

District: Chattogram

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 486 of 2023

JAC Shipping & Logistics Ltd. and another
.....Defendant Nos.1 & 3-Petitioners
-Versus-

Morshed Arif Chowdhury and others
.....Plaintiff-Opposite Parties

Mr. A. F. Hassan Ariff, Senior Advocate with
Mr. Mohammad Osman Chowdhury
..... For the petitioners
Mr. Mohammad Abdul Mannan, Advocate

..... For the opposite party No. 1

Heard on:26.11.2023 & 03.01.2023

Judgment on: 31.01.2024

Leave was granted to examine the legality and propriety of the judgment and order dated 26.09.2022 passed by the learned District Judge, Chattogram rejecting the Civil Revision No. 102 of 2022 and thereby affirmed and upheld the judgment and order dated 24.03.2022 passed by the learned Joint District Judge, Second Court, Chattogram in Other Suit No. 73 of 2020 rejecting the application filed under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 in short the CPC at the instance of the defendant-petitioner.

Facts leading to the issuance of the Rule are *inter alia* that the opposite party Nos. 1-7 being plaintiffs instituted Other Class Suit No. 73 of 2020 before the learned Joint District Judge, Second Court,

Chattogram impleading the petitioners and 10 others as defendants for the following reliefs:

“(a) A decree declaring that the Object Clause-III (01) as contained in the Memorandum and Articles of Association of the defendant No. 1 Company being forged and fraudulent bearing Reg. No. CH-5982, Reg. dated 30/08/2006 is void, illegal and inoperative.

(b) A further decree of declaration to the effect that the issuance of licence for Stevedoring against licence No. 02 of 1972 in favour of defendant No. 1 and enlistment as Ship Handling Operator vide Memo No. DT/ Sgip/ Ship Handling Operator/ Contract/ 2015 dated 25/03/2015 and Contract Agreement dated 23/03/2015 executed between defendant Nos. 1 and 9 are void, illegal and fraudulent and of no legal effect. And

(c) A decree of permanent injunction restraining the defendant No. 01 from operating under Stevedoring Licence No. 02 of 1972 having fraudulent enlistment as Ship Handling Operator vide Memo No. DT/ Sgip/ Ship Handling Operator/ Contract/ 2015 dated 25/03/2015 pursuant to the purported Contract Agreement dated 23/03/2015 executed between defendant Nos. 1 and 9”

The facts of the plaintiff's case are *inter alia* that the plaintiff-opposite party No. 1 himself and attorney holder of plaintiff-opposite party No. 2-7 are the heirs of late A.A. Raziul Karim Chowdhury who was the proprietor of Bangladesh Shipping & Trading Co. and he obtained Stevedoring License No. 2 of 1972 in the name of the said proprietorship concern in order to run his business as stevedore for discharging, landing and handling goods at Chittagong Port and had been doing the same for many years but could not continue the business since 1984. The said License was neither surrendered nor transferred to anybody. Predecessor of the plaintiffs, A. A. Raziul Karim Chowdhury passed away in the year 2007 and the plaintiffs decided to resume the business by renewing the said license being No. 2 of 1972. Upon inquiry, they came to know that the defendant No. 1 company has been carrying out business by virtue of the said License which was initially formed in the year 2006 under the name and style BSTC Shipping Limited having taken over the business of the proprietorship firm namely Bangladesh Shipping and Trading Company. The name of the predecessor of the plaintiffs; A. A. Raziul Karim Chowdhury was incorporated as sponsor shareholder in the Memorandum and Articles of Association of BSTC Shipping Limited by forging his signature which was subsequently transformed as defendant No. 1 company. The predecessor of the plaintiffs had been purportedly shown as one of the directors of BSTC Shipping Limited having 10 shares along with other shareholder directors i.e. the defendant Nos. 4-8 though he neither put any signature in any documents nor had he any knowledge about the

purported incorporation. The alleged affidavits of the predecessor of the plaintiffs were also forged and fabricated. The plaintiffs also came to know that on 23.03.2015, an agreement was executed between the defendant No. 1 company and Chittagong Port Authority where as it was appointed and enlisted for carrying on business as Ship Handling Operator vide memo dated 25.03.2015. According to the record of RJSC, the entire shares of the predecessor of the plaintiffs were transferred to another Director named Anwar Ahmed on 17.10.2007 though he died on 20.04.2007. Subsequently, on 25.10.2011, the remaining 5 Directors resigned from their post, transferred their respective shares to the defendant Nos. 2 & 3 who are holding 10 shares and 90 shares respectively. In such situation, the plaintiff No. 1 on 08.12.2019 filed an application to the defendant No. 9 on requesting for permission to operate under the License No. 02 of 1972 and which was kept pending without any reply. The BSTC Shipping Limited presently defendant No. 1 Company was incorporated by way of fraud using forged signature of the predecessor of the plaintiff since he never signed or executed the Vendors Agreement as mentioned in the Object Clause-III (01) of the Memorandum of Association, as such, the subsequent events conducted by said forged company are fraudulent. Hence, the plaintiffs were constrained to file the aforesaid suit.

The defendant entered appearance in the suit and filed an application under Order 7 Rule 11 for rejection of the plaint contending *inter alia* that the suit is not maintainable in its present form and the Civil Court has got no jurisdiction to examine the legality and propriety

of the Memorandum of Association of the Company; JAC Shipping & Logistics Limited formally known as BSTC Shipping Limited. The plaintiff-opposite parties by filing written Objection denied the allegations set forth in the petition for rejection of the plaint. Upon hearing, the learned Joint District Judge was pleased to reject the said application for rejection of the plaint. The learned District Judge upheld the decision of the learned Joint District Judge.

Challenging the legality and propriety of the judgment and order of the learned District Judge, the petitioners moved this Court and obtained Leave and stay therewith.

Mr. A. F. Hassan Ariff, the learned Senior Advocate with Mr. Mohammad Osman Chowdhury, appearing for the petitioners submits that the learned Joint District Judge without considering the facts and circumstances of the case and intricate legal position most illegally rejected the petition for rejection of the plaint and the learned District Judge without independent assessment of the materials on record and legal position embroiled in this case illegally dittoed the decision of the learned Joint District Judge and thereby committed a serious error of law resulting in the decision occasioning failure of justice. He further submits that the plaintiffs have got no *locus standi* to challenge the legality and propriety of the Object Clause of the Memorandum Association of the Company; therefore, the learned Joint District Judge ought to have rejected the plaint as the suit is not maintainable. He further submits that the result of the suit is as clear as daylight; therefore, the learned Joint District Judge ought to have buried the fruitless

litigation in order to save unnecessary time, money and energy. He finally submits that the dispute cannot be settled down by the Civil Court as it is the exclusive jurisdiction of the Company Court of the High Court Division which is legally empowered to examine the chastity, legality and correctness of the Objection Clause of the Memorandum Association of the defendants' company. In support of his contention, he has referred to the decisions reported in 61 DLR (AD) (2009) 82 & 2019 (3) 17 ALR (HCD) 101. In fine, he further submits that the original suit is repugnant to the provision of the Section 12 of the Company Act, 1994.

Mr. Mohammad Abdul Hannan, the learned Advocate for the opposite parties submits that the learned Joint District Judge after considering the facts and circumstance and legal position rightly rejected the petition for rejection of the plaint and the learned District Judge after delving into the facts and considering the legal position rejected the revisional application and, therefore, the concurrent findings of the Courts below do not warrant for any interference.

Heard the submissions advanced by the learned Advocates of the parties and perused the materials on record with due care and attention and seriousness as they deserve. The relevant provisions of the Companies Act and other relevant laws have meticulously and meaningfully been waded through in order to reach a just decision.

The learned Joint District Judge was pleased to reject petition for rejection of the plaint with the following observation:

“বাদীর আর্জি পর্যালোচনায় দেখা যায় যে, অত্র মোকদ্দমার বাদীপক্ষ এই মোকদ্দমায় ১নং বিবাদী তথা *JAC Shipping & Logistics Limited* এর আইনগত সত্তা/কোম্পানির অবসায়ন কিংবা উক্ত কোম্পানীরর শেয়ার সংক্রান্ত বিষয়ে সরাসরি কোন প্রশ্ন উত্থাপন করেননি। এই মোকদ্দমায় বাদীপক্ষের মূল দাবী হলো যে, বাদীগণের পূর্ববর্তী এ.এ রেজাউল করিম চৌধুরী এর স্বাক্ষর জাল করে প্রতারণামূলকভাবে বাদীর পূর্ববর্তী এ. এ রেজাউল করিম চৌধুরীর মালিকানাধীন লাইসেন্স ও কোম্পানী বিবাদীগণ ব্যবহার করে বাদীগণের পূর্ববর্তীর মালিকানাধীন কোম্পানীর নাম পরিবর্তন করে ব্যবসা পরিচালনা করছেন। এক্ষেত্রে অত্র মোকদ্দমার বাদীর দাবী মতে বাদীগণের পূর্ববর্তী এ.এ রেজাউল করিম চৌধুরীর স্বাক্ষর জাল করা হয়েছে কিনা তা মূলতঃ সাক্ষ্য প্রমাণ গ্রহণ সাপেক্ষে নির্ধারণযোগ্য। যদি সাক্ষ্য প্রমাণে দেখা যায় যে, ডকুমেন্ট জাল-জালিয়াতির মাধ্যমে এবং প্রতারণামূলকভাবে সৃজন করা হয়েছে তবে উক্ত ডকুমেন্ট এর আইনগত পরিণতির বিষয়ে ঘোষণা দেয়ার এখতিয়ার দেওয়ানী আদালতের রয়েছে এবং কোম্পানী আইনসহ অন্য কোন আইনের বিধান দ্বারা দেওয়ানী আদালতের এই এখতিয়ারকে খর্ব করা হয়নি। ফলে এই মোকদ্দমা অত্র আদালতে চলতে আইনগত কোন বাধা নেই মর্মে আদালত মনে করে।”

The learned District Judge by independent assessment of the materials on record and legal position concurred with the finding of the learned Joint District Judge. The pertinent question is that as to whether the plaintiffs’ suit is barred by Section 12 of the Companies Act. Admittedly, the plaintiffs are the 3rd parties to the Company. The plaintiffs are neither share-holders nor directors of the Company. It is also admitted that the Memorandum is a contract between the contracting parties who subscribed to the formation of the Company. The rest of the world is outside the membership of the Company. Section 12 has clearly spelt out who are competent to seek alteration or

amendment of the clauses of Memorandum and also provided guide-line/ criteria for seeking alteration. The plaintiffs have got no *locus standi* to get the reliefs prayed for in the suit through the intervention of the Company Court. Therefore, the jurisdiction of a civil court cannot be readily ousted. Moreover, the jurisdiction of the Civil Court has not been expressly barred by the Companies Act or any other legislation. The stranger-plaintiffs are contending that they are adversely affected by the Object Clause No. III (01) contained in the Memorandum and Articles of Association of the defendant No. 1 Company being forged and fraudulent bearing Reg. No. CH-5982, Reg. dated 30/08/2006 is void, illegal and inoperative is in the absolute domain of the Civil Court, since the door of the Company Court is not open for the plaintiffs in view of the Section 12 of the Companies Act.

On meaningful reading of Sections 12, 13, 14, 15 & 16 of the Companies Act, 1994 in conjunction with one another, I am of the view that the Company Court of the High Court Division is not competent to give the reliefs as prayed for in the aforesaid suit invoking Section 12 of the Companies Act; therefore, the Civil Court is competent to examine the legality of the contention of the plaintiff as set out in the plaint. The allegation of fraud contended by the plaintiffs are mixed question law and facts which cannot be adjudicated without taking evidence and a full-pledged trial of the suit. Consequently, the Leave Petition shall fall flat.

In the result, the Leave Petition is dismissed, however, without passing any order as to costs. The earlier order of stay granted by this

Court thus stands recalled and vacated. The learned Joint District Judge is directed to dispose of the Original Suit with utmost expedition preferably within 06 (six) months from the date of the receipt of the copy of this judgment.

Let a copy of the judgment be sent down to the Court below at once.

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Md. Zakir Hossain, J

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