APPELLATE CIVIL.

Before Newbould and B. B. Ghose JJ.

1924

April 8.

SARAT CHANDRA CHAKRAVARTI

v.

TARAK CHANDRA CHATTERJEE*.

Company—Private limited liability—Directors—Shareholders—Suit to declare election of Directors void—Injunction—Jurisdiction of Civil Court—Discretionary jurisdiction—Internal management—Indian Companies Act (VII of 1913), s. 2(3)—Civil Procedure Code (Act V of 1908), s. 9, O. XLI, r. 23—Specific Relief Act (I of 1877), s. 42.

Where a suit was brought under the Specific Relief Act and not under the Companies Act alone for a declaration that the election of certain shareholders as Directors in a private limited liability company was void, illegal, infructuous and *ultra vires* and also for an injunction restraining the defendants from acting as Directors :

Held, that the Civil Court had jurisdiction to entertain the suit as framed (for it was not a matter of internal management of the company, and, therefore, not excluded as such under the Indian Companies Act) :

Held, further, that the question of jurisdiction was quite different from the question whether the Court would exercise its discretionary jurisdiction having regard to the circumstances of a particular case :

Held, also, that an injunction may be granted on the application of a Director restraining the plaintiff's co-directors from wrongfully excluding him from acting as a Director.

Mozley v. *Alston* (1) distinguished and explained.

APPEAL from Order by Sarat Chandra Chakravarti and another, the defendants Nos 2 and 3.

This case relates to a dispute about the election of Directors of the "Faridpur Loan Office, Limited," a

* Appeal from Order, No. 198 of 1923, against the order of A. J. Dash, District Judge of Faridpur, dated Feb. 28, 1923, modifying the order of Gour Krishna Bose, Munsif of that place, dated Nov. 30, 1922.

(1) (1847), 1 Phillips 790 ; 65 R. R. 520.

company registered under the Indian Companies Act. The plaintiffs are some of the shareholders, the plaintiff No. 2 being one of the Directors elected at the meeting of the 32nd *Ashar* 1329 (B. S.). They alleged that the meeting of the 32nd *Ashar* was a general meeting of the shareholders, one of the items of business being the election of four Directors. Accordingly plaintiff No. 2 and defendants Nos. 1, 2 and 3 were elected Directors and defendant No. 2 was also elected Assistant Managing Director at that meeting which was adjourned after continuing until a late hour of the night, the 7th *Sravan* 1329 (B. S.) being the date fixed for the adjourned meeting to dispose of the remaining items on the Agenda. At that (adjourned) meeting a new Chairman, defendant No. 5, was elected, and he ruled on the motion of Babu Jnanendra Nath Lahiri, a shareholder present, that the adjourned meeting could re-open the question of the election of Directors effected at the meeting of the 32nd *Ashar*. The question was accordingly re-opened and a new election took place at which defendants Nos. 1, 2, 3 and 4 were elected Directors and defendant No. 3 was elected Assistant Managing Director, but the plaintiff No. 2 was not elected as a Director. The names of the Directors elected on the 32nd *Ashar* were sent up to the Registrar of Joint Stock Companies, and these Directors attended a meeting of the Board of Directors held on the 4th *Sravan* 1329 (B. S.).

The plaintiffs claimed in this suit that the election of Directors held on the 7th *Sravan* 1329 (B. S.) was void and invalid under article 51 of the Articles of Association of the Company which provided that the Chairman should with the consent of the meeting be able to adjourn any business of a meeting and should be able to fix another date and time for such

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meeting, but no business was to be transacted at the subsequent adjourned meeting other than those left unfinished at the meeting from which the adjournment took place. The plaintiffs, therefore, prayed for the following amongst other reliefs: (i) that the election of the 32nd *Ashar* be declared valid, and the election of the 7th *Sravan* be declared invalid; (ii) that an injunction be issued restraining the defendants Nos. 1, 2, 3 and 4 from attending the Directors' meetings and defendant No. 3 from acting as Assistant Managing Director; (iii) and that a temporary injunction during the pendency of the suit be issued to the same effect against these defendants.

The defence was that the suit was not maintainable, that the suit having been brought by the plaintiffs without first exhausting the special procedure laid down by the Indian Companies Act and the Articles of Association of the Company, and that it being a matter of internal management of the Company the plaintiffs were not entitled to any relief, and that the Civil Court had no jurisdiction to try the suit.

Consequently the learned Munsif, Sadar Court, Faridpur, tried Issue No. 1 first, *viz.*: "Has this Court jurisdiction to try the suit? Is the suit governed by the Indian Companies Act, and can the plaintiffs seek relief in Court without first exhausting the special procedure laid down in the Indian Companies Act and the Articles of Association of the defendant Company?"

The trial Court dismissed the suit, holding that it related to a matter which was internal or domestic, and was impliedly barred by the Indian Companies Act, and consequently the Court had no jurisdiction to try it.

On appeal, the learned District Judge of Faridpur held, *inter alia*, that the first issue should be decided

in favour of the plaintiffs; that jurisdiction was not barred, and the plaintiffs could seek relief in Court as the suit was not governed solely by the Indian Companies Act having been brought under the Specific Relief Act also. Under Order XLI, rule 23 of the Code of Civil Procedure, the suit was remanded to the learned Munsif, Sadar Court, Faridpur, for trial of the remaining issues. Against this order of the learned District Judge of Faridpur the defendants Nos. 2 and 3 preferred the present appeal to the High Court.

Babu Suresh Chandra Taluqdar, for the appellants. As this suit relates to the internal management or domestic affairs of the Company, the ordinary Civil Courts have no jurisdiction to try it. This is not an ordinary suit of a civil nature as is contemplated in section 9 of the Code of Civil Procedure. The plaintiffs should first have followed the provisions of the Articles of Association of their Company under which they could request the Directors to call a general meeting to re-open the question of elcction. But they have not done so. Under rule 38 of their Articles of Association meetings so called by the Directors can re-open the discussion of any matter previously decided at a general meeting. In case the Directors decline to act on the request of ten shareholders, the Articles permit the summoning of a general meeting under rule 36 by the ten shareholders themselves. The articles permit the dismissal of Directors at a general meeting and so it is evident that at the next, or *Pous* meeting, the shareholders had an opportunity of deciding whom they wished to act as Directors. At th ismeeting the shareholders must have already had an opportunity of expressing approval or disapproval of the proceedings of the meetings of the 32nd *Ashar* and of the 7th *Sravan*. The plaintiffs could have

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proposed that the election of the 7th *Sravan* should not be confirmed at the *Pous* meeting, and if this proposal had been accepted then their grievance would have been extinguished. The plaintiffs should also have exhausted all the procedure laid down by the Indian Companies Act. The bar of jurisdiction should prevail and I rely upon the decisions in *S. K. Ghandy* v. *L. P. E. Pugh* (1), *Mozley* v. *Alston* (2) and certain other cases following that case. The election of the 7th *Sravan* was not outside the powers of the Company and therefore there is a bar of jurisdiction such as can be inferred from the remarks in articles 471 and 472 at pages 289 and 290 of Volume V of the Halsbury's Laws of England. I may here refer to the observation made by Mr Justice Buckland in his Commentary on the Indian Companies Act (VII of 1913), 3rd edition, at page 7, which observation is made in answer to the question how far the English decisions under the Companies (Consolidation) Act, 1908 (which is the English statute now in force), and the decisions under the old Acts may be resorted to for the purpose of interpreting the Indian Companies Act, 1913. The learned author gives the following reply: "The "practice of all Courts in India to refer to and rely upon "English authorities is well established; where the "sections of the Indian statute are in the same terms as "its English counterpart, which in its turn repeats "those contained in earlier enactments, the principle of "the cases quoted will apply." On page 554 of Kerr on Injunctions the following observation occurs accompanied by a reference to the case of *Mozley* v. *Alston* (2): "An Act, although it may be beyond the powers of the "directors, or managing body of a company, may be "capable of being adopted and confirmed at a meeting "of the shareholders as a body. If so, the question is

(1) (1923) 28 C. W. N. 479. (2) (1847) 1 Phillips 790; 65 R. R. 520.

"properly a subject of internal regulation and "management, and the Court will not interfere until "all reasonable attempts have been made to take the "sense of the general body of shareholders on the "matters in question. Before applying to the Court, "all the means provided by the articles, etc., for the "purpose of bringing the matter before the general "body of the shareholders must be resorted to and "exhausted."

The Court ought not to interfere in this matter, even if it had jurisdiction, for, in *Maharaj Narain Sheopuri* v. *Sashi Shekareshwar Roy* (1) it has been laid down that the Court will not interfere in a case where the Court's decision might be rendered nugatory by the action of the Association. If the plaintiff No. 2 were to get a decree in this case, he might, under the Articles of Association of the "Faridpur Loan Office, Limited," be removed from office at the very next general meeting of that Company if the other Directors or the majority of shareholders choose to combine against him and remove him from the office of Director.

Babu Asitaranjan Ghose and *Babu Subodh Chandra Roy Chowdhury*, for the respondents, were not called upon to reply.

NEWBOULD AND GHOSE JJ. This appeal arises out of a suit brought by four persons as plaintiffs against defendants Nos. 1 to 5, who are stated to be acting as directors of the Company which was joined as defendant No. 6 on the ground that one of the plaintiffs has been prevented from acting as director. The facts shortly stated are that at a meeting of the shareholders of the Company, which was held on the 32nd *Ashar* 1329, the plaintiff No. 2 and defendants Nos 1, 2 and 3 were elected directors. The meeting

(1) (1915) I. L. R. 37 All. 313.

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was subsequently adjourned and the adjourned meeting was held on the 7th *Sravan* following. On that date on account of certain proceedings, which we need not state in detail, the election of the directors held on the previous date was reconsidered and a new election took place the result of which was that defendants Nos. 1, 2, 3 and 4 were elected directors and plaintiff No. 2 was not elected. There was also some other alteration as regards the election of the Assistant Managing Director. Several issues were framed, but the suit was dismissed by the Munsif on the first issue, that is, on the ground that the Court had no jurisdiction to try the suit. The plaintiffs appealed against that decree and the learned Judge on appeal held that the Court had jurisdiction to entertain the suit and remanded the case to the first Court for the trial of certain issues.

The defendants Nos. 2 and 3 have appealed to this Court and on their behalf the contention has been made that the Civil Court has no jurisdiction to entertain such a suit as this. It was also argued that having regard to the facts stated in the judgment of the Court of appeal below the Court ought not to interfere in this matter.

With regard to the second question we have only to observe that the learned Judge in the lower Appellate Court took the matter into his consideration as a question distinct from one of jurisdiction and as we understand his judgment he has left the question open for decision by the trial Court, that is to say, whether having regard to the circumstances of the case the Court will in the exercise of its proper discretion grant the relief claimed by the plaintiffs. That discretion is a judicial discretion to be exercised by the Court in consideration of all the circumstances of the case and it is liable to be reviewed on appeal

by the Appellate Court. That matter is not properly before us now and we need not express any opinion on the question. The only question that is properly before us is whether the Civil Court has jurisdiction to entertain the suit. It is contended on behalf of the appellants that although there is no direct provision in the law that the Civil Court has no jurisdiction to entertain such a suit it is a matter of internal management of a company with which the Court has no jurisdiction to interfere, and he cites in support of his contention the case of *Mozley v. Alston* (1) and certain other cases following that case. In that case however there were various reasons on which the Lord Chancellor sustained the demurrer of the defendant Company and we need not go into the reasons of the judgment in detail. The concluding remarks in the judgment show that the Court did not exercise its equitable jurisdiction on a consideration of the facts of the case. As a matter of fact an injunction may be granted on the application of a director restraining the plaintiff's co-directors from wrongfully excluding him from acting as a director, and we think that there is nothing which can be urged as excluding the jurisdiction of the Court from entertaining the suit. As we have said, this question of jurisdiction is quite different from the question whether the Court will exercise its discretionary jurisdiction having regard to the circumstances of a particular case.

We hold that the Court has jurisdiction to entertain the suit as framed and the appeal must be dismissed with costs.

Let the record be sent down without delay.

G. S. *Appeal dismissed.*

(1) (1847) 1 Phillips 790 ; 65 R. R. 520.