Kitnasamy S/O Marudapan v Nagatheran S/O Manogar and Another
[2000] SGHC 21

Case Number : OS 57/2000, SIC 600199/2000

Decision Date : 11 February 2000

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Sarbjit Singh [Lim & Lim] for the plaintiff; Ganesh [Ganesha & Partners] for the defendants

Parties : Kitnasamy S/O Marudapan — Nagatheran S/O Manogar; Sivaprakasam S/O Petha Perumal

JUDGMENT:

GROUNDS OF DECISION

1. The plaintiff is a director of JASP Construction Pte Ltd. The defendants are the other directors of the same company. This action was commenced by an Originating Summons with the principal objective of restraining the defendants from proceeding with a proposed resolution to remove the plaintiff as a director of the company.

2. The proposed resolution was to be discussed and passed at an Extraordinary General Meeting of the company on 14 January 2000. The plaintiff then applied ex-parte in chambers on 13 January 2000 for an injunction to restrain the directors from proceeding with the Extraordinary General Meeting.

3. The plaintiff is a shareholder as well as director of the company. One of the business of the company was to obtain foreign labour for local construction projects. He avers, among other matters, that the payment of commission is made in cash in India and unless he remains a director he will not be able to ensure that the money is not misappropriated by the other two directors.

4. The application though made ex-parte was opposed by the defendants. Their counsel, Mr. Ganesh, submitted that this application could only be made under section 216 of the Companies Act, but one of the pre-conditions is that the applicant must be a member of the company. He submitted that a shareholder is not necessarily a member. The only evidence put forward by the plaintiff in this regard is in paragraph 11 of his supporting affidavit in which he says:

> "Annexed hereto and marked Exhibit 'K-1' is a copy of the Registry of Companies search. The search shows that I am a director of the company. The search however does not show that I am a shareholder. I called the company's auditor to clarify on 12 January 2000 and I was told by the accountant Mr. Alan Subramaniam that the Registry of Companies would update the records after the Annual Returns were filed. He confirmed that 33,333 shares have been issued in my name and that I am a registered shareholder and that the certificates are with him for safe-keeping."

A registered shareholder would be a member of a company, but I am not satisfied that the plaintiff has adduced sufficient proof that he is a member of the company and not merely a shareholder. However, if this was the only impediment, I would have given the plaintiff time to adduce more reliable evidence of his membership, but his application would have failed in any event for the following reasons.

5. The plaintiff does not dispute that the Extraordinary General Meeting was properly called. In the circumstances, and in the absence of fraud there is no ground for a court to interfere with the running of a private company through such as this. The plaintiff may well have a legitimate grievance, the subject of which, however, I was in no position to assess via the pleadings. So an application of this nature without more cannot succeed.

6. A claim under section 216 must be clearly pleaded together with specific allegations. Neither the Originating Summons nor the summons-in-chambers indicates whether this application was founded on section 216, and no other cause of action was pleaded. From his affidavit it appears that the plaintiff was in danger of being pushed aside as a director and may well lose some influence, but that alone is never an adequate reason to grant an injunction against a properly convened meeting of the company. His removal may be a detriment to the company but the latter has to live with its own decisions. If the plaintiff has a proper cause of action, he must plead it in the originating action.

7. In the circumstances, the application was dismissed.

Choo Han Teck

Judicial Commissioner