

Present:

Mr. Justice Nozrul Islam Chowdhury

And

Mr. Justice K.M. Kamrul Kader

**First Appeal No. 304 of 2010 with**

**Civil Rule No. 489 (F) of 2010**

A.H. M. Kamruzzaman Khan

... Plaintiff-Appellant

-Versus-

Registrar, Joint Stock Companies & Firms

24-25 Dilkusha C/A, Dhaka and others

...Defendant-Respondents

Mr. Md. Nur Hussain Chowdhury with

Mr. Nasim Khan, Advocates

... For the appellant

Mr. A.K.M. Badrudduza, Advocate

.... For the respondents

**Heard on: 15.03.2012**

**Judgment on: 19.03. 2012**

**K.M. Kamrul Kader, J:**

This appeal at the instance of the plaintiff is directed against the judgment and decree dated 25-07-2010 passed by the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka in Title Suit No. 162 of 2009, rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendant-respondents.

The material facts in short are that, the appellant as plaintiff filed Title Suit No. 162 of 2009 before the Court of learned Joint District Judge, 5<sup>th</sup> Court, Dhaka stating *inter alia* that R. Zaman & Company Ltd. is a Private Ltd. Company, it is incorporated under the Companies Act, 1913, on 08.4.1984 under the defendant No. 1 and the plaintiff is the Managing Director of the said Company. Its authorized capital is Taka 1,25,00,000/- only (one crore twenty five lacs), divided into 1 lac 25 thousand shares, each share worth Taka 100/- (one hundred) only and paid up capital was Taka 10 lacs as per balance sheet dated 30.6.2005, subscribed by the 13 shareholders.

The Company has purchased a denationalized and privatized industry namely Kuliarchar Ground Nut Mills Ltd. at a price of Taka 1,00,24,000/- only, under an agreement dated 18.06.1987, executed by the Government and the Company. Thereafter, on 14.11.1994 a deed of financing was executed in between the plaintiff and the company for becoming Managing Director of the Company with Payment of Tk. 55,00,000/- (fifty five lacs) in share subject to the approval of the Ministry of Industries, which was accorded on 12.01.1995.

Next, on 01.4.1995 a meeting of the Board of Directors of the Company was held under the Chairmanship of Defendant No. 2 and in that meeting the plaintiff was appointed as the Managing Director of the Company and the company handed over 400 shares in his name, which was duly approved by defendant No. 10. Thereafter, the plaintiff was re-elected twice as Managing Director of the company for a period of 5 (five) years each on 15.9.1999 and 30.10.2004 respectively. Next, on 30.5.2004, the defendant Nos. 2-6 expressed their intension to sell their 600 shares at a price of Taka 1, 20,00000/- only and the plaintiff agreed to purchase their shares and accordingly a deed of agreement was executed and the plaintiff paid an amount of Taka 42, 00000/- only lacs to the defendants nos. 2-6. Thereafter, the defendant Nos. 3-5 served a notice on 10.6.2005 demanding payment of the balance amount, after receiving the said notice the Plaintiff gave a reply on 27.6.2005 expressing his willingness to make payment of the rest/balance amount provided that they will execute prescribed instruments to transfer the said shares in the name of the Plaintiff, but they did not pay any heed to it.

Due to non-payment of the balance amount government charged penal interest, the plaintiff filed a title suit being No. 9 of

1999 (re-numbered) before Joint District Judge, Dhaka against the defendant no. 10 for a declaration that the excess amount of money demanded by the government is wrong, unlawful and not binding upon the company. After conclusion of trial learned Additional Joint District Judge, Dhaka decreed the suit of the plaintiff. During pendency of the said suit, the defendants removed the plaintiff from the post of Managing Director on 22.03.1997, which was challenged by the plaintiff by filing a Writ petition being No. 1834 of 1997, before this Hon'ble Court and after hearing the parties, the Rule was made absolute by the judgment and order dated 05.08.2007.

The plaintiff filed an application on 23.10.2005 to the defendant No. 10 to make payment of rest of the installment, amounting Taka. 24,01,815.97/- only (Taka twenty four lac one thousand eight hundred fifteen and ninety seven paisa) by October, 2005. Subsequently, the plaintiff made payment rest of the amount on 23.01.2006 and filed Title Suit No. 1449 of 2008 for specific performance of contract against the defendant no. 10.

In the mean time, the defendant No. 2 received some money from a third party with a condition to sale of shares of the said Company, without any approval from the board of directors. Mr.

Rashiduzzaman and Mr. Khurshiduzzaman sold their 280 shares to Mr. Shafiqul Islam, Mr. Rafiqul Islam and Mr. Saiful Islam and they were shown as the directors of the company on 30.03.2006. The defendant No. 2 in collusion with defendant Nos. 3-6 created some false documents to misappropriate the properties of the Mill. The plaintiff's post as Managing Director was shown vacant under section 110 of the Companies Act and the defendant No. 2 was shown as the Managing Director in a meeting held in the Kuliarchar Ground Nut Mill, wherein, defendant Nos. 2-6 were shown present in that meeting and passed the said resolution, though the defendant Nos. 3-5 were out of Bangladesh at the relevant period. On getting that information the plaintiff filed a General Diary entry on 14.8.2006 to the Kuliarchar Police Station and a copy of the said G. D. was send to the defendant No. 1, after receiving the same the defendant No. 1 passed an order upon the plaintiff and defendant No. 2 to settle the matter amicably. Later, the plaintiff filed a Writ Petition No. 9278 of 2006 against the aforesaid order before this Hon'ble Court and after hearing the parties their Lordships was pleased to made the Rule Nisi absolute on 18.8.2008 and declared that the impugned letter dated 08.8.2006 have been issued without lawful authority and directed

the Registrar of Joint Stock Companies and Firms to hold an enquiry in respect of the return as submitted by the company M/s. R. Zaman & Company through writ petitioner and the counter return, under the authority as availed to him under the provision of Section 193 of the Companies Act. 1994. The plaintiff after obtaining the certified copy of the aforesaid judgment and order sent it to defendant No. 1 on 24.5.2009, unfortunately, he without considering the said Judgment and order, passed an order which needs to be declared to have been passed unlawfully and hence not binding upon the plaintiff.

The defendant No. 2 in collusion with defendant Nos. 2-6 sold out stock and other articles of the said Mill amounting to over Tk. 2,00,00,000/- (two crore), for depriving of the plaintiff from his due share as major share holder of the company. The defendant Nos. 2-6 collecting rents from the tenants of the Mill, at the rate of Tk. 12,000/- per months, which is illegal and unauthorized. The plaintiff is the managing Director of the Company. But the defendant no. 1 most illegally approved the appointment of the defendant no. 2 as managing Director of the Company, which is illegal and void. Further, the defendant Nos. 2-6 tried to misappropriates the properties of the company. The

cause of action of the suit arose on 24.05.2009. The plaintiff brought this suit for declaration praying for 7 reliefs, which reads as follow:-

অতএব, প্রার্থনা এই যে,

১। আর, জামান এন্ড কোং লিঃ এর ব্যবস্থাপনা পরিচালক হিসা-ব বাদীর নিযুক্তি বৈধ ঘোষণার ডিএলি প্রদা-ন ;

২। আর, জামান এন্ড কোং লিঃ এর ব্যবস্থাপনা পরিচালক হিসা-ব বাদী-ক অব্যাহতি দান অবৈধ ম-র্ম -ঘোষণার ডিএলি প্রদা-ন ;

৩। আর, জামান এন্ড কোং লিঃ এর ব্যবস্থাপনা পরিচালক হিসা-ব ২ নং বিবাদীর নিযুক্তি অবৈধ ম-র্ম ঘোষণার ডিএলি প্রদা-ন ;

৪। বিগত ১৮/০৬/১৯৮৭ ইং তারি-খ চুক্তিমু-ল প্রকৃত ক তপছিল বর্ণিত কুলিয়ারচর গ্রাউন্ড নাট মি-লর -এসস (অস্থাবর সম্পত্তি) ২ নং বিবাদী কর্তৃক বিক্রয় ক্ষমতা বর্হিত্ত এবং বিক্রয়লব্ধ অর্থ উক্ত মি-লর ব্যাং-কর হিসা-ব জমা দা-নর ডিএলি প্রদা-ন ;

৫। বাদী-ক অবৈধতা-ব অব্যাহতি দা-নর পর মি-লর হিসা-ব যে আয় হ-য়-ছ, তাহা মি-লর হিসা-ব জমা দা-নর জন্য ২ নং বিবাদীর বিরুদ্ধ ডিএলি প্রদা-ন ;

৬। বিগত ২৪/০৫/২০০৯ ইং তারি-খ ১ নং বিবাদী কর্তৃক প্রদত্ত আ-দশ আইনানুগতা-ব প্রদান করা হয় নাই ম-র্ম ঘোষণার ডিএলি প্রদা-ন ;

৭। বাদী অদ্যাবধি কোম্পানীর হিসা-ব শেয়ার কেনা বাবদ ৯৭,০০,০০০/- ( সাতানব্বই লাখ ) টাকা এবং মিল খরি-দর ল-ক্ষ্য বিগত ১৮/০৬/১৯৮৭ ইং তারি-খর চুক্তির বিপরী-ত সরকার বরাব-র টাকা ২৪,০০,০০০/- (চব্বিশ লাখ) জমা দান কোম্পানীর শেয়ার কেনার বিপরী-ত করা হইয়া-ছ ম-র্ম -ঘোষণার ডিএলি প্রদান ; এবং

৮। আইন ও ইকুইটি ম-ত বাদী আর যে প্রতিকার পাওয়ার হকদার উহার আ-দশ দা-ন মর্জি হউক।

During pendency of the suit the plaintiff filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for restraining the defendant No. 2 from discharging duties as Managing Director of the Company and after hearing the party, learned Joint District Judge passed an Order of ad-interim injunction on 05.07.2009 and restrained the defendant No. 2 to act as Managing Director of the said Company till filing of the written objection

The defendant No. 2 made appearance by filing a written objection against the application for temporary injunction. After submission of written objection the Plaintiff filed an application along with a prayer not to accept the vokalatnama and the written objection as the same was filed by a false person and to take necessary step in accordance with law. Thereafter, on 25.08.2009 the plaintiff filed another application along with prayer to submit the passport of the defendant No. 2.

Next, the defendant No. 2 on 02.09.2009 filed an application under Order 7 Rule 11 praying for rejection of the plaint. In the meantime, the defendant No. 10 entered appearance upon filing a written statement denying the material allegations made in the plaint. Thereafter, on 03.06.2010, the defendant no. 10 filed an

application for rejection of the plaint, under Order 7 rule 11(a) and (d) of the Code of Civil Procedure. In both the applications under Order 7 Rule 11 of the Code of Criminal procedure the defendants alleged that the suit is barred by law and civil court has no jurisdiction to try this suit as the relief claim by the plaintiff attract the provision of the section 3 and 43 of the company Act 1994. The plaintiff on 25.10.2009 filed a written objection contending *interalia* that on 18.06.2009 the Plaintiff filed an application along with a prayer not to accept the vokalatnama and the written objection as the same was filed by a fake person and to take necessary step in accordance with law and the same is still pending before the Court. It was necessary to resolves this matter first, before considering the application for rejection of plaint. The learned Joint District Judge, 5<sup>th</sup> Court, Dhaka, kept the application dated 18.06.2009 filed by the plaintiff in abeyance while allowed the application filed by the defendants under Order 7 Rule 11 of the Code of Criminal procedure and rejected the plaint by his judgment and order dated 25.07.2010.

Challenging the said judgment and order dated 25.07.2010, which amounts to a decree the instant appeal has been preferred by the plaintiff appellant.

Mr. Md. Nur Hussain Chowdhury the learned counsel appearing on behalf of the appellant having taken us through the entire material on record including the impugned order submit that the plaintiff filed a Title Suit No. 162 of 2009 in the court of learned Joint District Judge. 5<sup>th</sup> court, Dhaka, under section 42 of the Specific Relief Act, praying for 7 (seven) reliefs, but on misconstruction of law and facts learned Joint district judge rejected the plaint under order 7, rule 11(a) and (d) of the Code of Civil Procedure and holding that the suit is barred by law and the instant suit is not maintainable according to the provision of section 3 and 43 of the Companies Act, 1994 said finding is erroneous, if the companies Act, Rule and Rulings are read together, impugned order is not sustainable in law. He further submits that there is no provision in the Companies Act to file any declaratory suit under which the plaintiff could seek reliefs he claimed in the suit and these reliefs are only available under section 42 of the Specific Relief Act and as such the impugned order and decree is not sustainable in law.

The learned Counsel for the appellant submits that section 9 of the Civil Procedure Code gives Jurisdiction to the Civil Court to try all civil disputes unless they are expressly or impliedly

barred. Sections 3 and 43 of the Companies Act have not barred the jurisdiction of the Civil Court in this matter. He further contended that the relief claimed by the petitioner cannot be grounded on any provision under the Companies Act. To substantiate his submission he placed reliance on the decisions of the cases of **Messrs Chalna Fibre Company Ltd. Khulna and others Vs. Abdul Jabbar and 9 others reported in 20 D.L.R. (S.C) 335 and Md. Shamsuzzaman Khan Vs M.S. Islam and ors. 28 DLR-1976.**

The learned Counsel lastly submits that the appellant as plaintiff filed this declaratory Suit before the court of learned Joint District Judge, 5<sup>th</sup> Court, Dhaka praying for 7 reliefs, these reliefs are not simple one in nature for adjudication in summary manner and need be adjudicated after taking both oral and documentary evidence and should not be decided in this summary proceeding under section 43 of the Companies Act. Reliance was placed on a decision in the case of **Nurun Nahar Zaman vs. Sea Pearl Lines Ltd. 11 BLC (2006) 111.**

Mr. A.K.M. Badrudduza, the learned counsel appearing on behalf of the respondents submits that the learned Joint District Judge after careful considering the plaint, relevant laws and other

materials on record rejected the plaint and dismissed the suit of the plaintiffs. The learned Advocate for the respondents argued that the reliefs claimed by the Appellant fall under the jurisdiction of the High Court Division as company matter, under section 43 of the Companies Act, according to the provision of Rule 9 of the Companies Rule 2000. The learned Advocate for the respondents also submits that adequate remedies were provided for settlement of such dispute under the companies Act. He has relied in this connection on Section 43 of the Companies Act. The learned Counsel for the respondents further submits that the Court of Joint District Judge had no jurisdiction to entertain the suit as the reliefs claimed therein were in substance for reliefs under the provision of section 43 of the Companies Act and these reliefs could only be granted by the High Court Division under Rule 9 of the Companies Rules, 2000, which alone had exclusive jurisdiction in the matter Under Section 3 of the Companies Act. The affairs of the Company should be regulated in accordance with the law that has been provided by the Companies Act itself. In the case of any breach the grievances can only be addressed before a Company court according to the provision of the Section 3 of the Companies Act. The judgment and decree passed by the

learned Joint District Judge is well reasoned in terms of law, facts and the materials in record, there is no reason to interfere with it.

With a view to appreciate the submission made by the learned Advocates from both sides, we have to consider the plaint of the instant suit and the principles of law as laid down in the Civil Procedure Code and the Companies Act. According to the provision of section 9 of the Civil Procedure Code gives Jurisdiction to the Civil Court to try all civil disputes unless they are expressly or impliedly barred. Expressly barred means barred by any enactment passed by legislature and impliedly barred means the remedy is available in the statute itself for the right or obligation it has created and as such same remedy cannot be sought in a civil court. In the cases of **Messrs Chalna Fibre Company Ltd. Khulna and others Vs. Abdul Jabbar and 9 others reported in 20 D.L.R. (S.C) 335** it was held that:

*“It is a well-settled rule that the ouster of jurisdiction of a civil Court in respect of a civil suit is not to be readily inferred. Unless that jurisdiction has been either expressly or impliedly taken away by some other law it will continue to vest in the civil Court.”*

According to the provision of the Section 2(d) of the Companies Act 1994, the court means the court having jurisdiction under this Act. Section 3 of the Companies Act provides that the Court having jurisdiction under this Act shall be the High Court Division provided that the Government may, by notification in the Official Gazette and subject to such restrictions and conditions as it thinks fit empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regard the jurisdiction so conferred, be the court in respect of all companies having their registered office in the district.

The learned Advocate for the respondents argued that the reliefs claimed by the Appellant fall under the jurisdiction of the High Court Division as company matter, under section 43 of the Companies Act, according to the provision of Rule 9 of the Companies Rule 2000. Rule 9 of the Companies Rule 2000, provides that:

*“In all courts having jurisdiction under this Act shall be kept and maintained a book called “the Register of Company matters” in which shall be entered and numbered serially all application made under sections 13, 15, 41, 43,*

*59, 71, 81, 82, 85, 89, 115, 151, 153, 171, 175, 176, 193, 203, 228, 229, 230, 231, 233, 245, 248, 251, 253, 255, 258, 259, 261, 262, 263, 264, 265, 293, 294, 296, 299, 300, 301, 302, 303, 305, 309, 311, 312, 314, 316, 326, 328, 331, 333, 338, 339, 340, 342, 346, 349, 395, 396, and any other original proceeding under the Act in relation to a company.....”*

According to provision of Rule 9 an aggrieved person can file an application under section 43 of the Companies Act, to rectify register of members of a company. This Section provides that:

*43. Power of Court to rectify register:- (1) If- (a) the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or*

*(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having become or ceased to be, a member, the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.*

*(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any*

*damages sustained by any party aggrieved and may also make such order as costs as it may consider proper.*

*(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law.*

We also consider the submission placed by the learned Counsel for the appellant that the reliefs claimed by the Appellant are not only for rectification of share register, there are allegation of fraud against the defendants and adequate relief cannot be provided under the aforesaid section. Further, there is no provision in the Companies Act to file any declaratory suit under which the plaintiff could seek reliefs he claimed in the suit and these reliefs are only available under section 42 of the Specific Relief Act.

In the present suit, the plaintiff praying for following reliefs to the court, according to the provision of Section 42 of the specific relief Act, to the effect that a decree be passed declaring that (a) the plaintiff is legally appointed Managing Director of the R. Zaman and Company Limited and (b) the removal of the plaintiff from the post of Managing Director of the Company is illegal and without jurisdiction and (c) a decree be passed to the effect that the appointment of the defendant no. 2 as Managing Director of the Company is illegal and others relief prayed by plaintiff with regard to the properties of the company and to deposit the same or equivalent money to the company's account. All that had been done, according to the plaint that his fictitious removal from the post of the Managing Director of the Company had been accepted by defendant No. 1. The plaintiff alleged that the defendant No. 2 in collusion with defendant Nos. 3-6 created some false documents to transfer shares of company to the 3<sup>rd</sup> parties and the defendant Nos. 2-6 in collusion with each other sold out stock and other articles of the said Mill amounting to Taka 2, 00, 00, 000/- (two crore), for depriving of the plaintiff from his due share as major share holder of the company, all these had been done fraudulently and illegally. He also alleged that the

defendant No. 2-6 tried to misappropriate the properties of the Mill and he had been illegally and fraudulently removed from his office of Managing Director and that he could only be restored to his said office, if he obtained a declaration from a competent court that his removal was illegal.

We also noticed that the plaintiff alleged, some forged documents have been created to deprive him from the properties and assets of the company, he also seeks reliefs with regards to the assets of the company, these reliefs are not simple in nature for adjudication in summary manner and need be adjudicated after taking both oral and documentary evidence and should not be decided in summary proceeding for rectification of the share register, according to the provision of section 43 of the Companies Act.

Considering the facts and circumstances of the case and the principle of law as laid down it appears that the nature of the dispute is entirely a civil dispute and it can only be resolved by a competent civil court. There is no provision in the Companies Act to file any declaratory suit under which the plaintiff could seek reliefs he claimed in the suit and these reliefs are only available under section 42 of the Specific Relief Act.

In view of submission made above, we find substance in this appeal.

Accordingly, the appeal is allowed and the judgment and decree dated 25.07.2010 passed by learned Joint District Judge, 5<sup>th</sup> Court, Dhaka in Title Suit No. 162 of 2009 is here by set aside and the connected Civil Rule being No. 489(F)/2010 is here by discharged.

No order as to costs.

Send down the lower Court's records along with a copy of this judgment at once.

*Nozrul Islam Chowdhury, J:*

I agree.