

THE HON'BLE SMT. JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

C.C.C.A. No.57 OF 2023

JUDGMENT: (Per Hon'ble Smt. Justice Moushumi Bhattacharya)

The appeal arises from an order passed by the learned XI Additional Chief Judge, City Civil Court at Hyderabad, on 09.01.2023, in I.A.No.1099 of 2022 in O.S.No.476 of 2018.

2. The impugned judgment was passed on an application filed by the defendants (respondents in the appeal) under Order VII Rule 11(a) and (d) read with Section 151 of The Code of Civil Procedure, 1908, for rejection of plaint. By the impugned order, the learned Trial Court allowed the application filed by the defendants and directed for return of the plaint for filing before a proper forum.

3. The appellant before us was the plaintiff and the respondents were the defendants in the Trial Court.

4. Learned counsel appearing for the appellant assails the impugned order on the ground that Section 430 read with

Sections 58 and 59 of The Companies Act, 2013, would have no application to the facts of the case contrary to what was held by the Trial Court. Counsel submits that the prayer for re-transfer of the shares from the respondents to the appellant (defendants to the plaintiff) is a matter which is entirely within the domain of a Civil Court. Counsel takes the Court through the relevant pleadings in the plaint to submit that the National Company Law Tribunal (NCLT)/the National Company Law Appellate Tribunal (NCLAT) would not have jurisdiction to adjudicate on the issues raised in the suit filed by the appellant.

5. Learned counsel appearing for the respondents/defendants relies on Section 430 read with Sections 58 and 59 of The Companies Act, 2013, to urge that there is a complete bar in the said Act against Civil Courts from entertaining any suit which is within the domain of the NCLT/NCLAT. Counsel further submits that the dispute cannot be referred to arbitration in terms of Clause 8 of the Share Purchase Agreement executed between the parties in 2015 since the appellant is only one of the several 'Transferors' in the Share Purchase Agreement.

6. A brief factual background to the present appeal is required to be stated. The appellant/plaintiff was the owner of a substantial number of shares in M/s. Sunbeam Hospitality Private Limited. The appellant, along with other shareholders of Sunbeam Hospitality, entered into a Memorandum of Understanding (MOU), Share Purchase Agreement (SPA) and a Takeover Agreement with the respondents/defendants for transfer of their shares in favour of the respondents. The parties agreed that the respondents would pay Rs.20,04,50,700/- to the appellant. Admittedly, the respondents have paid only a part of this amount i.e., Rs.19,37,50,700/-; the balance of Rs.67,00,000/- remains outstanding as on date.

7. The appellant says that the respondents fraudulently transferred the shares of the appellant in their names without making payment of the balance consideration and also removed the appellant as Director before taking over the control of the Company. The appellant was therefore constrained to file O.S.No.476 of 2018 in the learned City Civil Court at Hyderabad for mandatory injunction and for re-transfer of 10,197 shares in

M/s. Sandhya Hospitality Private Limited (formerly M/s. Sunbeam Hospitality Private Limited). The impugned order rejecting the plaint was passed on the respondents' application leading to the present appeal filed by the appellant/plaintiff.

8. The only issue which falls for adjudication before this Court is whether the appellant/plaintiff could have been ousted from the domain of the City Civil Court, Hyderabad by reason of Section 430 read with Sections 58 and 59 of The Companies Act, 2013.

9. The sole reason for rejection of the plaint was that Clause 8 of the SPA operates as a bar on the City Civil Court entertaining the suit.

10. Clause 8 of the SPA is set out below:

“In the event of any dispute or difference at any time arising between the Transferors & Transferees in respect of anything arising out of and incidental thereto, such dispute of difference shall be submitted to Arbitration in Hyderabad in the State of Andhra Pradesh under the provisions of Arbitration and Conciliation Ordinance 1996 or any Statutory enactment thereto for the time Being force and each of the parties shall be entitled to appoint their own Arbitrator.”

11. The above clause indicates that the parties agreed to refer any dispute arising from the SPA with regard to transfer of shares from the appellant to the respondents to arbitration. It was hence open to the Trial Court to take the point of arbitrability of the dispute and pass necessary orders consequent to such finding. The issue of arbitrability of the dispute is relevant since counsel for the appellant proposes to file an appropriate application for appointment of Arbitrator under Section 11 of The Arbitration and Conciliation Act, 1996.

12. Counsel for the respondents, on the other hand, resists the proposal on the ground that the appellant cannot carry such application on his own without the other parties to the SPA.

13. We cannot accept the objection raised on behalf of the respondents since the question whether all the parties to the SPA are before the Court in the application filed under Section 11 of The Arbitration and Conciliation Act, 1996 for appointment of arbitrator may only be gone into at the time of hearing of the application as and when it is filed. It would be unwarranted to limit the options available to the appellant at this stage of the

proceedings. We accordingly are of the view that the appropriate Court will decide the fate of such application as and when the appellant takes necessary steps in terms thereto.

14. The next issue is with regard to the applicability of Section 430 read with Sections 58 and 59 of The Companies Act, 2013, to the suit filed by the appellant.

15. The Trial Court rejected the plaint under Order VII Rule 11 (a) and (d) read with Section 151 of The Civil Procedure Code, 1908, which provides for rejection of the plaint where the suit appears from the statement in the plaint to be barred by any law. The Trial Court relied on Clause 8 of the SPA to hold that the Civil Court does not have any jurisdiction and that the parties must therefore be relegated to arbitration.

16. We disagree with the view taken by the Trial Court.

17. Section 430 of The Companies Act, 2013 was enacted to discourage Civil Courts from passing injunctions or interfering with actions/orders taken or passed by the NCLT/NCLAT. The words 'Tribunal' and 'Appellate Tribunal' have been defined as

“the National Company Law Tribunal constituted under section 408” and “the National Company Law Appellate Tribunal constituted under section 410” under Section 2 (90) and (4) of The Companies Act, 2013, respectively. Section 430 is set out below:

“430. 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.”

Section 430 constitutes a bar on a Civil Court from entertaining any suit, the subject matter of which is within the determination of the NCLT/NCLAT. This would be clear from the section itself. The object of Section 430 was to demarcate the zones of adjudication between Civil Courts and NCLTs/NCLATs.

18. Section 58 of The Companies Act, 2013, deals with refusal of registration by private and public Companies to register the transfer of securities and provides for appeal by a transferee to

the Tribunal against such refusal by a private and a public company. Section 59 of The Companies Act, 2013, provides for rectification of the register of members of a Company where the name of a person has been entered without sufficient cause or where rectification is required for omissions or delay.

19. The respondents have relied on both these sections to urge that the NCLT would have jurisdiction to entertain the plaintiff's dispute which was brought to the City Civil Court.

20. However, contrary to the submissions made on behalf of the respondents, we are unable to accept the application of either of these provisions to the facts of the case.

21. First, both these sections deal with refusal of registration of the transfer or transmission of shares/securities and appeal against refusal and rectification of register of companies (as defined in Section 2(74)) pursuant to certain defaults. It is evident that these provisions would only become relevant once the title to the shares/securities has been decided.

22. The decision-making with regard to the title of the shares is within the domain of the Civil Court and not the NCLT/NCLAT. This would also be clear from the *proviso* to Section 58(2), which reads that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. Moreover, Section 58 (5) (a) and (b) defines the powers of the Tribunal by delineating the orders which may be passed by the Tribunal in respect of directing registration of transfer/transmission by the Company or rectification of the register or even directing the Company to pay damages to the aggrieved party.

23. It is also significant that the respondents objected to the applications filed by the other shareholders before the NCLT under Section 244 of The Companies Act, 2013 on the ground that the said shareholders do not fulfill the eligibility criteria for filing the Company Petition under Sections 241 and 242 read with Section 59 of The Companies Act, 2013. The conduct of the respondents before this Court and before the NCLT, Hyderabad

Bench (although in respect of the other shareholders to the SPA) is therefore one of approbation and reprobation.

24. The respondents' arguments of the NCLT being the proper forum for deciding the dispute is hence without basis.

25. It is also relevant that the statements in the plaint filed by the appellant enumerate the wrongful and illegal acts of the respondents/defendants in terms of failing to pay the total consideration for the transfer of shares to the plaintiff and unjustly enriching themselves in the process. Although the appellant has not specifically used the word 'fraud' in the plaint, the illegalities committed on the part of the respondents have been spelt out in paragraph 8 (e) and (f) of the plaint.

26. It is clear from these averments that the NCLT is certainly not the forum to decide on the acts of omission or commission on the part of the respondents and more importantly on the issue of re-transfer of the shares in favour of the appellant or even the title of the shares pending or on completion of the transfer. The facts pleaded in the plaint are concerned with individual rights of the

appellant and those of the respondents, as the plaintiff and the defendants, respectively. Only a Civil Court is empowered to decide disputes of this nature subject to the parties agreeing to refer the dispute to arbitration. The NCLT is certainly not the proper forum to adjudicate on disputes of individual members with regard to transfer of or title to the shares. Section 430 or Sections 58 and 59 of The Companies Act, 2013, will hence not operate as a bar to the suit filed by the appellant in any manner howsoever.

27. The facts in *Shazia Rehman v. Anwar Elahi*¹ before the Delhi High Court are similar to those before this Court and assist the appellant. A Division Bench of the Calcutta High Court, in *Phool Chand Gupta v. Mukesh Jaiswal*² held that the NCLT would not have jurisdiction to decide on a serious enquiry with regard to fraud. *Shashi Prakash Kemka v. NEPC Micon Ltd.*³ was specifically on the exercise of power under Section 59 of The Companies Act, 2013 (Section 111A of the earlier Act of 1956) where the appellants

¹ 2023 SCC OnLine Del 4807

² 2023 SCC OnLine Cal 1812

³ (2019) 18 SCC 569

before the Supreme Court were relegated to a civil suit. In that case, the dispute was not with regard to the forum which would exercise jurisdiction on the subject matter of the dispute.

28. In essence, the above discussion leads us to the view that the Trial Court erred in rejecting the plaint on the ground of Section 430 read with Sections 58 and 59 of The Companies Act, 2013, and for the reasons stated in the impugned order.

29. Clause 8 of the SPA, which provides for reference of the dispute to arbitration and Section 430 read with Sections 58 and 59 of The Companies Act, 2013, contemplate two entirely different implications/consequences. The Trial Court could have referred the dispute to arbitration on the strength of Clause 8 of the SPA, but instead mixed up the two remedies under The Arbitration and Conciliation Act, 1996 and The Companies Act, 2013, to reject the plaint. No litigant can be left without a remedy. In the present case, the stand taken on behalf of the respondents amounts to ousting the appellant from all available and competent fora. The Court certainly cannot be a mute spectator to the conduct of the respondent.

30. The impugned order dated 09.01.2023 is set aside since we have found that Section 430 read with Sections 58 and 59 of The Companies Act, 2013, have no application to the statements in the plaint and the relief sought for therein.

31. C.C.C.A.No.57 of 2023 is accordingly allowed and disposed of in terms of this judgment.

MOUSHUMI BHATTACHARYA, J

NAGESH BHEEMAPAKA, J

Date: 24.04.2024.

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