

Before Rajiv Narain Raina, J.

M/S SANT LAL SURINDER KUMAR—Petitioner

versus

**M/S BEHL ROLLER & FLOUR MILLS (P.) LTD.
AND OTHERS—Respondents**

CR No. 1626 of 2014

March 4, 2014

***Code of Civil Procedure, 1908 - O. 7 R. 11 & O. 9 R. 7 -
Rejection of plaint - Petitioner-firm was creditor of respondent company
- In 1996, petitioner filed suit for money recovery - In 1997, directors
of company sought for rejection of plaint on ground that they were
immune from personal recovery as Company Act, 1956 protects them
and claim would lie against company - Trial Court dismissed suit qua
director but continued same qua other defendants - Petitioner argued
that application for rejection of plaint was filed by directors at belated
stage and accordingly rights under order 7 Rule 11, CPC was waived
off - Held, that statutory rights and protections afforded to directors by
law can be claimed at any time as they go to root of jurisdiction - No
place for coercive adjudication of claims through lawful process -
There is no estoppel against statute - Plaint stood rejected qua said
defendants***

Held, that statutory rights and protections afforded by law can be claimed at any time as they go to the root of jurisdiction. Any order passed or decree made by the trial Court against the wishes of the said two defendants would be contrary to law and suspect in appeal unless the admitted debt is discharged willingly or by free consent of defendants no. 4 and 5 surrendering rights as directors and paying debt piously and on high moral grounds from their personal assets but not that of the company. There is no place here for coercive adjudication of the claims through lawful process. It is a well recognized legal principal that there is no estoppels against the statute.

(Para 3)

Further held, that there are other defendants arrayed as parties including the defendant company from where the claim is open to be

satisfied as the plaintiffs remain at liberty to proceed against the remaining defendants.

(Para 4)

Vikas Kumar, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J. (Oral)

(1) The challenge in this petition is by the plaintiff to the order of the trial Court dated 30th January, 2014 (P-5) allowing the application filed by defendants No. 4 and 5 under Order 7 Rule 11, Code of Civil Procedure, 1908 (for short 'CPC') dismissing the suit qua them and leaving the contest between the plaintiff firm and the remaining defendants in a suit for recovery of money.

(2) Indisputably defendants No. 4 and 5 were directors of M/s Behl Roller & Flour Mills (P) Ltd. at the time when the liability was incurred and the petitioner M/s Sant Lal Surinder Kumar became a creditor of the 1st respondent company. It may be noted that respondents/defendants No.4 and 5 were *ex parte* before the trial Court and on their application under Order 9 Rule 7, CPC the *ex parte* proceedings were set aside. This happened in 1997. The suit was filed in 1996 and has remained pending. Be that as it may, at the fag end of the trial, defendants No. 4 and 5 sprang a surprise on the plaintiff firm by filing an application under Order 7 Rule 11, CPC taking the plea that the plaint deserves to be rejected qua defendants No. 4 and 5 for the reason that the relief and claim made in the suit was barred in favour of the applying defendants by virtue of the provisions of the Companies Act, 1956 which protect Directors against personal liability while acting as Directors of the Company in the disputed transactions and against whom, *inter alia*, the claim for money was brought in the suit for recovery of money. Defendants No. 4 and 5 are plainly immune from personal recovery as law protects them. The claim, if any, would lie against the company and the plaintiffs are free to proceed accordingly against the remaining defendants.

(3) The next argument advanced by the learned counsel for the petitioner is that the application under Order 7 Rule 11, CPC was filed at a belated stage and therefore should not have been entertained for the

reason that the defendants No. 4 and 5 had submitted to jurisdiction and should be taken as waiver of rights under Order 7 Rule 11, CPC by reason of conduct not having invoked the prayer for rejection at the onset of litigation or at the earliest. The contention appears attractive on its face but merits rejection for the reason that statutory rights and protections afforded by law can be claimed at any time as they go to the root of jurisdiction. Any order passed or decree made by the trial Court against the wishes of the said two defendants would be contrary to law and suspect in appeal unless the admitted debt is discharged willingly or by free consent of defendants No. 4 and 5 surrendering rights as directors and paying debt piously and on high moral grounds from their personal assets but not that of the company. There is no place here for coercive adjudication of the claims through lawful process. It is a well recognised legal principle that there is no estoppel against the statute.

(4) The remaining complaint of the petitioner firm as projected before me is that the trial court has dismissed the suit qua defendant Nos.4 and 5 when it could only reject the plaint under Order 7 Rule 11, CPC. The argument is misdirected. Whether the plaint is rejected qua respondents No. 4 and 5 or the suit is dismissed qua the two matters little in law. There are other defendants arrayed as parties including the defendant company from where the claim is open to be satisfied as the plaintiffs remain at liberty to proceed against the remaining defendants. However, to set the record straight the order of the trial Court is modified and shall henceforth be read, that the plaint stands rejected qua defendants No. 4 and 5 as barred by law.

(5) For the foregoing reasons, I see no ground to interfere with the order of the trial Court which deserves to be upheld in its conclusion.

(6) The petition, therefore, fails and is dismissed.

P.S. Bajwa