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SLP(C)No. 8642 OF 2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9484 OF 2003

[Arising out of S.L.P.(C) No.8642 of 2003

LALIT BHASIN

.....

APPELLANT(S)

:VERSUS:

M/S. JAI PRAKASH INDUSTRIES LTD.

.....

RESPONDENT(S)

O R D E R

Heard the learned counsel for the parties.

Leave granted.

The appellant has impugned the order of the High Court setting aside the order dated November 30, 2002, passed by the Civil Judge (Senior Division), Lucknow, by which the trial court allowed the amendment in the plaint which, according to the plaintiff, became necessary due to subsequent developments which took place after filing of the suit. The trial court, we find, while allowing amendment, in the concluding part of the order, observed that so far as maintainability of the suit is concerned, it is a matter which may be decided later on after incorporation of the amendment prayed for.

The High Court, however, took the view that the amendment is such that the matter may be cognisable by the Company Law Board under the provisions of the Companies Act as it may amount to a case of oppression within the meaning of Sections 397 and 398 of the Companies Act. While so holding, the High Court ultimately issued a direction to the trial court to return the plaint for want of jurisdiction. We feel that there was hardly any need for the High Court to go into the issue of jurisdiction. The suit had already been filed and it was pending before the trial court. The amendment was necessitated due to later developments. The view taken by the trial court could not be faulted with, much less with any jurisdictional error in exercise of jurisdiction, in holding that the maintainability of the suit or the jurisdiction of the court could be decided later on, after incorporation of the amendment in the pending suit. The High Court could at best refuse amendment but there was no occasion to order for return of the plaint.

In view of the above, we allow the appeal, set aside the order passed by the High Court and restore the order passed by the trial court allowing the amendment which may be incorporated as directed by the trial court. However, in the facts and circumstances of the case, we would like to observe that it will be open for the respondent to move an application before the trial court, making a request for deciding the question of maintainability of suit and its jurisdiction as a preliminary issue. If such an application is made it shall be duly considered and appropriate order shall be passed by the trial court thereon. There will be no order as to costs.

.....J

( BRIJESH KUMAR )

.....J  
( ARUN KUMAR )  
NEW DELHI,  
DECEMBER 2, 2003.

ITEM No.51

Court No. 9

SECTION XI  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.8642/2003

(From the judgement and order dated 26/03/2003 in CR 51/03  
of The HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH)

LALIT BHASIN

Petitioner (s)

VERSUS

M/S. JAI PRAKASH INDUSTRIES LTD.

Respondent (s)

(With Appln(s). for exemption from filing O.T. and  
with prayer for interim relief)

Date : 02/12/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR  
HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s)Mr. Harish N. Salve, Sr. Adv.  
Mr. P. Venugopal,Adv.  
Mr. P.S. Sudheer,Adv.  
forM/s. K.J. John & Co.,Adv.

For Respondent (s)Mr. R.K. Anand, Sr. Adv.  
Mr. S.B. Upadhyay,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. There will be no order as to costs.

(A.S. BISHT)(KANWAL SINGH)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]