(1984) 55 CompCas 702 : (1982) 3 DRJ 295

Delhi High Court

Case No: Civil Petition No. 60 of 1979

Chander Krishan Gupta		APPELLANT
	Vs	
Pannalal Girdhari Lal Pvt. Ltd. and Others		RESPONDENT

Date of Decision: Nov. 6, 1981

Citation: (1984) 55 CompCas 702 : (1982) 3 DRJ 295

Hon'ble Judges: B.N. Kirpal, J

Bench: Single Bench

Advocate: R.K. Talwar, Ved Vyas, N. Gautam, L.M. Sanghvi, B.R. Iyengar, S.P. Aggarwal and Subhash Oberoi, for the Appellant;

Judgement

(1) The company was incorporated on 12th Aug. 1973. It had five shareholders, namely, Bal Kishan Das (respondent No. 2) Brij Krishna Gupta (respondent No. 3), Gopal Krishan Gupta (since deceased), Chander Krishan Gupta (petitioner) and Avtar Krishan Gupta (respondent No. 4). The main business of the company was the manufacture of zari goods and copper wire. This was in fact a family business which had been started, I am told, about 65 years ago by the father, respondent No. 2. That business was being carried on in partnership amongst the members of the family, and with respect to which partnership another litigation on the original side of this court is pending. According to the petitioner the company has taken over the entire assets and liabilities of the said family firm Pannalal Girdharilal.

(2) According to the Articles of Association of the company all the five shareholders became the first directors of the company. The Articles further provided that they shall be permanent directors of who will not be liable to retire by rotation.

(3) The shareholders held 250 shares each, the paid-up share capital being 1.25 lacs. On 1st June, 1976 Shiv Raj Krishan Gupta (respondent No.5) who was the son of Brij Krishan Gupta, was inducted into the company. The four brothers parted with 50 shares each in favor of Shiv Raj Krishan Gupta. Shiv Raj Krishan Gupta thereby became, along

with his father and uncles, holder of 200 shares, respondent No. 2 continued to hold 250 shares. It is further admitted that Shiv Raj Krishan was also appointed as the director of the company.

(4) On 27th June 79 Gopal Krishan Gupta died. By this time disputes amongst the brothers had gathered full momentum. This led to the filing of the present petition on 6th Sept. 1979 under sections 397 and 398 of the Companies Act.

(5) In the petition the main thrust of the allegations is against Brij Krishan Gupta, respondent 3, and his son Shiv Raj Krishan Gupta. According to the petitioner the control of the company has been assumed by respondent No. 3 and respondent No. 5 and the petitioner has been ousted from the management of the company. The petitioner has alleged that the affairs of the company are being carried out in a manner which has resulted in the oppression of the minority shareholders. It is further alleged that the company''s affairs are being mismanaged and are being conducted in a manner which is prejudicial to the company''s interests. The allegation of oppression in the management has, of course, been denied by respondents 3 and 5 in their reply. The contention of the said respondents is that prior to the induction of respondent No. 5 the company had been running at a loss and after respondent No. 5 was appointed as director of the company has started making profit. The specific allegations of oppression and mismanagement raised in the petition have also been denied.

(6) Decision If the Company continues to run in losses and its substation is wiped off it may be good ground for winding up the company but the non declaration of dividend, under such circumstances, when the company is not making profits, cannot be a ground under Sections 397 and 398 of the Act.

(7) The non maintaining of the assets register or records cannot amount to acts of oppression being committed oil minority shareholders. Similarly no maintaining of statutory books at the registered office may attract evil consequences to the directors and may also, in certain circumstances, amount to an act of mismanagement but under no circumstances, can it be regarded as an act of oppression.

(8) The non holding of the meetings of the Board would not amount to oppression of minority shareholders. The rights of the petitioner as a director might have been affected but his rights as a minority shareholder have not been affected thereby.

(9) Filing of the unedited balance sheets show misconduct in the managing of the affairs of the company. If this act causes prejudice to the company''s interests, it may justify action 398 of the Act but this by itself cannot be regarded as an ingredient of oppression within the meaning of Sec. 397 of the Act.

(10) Section 398 has two facts. The first is that positive acts are done by the management which results in prejudice being caused to the company. Secondly section 398 may be attracted even where no action at all is taken by the management and such non action

results in prejudice being caused to the company The management of the company has miserably failed in protecting the Company''s records and this failure results in prejudice being caused to the company. Moreover, the constant fight amongst the directors who were also the shareholders of the company had certainly adverse effect on the conduct of the company''s business with the result that the company started incurring losses. To my mind, Therefore, this by itself would justify appropriate orders being passed u/s 398 of the Act.