
M/s Himland Real Estate (P) Ltd. Co And Ors Vs Ghevarchand R. Jain

Original Miscellaneous Petition No. 189 Of 2019, COMS No. 7 Of 2019

Court: High Court Of Himachal Pradesh

Date of Decision: Aug. 27, 2019

Acts Referred:

Companies Act, 2013 " Section 1(4), 214, 241, 408, 430#Limitation Act, 1963 " Section 54#Code Of Civil Procedure, 1908 " Section Order 7 Rule 11, Order 7 Rule 11(d)#Limitation Act, 1963 " Article 54

Hon'ble Judges: Chander Bhusan Barowalia, J

Bench: Single Bench

Advocate: J.L. Bhardwaj, I.N. Mehta

Final Decision: Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present application, under Order 7, Rule 11(d) of the Code of Civil Procedure, has been maintained by the applicants/defendants for rejection

of the plaint, wherein the plaintiff/non-applicant prayed as under:

“(i) Decree for specific performance of the contract/MOU and SMOU, dated 26.05.2007, respectively, arrived at between the parties may kindly

be passed in favour of the plaintiff and against the defendants directing them to allot and transfer the equity shares of Himland Real Estate Pvt. Ltd.

Company in favour of the plaintiff based on proportionate to the amount received by the defendants against agreed allotment of 60% of the shares of

the Company or in the alternative, plaintiff is entitled for claim of compensation of Rs. 5,89,18,970/- on account of compensation of breach of said

contracts by defendants alongwith pendente lite and future interest and cost of the suit.

(ii) That a decree for permanent prohibitory injunction restraining the defendants from creating any third party interest in the movable and immovable

interests including shares of the company by way of entering into any contract, sale, transfer, hypothecation or creation of lease/mortgage etc. till the

determination of the dispute between the parties by this Hon'ble Court.

As per the applicants, the suit preferred by the non-applicant/plaintiff is not maintainable before this Court, in view of the specific bar as contained in

Section 430 of the Companies Act, 2013, which clearly provides that no Civil Court shall have any jurisdiction to entertain any suit or proceedings in

respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine inasmuch as no injunction shall be granted by any

Court. It is further averred that the non-applicant/plaintiff in the suit has averred that he is ready and willing to do all acts, deeds and things required to

be performed by him to complete the process of transfer of shares in his favour, as such, the applicants/defendants are liable to transfer the said

shares of the company in his favour. Since the dispute raised by the non-applicant is with respect to transfer of the shares, as is evident from the

averments made in the plaint, more particularly in para-11 of the plaint, the proper Court to deal with such issues is only the National Company Law

Tribunal, which has been constituted under Section 408 of the Companies Act, 2013. Therefore, the plaint filed by the non-applicant/plaintiff being

barred by the provisions of Section 430 of the Companies Act, 2013, may be dismissed. It is further averred in the application that the suit is otherwise

hit by the provisions of Limitation Act, which prescribes only three years to enforce the specific performance of a contract. However, in the present

case, the non-applicant/plaintiff has instituted the suit on 15.03.2019, whereby he is seeking the specific performance of the contract/MOU and

SMOU dated, 26.05.2007. As per the provisions of Article 54 of the Limitation Act, the period of three years has been fixed for performance of the

contract, as such, the plaint under Order 7, Rule 11 of the Code of Civil Procedure deserves to be rejected.

2. In reply to the application, it is averred that provisions of Section 430 of the Companies Act, 2013, as referred by the applicants in the application,

envisage the provision of law in the matter, for which the Tribunal is empowered to determine the dispute between the members of the company

related to business affairs of the company and does not oust the jurisdiction of the Civil Court, but, since the non-applicant/plaintiff has filed the suit

being non-member of the Company, has even no legal right to approach the Tribunal, under Section 241 of the Companies Act, which confer the right

to approach the Tribunal only to the members of the company and status of the non-applicant/plaintiff against the company is of third party, as per

Agreement/MOU arrived at between the parties. Lastly, a prayer for dismissal of the application with heavy costs is made.

3. Rejoinder to the reply stands filed, wherein contents of the application are reasserted and contents of the reply filed on behalf of the non-

applicant/plaintiff are denied.

4. Mr. J.L. Bhardwaj, learned counsel for the applicants has argued that the present suit is not maintainable in view of the provisions of Section 430 of

the Companies Act, 2013, as the case is with respect to transfer of shares or in alternative, for compensation. He has further argued that after

constitution of National Company Law Tribunal, under Section 408 of the Companies Act, the suit is not maintainable and the same be returned for

being presented before the appropriate authorities. Even otherwise also, the suit is not maintainable under Section 54 of the Limitation Act, as the

Memorandum of Understanding and supplementary Memorandum of Understanding has taken place in the year, 2007, whereas the present suit is

maintained in the year, 2019, much beyond the period of three years. In support of his arguments, learned counsel for the applicant has placed reliance

upon the decisions rendered by Hon'ble Supreme Court in Shashi Prakash Khemka (Dead) Vs. NEPC Micon (Now called NEPC India Ltd.) and

others (Civil Appeals No. 1965-1699 of 2014) and Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LR's case (Civil Appeal No.

2960 of 2019).

5. On the other hand, Mr. I.N. Mehta, learned counsel for the non-applicant has argued that in the present case the question of limitation is a mixed

question of facts and law and required to be adjudicated after the evidence of the parties and at this stage, this question is not required to be

adjudicated upon. He has further argued that in view of clear provisions of Section 1(4) and Section 241 of the Companies Act, 2013, it is clear that

only a member of the company, i.e. shareholder of the company can maintain a petition before the Tribunal, none else and since the non-

applicant/plaintiff is not a shareholder or member of the company, he cannot file an application before the Tribunal and only remedy available to him is

this suit. He has argued that as far as question of limitation is concerned, in MOU no specific time has been mentioned and without there being any

specific time, the time is not essence of the contract. In support of his contentions, learned counsel for the non-applicant has relied upon the decision

rendered by a Coordinate Bench of this Court in Shiv Saran Dass vs. Rajindera Devi & other's case 2017 (4) HLR 2366.

6. In rebuttal, Mr. J.L. Bhardwaj, Advocate, has argued that Section 241 of the Companies Act only deals with respect to mis-management of the

company and does not deals to transfer of shares, in these circumstances, the contention raised by learned counsel for the non-applicant is not

applicable to the facts of the present case and referred to the decision rendered by Hon'ble Delhi High Court in Civil Suit No. 1496 of 2016, titled

SAS Hospitality Pvt Ltd. & another Vs. Surya Constructions Pvt Ltd. & others.

7. The law on the subject is gone into vis-a-vis, the facts of the present case. It is clear that the plaintiff is not a member of the Company or

shareholder of the Company, therefore, he has no right to approach the Tribunal under Section 214 of the Companies Act, as under Section 214 of the

Companies Act the right to approach the Tribunal is only to the members of the Company, i.e. shareholders of the Company. This Court finds that the

status of the plaintiff is that of a third party vis-a-vis the Company and in these circumstances, the plaint cannot be rejected at this moment. As far as

question of limitation is concerned, the same is mixed question of law and facts and required to be considered in the suit after the parties led their

evidence on the facts and at this stage, the plaint cannot be rejected on this account also.

8. The net result of the above discussion is that the plaint does not required to be rejected at this moment and the applicants are at liberty to contest

the plaint after framing of issues and leading cogent and reliable evidence. Accordingly, the application, which is devoid of merits, deserves dismissal

and is dismissed.

9. It is made clear that my observations while dismissing this application are only restricted for the purpose of disposal of the application and will have

no bearing on the merits of the suit or issues involved therein, which are to be adjudicated after allowing the parties to lead their evidence in detail and

every issue will be open to be contested upon by the parties. The application stands disposed of.