circumstance be treated to be assets of the family or the shareholders of such company. He says that if it is construed that the shares of the defendant no. 6 is held closely by all family members, belonging to Rathhi family, the assets and properties of the defendant no.6 continues to be vested in the company itself i.e the defendant no.6 and not with the shareholders and shareholders cannot by mutual

consent, understanding, representation seek to alter, amend, modify or usurp the assets and properties of the defendant no. 6.

4. Mr. Mitra submitted that as per the claim made by the plaintiff, the same is entertainable by the National Company Law Tribunal under Sections 58 and 59 of the Companies Act, 2013 and cannot be presumed to be a family company or the assets held by it to be family assets.

5. Mr. Mitra submitted that as per Section 430 of the Companies Act, 2013, this Court has no jurisdiction to entertain the claim made by the plaintiff. In support of his argument, the Mr. Mitra relied upon the following judgments:

- i. *(1954) 2 SCC 563 (Bacha F. Guzdar vs. Commissioner of Income Tax, Bombay).*
- ii. *(2003) 10 SCC 310 (D.S. Lakshmaiah and Another vs. L. Balasubramanyam and Another).*
- iii. *(2012) 5 SCC 370 (Maria Margarida Sequeira Fernandes and Others vs. Erasmo Jack De Sequeira (Dead) Through LRS).*

6. Mr. Mainak Bose, Learned Advocate representing the plaintiff submitted that the defendant no. 6 had applied for extension of time to file written statement which expired on 14th August, 2019 but despite of substantial delay has no written statement was filed and to come out of the rigor of the same, the defendant no.6 has filed the

present application. He submits that in paragraph 5 of the affidavit in reply of the instant application, the defendant no. 6 has stated that the petitioner had given a go by thereby meaning that the defendant no. 6 has accepted the case of the plaintiff and has no defence to the claim of the plaintiff.

- 7.** Mr. Bose submitted that the defendant no. 6 has categorically admitted that it was incorporated by Ashok Kumar Rathi, the son of Mulchand Rathi and grandson of Ganga Bishan Rathi and Narayan Das Rathi being the son of Ganga Bishan Rathi as would appear from the genealogical table. He submits that the plaintiff has categorically stated that as to how Mulchand Rathi HUF evolved which acquired control over the several joint family properties and businesses.
- 8.** Mr. Bose submitted that plaintiff has shown that the joint Hindu Undivided Family which consists of Ganga Bishan Rathi, great grandfather of the plaintiff and his six sons. He submits that the original business of the Rathi Family started from 201B, Mahatma Gandhi Road, Kolkata-700007. The income generated from the said business constituted the nucleus of the joint family and from the said nucleus further income was generated and several businesses were established and properties were acquired either in the name of the individual members or in the name of companies which were formed out of the joint family nucleus. He submits that the promoters of the said companies were members of the Rathi family and all the shareholders were also members thereof.

- 9.** Mr. Bose submitted that all six sons of Rathi family resided together and carried business together, subsequently with the passage of time, sons of Ganga Bishan Rathi started severing from joint family. The defendant no. 6, the defendant no. 7 and 8 who are holding controlling shares in the defendant no. 6, the other sons of Ganga Bishan Rathi transferred their shares in favour of the plaintiff and other members of the family of Mulchand Rathi family which consisted of Mulchand Rathi, his two sons, Ashok Kumar Rathi, Indra Kumar Rathi and their other family members. He submits that since inception, the registered office of the defendant no. 6 is situated at 201B, Mahatma Gandhi Road, Kolkata-700007 which is also the address of defendant nos. 7 to 12 and the defendant no.18 which are joint family companies.
- 10.** Mr. Bose submitted that as per Master data of the defendant no.6, since inception the defendant no.6 was run by the joint family members of Ganga Bishan Rathi and was owned by its family members. He submits that the defendant no.1 has not stated that the defendant no.6 was constituted and/or promoted from the separate earning of the defendant no.1 de hors the joint family. He submits that the defendant no.6 has not produced any document in support of the contention that the funds to acquire assets had come from the income generated by the defendant no.6. He submits that apart from holding the land at Mandarmoni, West Bengal, no other business so as to generate funds to acquire the assets.

11. Mr. Bose in support of his submissions relied upon the following judgments:

- i. *(2004) 9 SCC 512 (Liverpool & London S.P.& I Association Ltd. vs. M. V. Sea Success I and Another).*
- ii. *(2017) 9 SCC 586 (Adivappa and Others vs. Bhimappa and Another).*

12. The plaintiff has filed the suit against the defendants praying for the following reliefs:

“(a) Declaration that all the properties and assets including those described in annexures “B”, “C” and “D” hereto and the defendant Nos.6 to 18 are Joint family properties, assets and business and the plaintiff has ½ share therein;

(b) Decree for partition of all the properties and assets belonging to the family of the plaintiff and the defendant Nos. 1 to 5 including the properties and assets described in annexures “B”, “C” and “D” hereto and also of the family business being the defendant Nos. 6 to 18 above named by meres and bounds and separate allotment to the plaintiff of his ½ share therein;

(c) A decree for enquiry into the properties, assets and businesses of the family of the plaintiff and the defendant Nos.1 to 5 and a decree for partition thereof and for separate allotment of ½ share therein respectively to the plaintiff;

(d) Receiver;

(e) Attachment

(f) Injunction;

(g) Costs;

(h) Such further and/or other relief.”

- 13.** Statement made in paragraph 22 of the plaint reads as follows :

“In course of such Joint family business, lands were purchased in the name of the companies and firms being defendant Nos. 6 to 18 which were owned and controlled by the Hindu Undivided Family and lands were purchased and divided in the said companies randomly. Share holding in the said companies being defendant Nos. 6 to 15 are held in the name of the parties herein. The number of allotment of shares in the individual name was made as per instruction of the defendant No.1, however, at all material times, it was represented by the defendant No.1, both the defendant No.1 and the plaintiff will have equal right in the said companies, firms & LLP being defendant Nos. 6 to 18 and the said companies, firms & LLP being defendant Nos. 6 to 18 are family companies and number of shares held by a person cannot affect such right of the parties.”

- 14.** At Annexure “B” of the plaint at serial no. 12 at page 55 name of the defendant no. 6, namely, Karni Exports Pvt. Ltd. is appearing. At Annexure “D”, page 57 of the plaint, the address of the defendant no. 6 is mentioned as 201B, M.G. Road, 1st Floor, Room No. 55-57A, Kolkata -700007.

- 15.** The defendant no. 6 has filed an application for deletion of its name from the suit and main contention raised by the defendant no. 6 is as follows:

“5. From the cause title it appears that the plaintiff has impleaded the promoter director of this petitioner/defendant, Ashok Kumar Ratthi and certain other shareholders.

6. *The plaint does not disclose any cause of action as against this defendant, the petitioner herein. In fact, the plaintiff has no cause of action against the petitioner.*

7. *It is not in dispute and clearly admitted that the petitioner was incorporated by Ashok Kumar Ratthi and Narayan Das Ratthi on October 29, 1987, each holding 150 shares.*

8. *This petitioner has never availed of any money from the family corpus or from the plaintiff nor has it been alleged in the plaint.”*

16. In the case of ***Liverpool & London S.P.&I Association Ltd. (Supra)***, the Hon’ble Supreme Court held that:

“Rejection of Plaint

139. *Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.*

Cause of action

140. *A cause of action is a bundle of fact which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence.”*

After going through the entire plaint particularly paragraphs 22, 36, 47 and 48, this court finds that sufficient cause of action has been pleaded against all the defendants including the defendant no. 6 and

thus it cannot be said that that the plaintiff has no cause of action against the defendant no. 6.

- 17.** In the case of ***Adivappa (Supra)***, the Hon'ble Supreme Court held that:

“16. It is a settled principle of law that the initial burden is always on the plaintiff to prove his case by proper pleading and adequate evidence (oral and documentary) in support thereof. The plaintiffs in this case could not prove with any documentary evidence that the suit properties described in Schedules ‘B’ and ‘C’ were their self-acquired properties and that the partition did not take place in respect of Schedule D properties and it continued to remain ancestral in the hands of family members. On the other hand, the defendants were able to prove that the partition took place and was acted upon.

19. It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property.”

- 18.** In the present case, the plaintiff has relied upon two documents against the defendant no. 6 those are appearing at Annexure “B” of the plaint at serial no. 12 at page 55 name of the defendant no. 6, namely, Karni Exports Pvt. Ltd is appearing. At Annexure “D”, page 57 of the plaint, the address of the defendant no. 6 is mentioned as 201B, M.G.

Road, 1st Floor, Room No. 55-57A, Kolkata -700007. Though the defendant no. 6 has raised the contention that the defendant no. 6 has never availed any money from the family corpus or from the plaintiff but the defendant no. 6 has not filed any document to establish that the assets of the defendant no. 6 is self-acquired property.

19. As regard to the contention of the defendant no. 6 that the suit is not maintainable and this Court is not having jurisdiction, the defendant no. 6 has filed an application only for deletion of the name of the defendant no. 6 from the suit and the defendant no. 6 has not prayed for rejection of plaint or dismissal of suit, thus this Court is of the view that at this stage it would not be proper to decide the said issue only on the basis of verbal submissions as the defendant no. 6 has filed the present application only for deletion of name of the defendant no. 6 from the suit.

20. Considered the judgments relied by the defendant no. 6 and on perusing the same, this Court finds the law which the defendant no. 6 has relied upon are the settled law but from the facts and circumstances of the present case, the judgments relied by the defendant no. 6 is distinguishable.

21. In view of the above, **G.A. No. 03 of 2022** is **dismissed**.

(Krishna Rao, J.)