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(10) In view of the above dates, it is clear that the petitioner has undergone the agony of trial and subsequent proceedings in this case since 11th December, 1980 till today which comes to about 6½ years. In such a situation, it would not be in the interest of justice to remand the case to the trial Court for proceeding according to law. Rather, it is a case where the petitioner has undergone harassment for a period of 6½ years and I would, therefore, allow this revision.

(11) With the foregoing observations, this revision is accepted and the orders passed by the first Appellate Court and also by the trial Court are set aside and the petitioner is acquitted of the charges.

R.N.R.

Before S. P. Goyal, J.

AMRITSAR RAYON AND SILK MILLS LTD.,—Petitioner.

versus

AMIN CHAND SAJDEH,—Respondent.

Civil Revision No. 181 of 1987.

May 27, 1987.

Companies Act (I of 1956)—Section 299—Code of Civil Procedure (V of 1908)—Order 37 Rule 3(5)—Indian Contract Act (IX of 1872)—Section 23—A, a Director of Company B, bringing suit under order 37 against B as sole proprietor of firm C to which B owed sums on a contract for supply of yarn—Company B granted leave to defend suit on the ground that A failed as a Director of B to disclose his interest in the contract as required by Section 299—Contract in violation of Section 299—Whether opposed to public policy—Failure to disclose interest—Its effect on the contract—State.

Held, that nothing contained in Section 299 of the Companies Act, 1956 either bars the entering into of a contract by a Director

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with the company in his individual capacity or renders the contract illegal or unenforceable against the Company. If that was so, there was no need to enact sub-section (5) of Section 299 which saves the operation of any rule of law restricting a director of a company from having any concern or interest in any contracts or arrangement with the company. If a contract is entered into without conforming to the provisions of Section 299 it can by no stretch of reasoning be said to be opposed to any public policy or forbidden by law because the provisions of Section 299 neither forbid the entering into nor render such a contract void. The only duty cast upon the Director by the provisions of Section 299 is to disclose the nature of his interest in the proposed contract at a meeting of the Board of Directors. The failure on his part to make such a disclosure, though has been made punishable, does not have the effect of rendering the contract void or unenforceable.

(Paras 4 and 6)

Petition for revision under section 115 C.P.C. against the order of the Court of Shri S. S. Gupta, P.C.S., Sub-Judge, 1st Class, Amritsar, dated 1st December, 1986, granting leave to the defendant to defend the suit subject to deposit of Rs. 1,09,279.40 p. admitted by him to be due to the plaintiff and on furnishing a security to the tune of Rs. 68,720.00 paise, regarding the due performance of the decree, in case the same is passed, within a period of one month from that day.

H. L. Sibal, Sr. Advocate, with S. C. Sibal, Advocate, for the Petitioner.

Bhagirath Dass, Sr. Advocate, with Ramesh Kumar, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.—

The respondent filed the suit giving rise to this revision under Order 37 of the Code of Civil Procedure for the recovery of Rs. 1,09,279.40 besides interest at the rate of 2 per cent per month alleged to be due from the defendant on account of the nylon filament yarn supply during March 16 to June 14, 1982. On service of summons for judgment, the petitioner-defendant put in appearance and sought leave to defend the suit under Rule 3(5) of Order 37 mainly on the ground that the contract was hit by the provisions of section 299 of the Companies Act inasmuch the plaintiff, a Director of the defendant-Company, never disclosed his interest in the contract of supply of the yarn. As the correctness of the

amount due had been already certified by the defendant,—*vide* letter, dated September 19, 1984, the trial Court granted leave to defend on the deposit of this amount and furnishing security in the amount of Rs. 68,720.60 for due performance of the decree. Dissatisfied therewith, the defendant has come up in this revision.

(2) The principles applicable to cases covered by Order 37 of the Code of Civil Procedure, as approved by the Supreme Court in *M/s Mecalec Engineers & Manufacturers v. M/s Basic Equipment Corporation* (1) were stated by Das, J. in *Smt. Kiranmoyee Dassi v. Dr. J. Chatterjee* (2) as under:—

- “(a) If the defendant satisfies the Court that he has a good defence to the claim on its merits, the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend;
- (b) If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence although not a positively good defence, the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend;
- (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security;
- (d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine, then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend; and

(1) A.I.R. 1977 S.C. 577.

(2) (1945) 49 Cal. W.N. 246.

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(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

(3) The trial Court is alleged to have acted illegally in the exercise of its jurisdiction on the ground that unless it was a case of no defence, as stated in proposition (e), the condition of deposit of the principal amount claimed and of furnishing security could not be imposed. According to the learned counsel, the present case would be covered by either of the first three propositions because the contract was void and unenforceable having been entered into in violation of the provisions of Section 299 of the Companies Act. Reliance for this proposition was placed on *Kaye v. Croydon Tramways Company* (3), I regret my inability to subscribe to this view.

(4) Sub-section (1) of Section 299 provides that every director of a Company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the Company, shall disclose the nature of his concern or interest at a meeting of the Board of Directors. Sub-section (2) provides the mode and time when the director is to make the said disclosure. Every director who fails to comply with sub-section (1) or (2) is punishable with fine extending up to five thousand rupees by virtue of sub-section (4). Sub-section (5) further lays down that nothing in this section shall be taken to prejudice the operation of any rule of law restricting a director of a Company from having any concern or interest in any contracts or arrangement with the Company. It is evident from a combined reading of all these provisions that nothing contained in Section 299 either bars the entering into of a contract by a director with the Company in his individual capacity or renders the contract illegal or unenforceable against the Company. If that was so, there was no need to enact sub-section (5) which saves the operation of any rule of law restricting a director of a Company from having any concern or interest in any contracts

or arrangement with the Company. Instead, the only consequence of the failure on the part of the director to disclose the nature of his concern or interest is that he becomes liable to be punished with fine extending up to five thousand rupees. The learned counsel for the petitioner, however, urged that the director being in a fiduciary relationship with the Company, a duty has been cast upon him to disclose the nature of his interest in such dealings. If a contract is entered into without conforming with that provision, it would be hit by the provisions of Section 23 of the Indian Contract Act being opposed to public policy and forbidden by the provisions of the said Section 299. Reliance on the provisions of Section 23 of the Indian Contract Act, in my view, is wholly misplaced. The consideration or object of the present contract can, by no stretch of reasoning, be said to be opposed to any public policy or forbidden by law because the provisions of Section 299 neither forbid the entering into nor render such a contract void.

(5) Now, let us examine how far the decision in *Kaye's case* (supra), relied upon by the learned counsel for the petitioner, supports his contention. In that case, the British Electric Traction Company entered into an agreement to purchase the Croydon Tramways Company and one of the terms of the agreement was that the purchaser Company shall pay a sum of 5,007 to each of the present directors of the Tramways Company. The contract was stated to be void and unenforceable because of the provisions of Section 85 of the Companies Clauses Consolidation Act, 1845, which provides that "no director shall be capable of accepting any other office or place of trust of profit under the company, or of being interested in any contract with the company, during the time he shall be a director." Relying on the said provision it was contended that the directors were interested in the contract with the Company and as they were not capable of being interested in a contract with the Company, the contract itself must be held to be beyond the powers of the Company to enter into. The contention was repelled with the following observations :—

"That is putting upon Section 85 a construction which has never been put upon it for the last fifty years, and it appears to me inadmissible. The real truth is that the consequences of a director being interested in a contract with the Company are as follows : first, there is the statutory consequence that he ceases to hold office; and, secondly, there is what I may call the general legal consequence, that he cannot enforce, as against the Company, any contract which he has entered into with that personal

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interest. But to say that a contract between two companies is to be treated as invalid and beyond the power of one of the companies because one of the directors is interested in it, is a proposition which I have never heard advanced before, and which appears to me to be entirely unsound."

(6) The argument of the learned counsel was that even though the challenge to the competence of the two Companies to enter into the impugned contract was repelled, yet it was held that the Directors were not competent to enforce the contract against the Company which necessarily means that such a contract was against law or the public policy. The fallacy in the argument is quite obvious. The provision of Section 85 debarred the Director from having any interest in any contract with the Company and because of the same, a contract entered into with the Company was held to be unenforceable by such a Director. The Companies Act applicable in India, on the other hand, does not contain any provision prohibiting a Director from being interested in any contract with the Company. The only duty cast upon him by the provisions of Section 299 is to disclose the nature of his interest in the proposed contract at a meeting of the Board of Directors. The failure on his part to make such a disclosure, though has been made punishable, but does not have the effect of rendering the contract void or unenforceable. So, the impugned contract cannot be said to be void and unenforceable on the basis of any observation made in *Kaite's case* (supra) No case, consequently, has been made out for interference with the order of the trial Court and this petition is accordingly dismissed leaving the parties to bear their own costs.

R.N.R.

Before S. P. Goyal, J.

MAHAVIR SINGH.—Petitioner

versus

GIAN PARKASH KHURANA and another,—Respondents.

Civil Original Contempt Petition No. 365 of 1986.

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Industrial Disputes Act (XIV of 1947)—Section 17-B—Contempt of Courts Act (LXX of 1971)—Section 2(b)—Tribunal directing reinstatement with full back wages—Award of reinstatement stayed subject to section 17-B—No interim order passed staying payment

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(10) In view of the above dates, it is clear that the petitioner has undergone the agony of trial and subsequent proceedings in this case since 11th December, 1980 till today which comes to about 6½ years. In such a situation, it would not be in the interest of justice to remand the case to the trial Court for proceeding according to law. Rather, it is a case where the petitioner has undergone harassment for a period of 6½ years and I would, therefore, allow this revision.

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