

(1999) 02 BOM CK 0087

Bombay High Court

Case No: Appeal From Order No. 759 of 1997

Gopal Krishna Baliga

APPELLANT

Vs

Poona Industrial Hotel Ltd.

RESPONDENT

Date of Decision: Feb. 17, 1999

Acts Referred:

- Companies Act, 1956 - Section 111, 111(1), 111(2), 111(4)

Citation: AIR 1999 Bom 302 : (1999) 3 BomCR 157 : (2000) 102 CompCas 375 : (2010) 3 CompLJ 44 : (1999) 2 MhLj 301

Hon'ble Judges: D.K. Deshmukh, J

Bench: Single Bench

Advocate: Milind Vasudeo, instructed by M.S. Bodhanwala and Co, for the Appellant;
Pravin Samtani, instructed by y Manilal Kher Ambalal and Co., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.K. Deshmukh, J.

By this appeal the appellant challenges the order dated 14-10-1996 passed by the trial Court below Exh. 12 in S.C. Suit No. 1724 of 1996 holding that it has no jurisdiction to entertain the suit. The plaintiff had come to the Court challenging the Resolution passed by the Annual General Meeting of the company held on 11-9-1996, pursuant to Item No. 8 on the Agenda of that A.G.M. Item No. 8 of the Agenda was regarding the allotment of equity shares not exceeding 1,00,000 to the promoters of the company. The trial Court has held that in view of the provisions of section 111 of the Companies Act. The Civil Court has no jurisdiction to entertain the suit.

2. The learned Counsel appearing for the appellant submits that the trial Court has committed a grave error in holding that the provisions of section 111 are applicable in the present case. He points out that the respondent company is a public limited company. He further points out that because of the provisions of sub-section (4) of

section 111 of the Companies Act, application of section 111 is restricted only to the private limited companies and which became public limited companies by virtue of section 14(a) of the Act. In the submission of the learned Counsel therefore, the trial Court was not right in holding that the jurisdiction of the Civil Court is ousted because the plaintiff has a remedy of approaching the Company Law Board u/s 111 of the Act. The learned Counsel points out that the plaintiff would also not be entitled to approach the Company Law Board for the relief that he is seeking in the civil suit u/s 111-A of the Companies Act. The learned Counsel submits that the right of appeal to the Company Law Board given u/s 111-A applies to the public limited companies only in relation to the transfer of shares or debentures. In the submission of the learned Counsel in the civil suit, the plaintiff is not challenging any transfer of shares, but he is challenging the resolution of the company deciding to allot the shares to the promoters which does not amount to transfer.

3. The learned Counsel appearing for the respondent on the other hand submits that section 111 as it originally stood applied both to the private limited companies as also the public limited companies till sub-section (14) was added by the Depositories Act, 1996 with effect from 20-9-1995. The learned Counsel submits that by that amendment section 111 was restricted to the private limited companies and similar provision in relation to the public limited companies was made by section 111-A. In the submission of the learned Counsel, therefore, remedies that were available u/s 111 as it stood before the amendment in 1995 in relation to the public limited companies would be available u/s 111-A of the Companies Act. The learned Counsel submits that the word "transfer" would also include allotment of shares and therefore the plaintiff has a right of an appeal before the Company Law Board u/s 111-A of the Act.

4. Now it is clear firstly that before the trial Court though section 111 was amended in 1995, both the parties proceeded on the assumption that section 111 applies to the respondent-company. That was obviously wrong. It is absolutely clear from the provisions of sub-section (14) of section 111 of the Companies Act that with effect from 20-9-1995 the application of section 111 is restricted only to the private companies and therefore, it will not apply in case of respondent-company.

5. It is to be seen here that before its amendment in 1995 section 111 applied to private companies as well as public limited companies. A perusal to the provisions of section 111 shows that an appeal has been provided to the Company Law Board by sub-section (1) and (2) of section 111 against refusal by the company to register the transfer of share. Sub-section (4) of section 111 also provides for an appeal, but that appeal is in relation to wrong entries made in the register of members. Therefore, the right of appeal which is provided by sub-section (4) of section 111 is in cases which are not covered by sub-section (1) and (2). Therefore, the scheme of section 111 shows that a right of appeal was given to the transferees against wrong transfer of shares or refusal of the company to transfer the share and right of appeal was

also given to any member of the company when a wrong entry is made in the register of members. Therefore, obviously when the company allots shares and a consequential entry is made in the register, a member could raise objection and challenge that action of the company by filing an appeal under sub-section (4) of section 111. It is true that sub-section (14) was added to section 111 by the Depositories Act, 1996 and section 111-A was enacted by the same Act. Therefore it is clear that the legislature was fully aware of the existence of two types of rights of appeal given by section 111 namely right of appeal given under sub-sections (1) and (2) and right of appeal given by sub-section (4). However, while enacting section 111-A in relation to the public limited companies, the legislature restricted the right of appeal only in case of transfer of shares and the wider of right of appeal which was provided by sub-section (4) was not enacted in section 111-A. The Legislature which is aware of the existing position when makes a conscious departure of such a nature, in my opinion, there would be no room to infer that the right of appeal provided by sub-section (4) of section 111-A is to be read in consonance with sub-sections (2) and (3) of section 111-A by equating transfer of shares with the allotment of shares. It is thus clear that there is no right of appeal provided by section 111-A in relation to the public limited companies, which was contained in sub-section (4) of section 111 of the Companies Act. It is thus clear that the plaintiff would not be entitled to approach the Company Law Board for seeking the reliefs that are prayed for in the civil suit and therefore, there is no question of jurisdiction of the Civil Court being barred by the availability of remedy to the plaintiff u/s 111-A of the Companies Act.

6. In this view of the matter, therefore, the appeal is allowed and the order impugned in the appeal is set aside. It is held that the Civil Court has jurisdiction to entertain the civil suit filed by the appellant/plaintiff. The trial Court is directed to try the suit and any application that may be filed in the suit in accordance with the law.

7. Appeal allowed.