(2015) 10 KL CK 0166

In the High Court Of Kerala

Case No : R.P. No. 434 of 2015 in Company Appeal No. 4 of 2013, R.P. No. 448 of 2015 in Company Appeal No. 6 of 2013, R.P. No. 478 of 2015 in Company Appeal No. 6 of 2013, I.A. No. 1672 of 2015 in Company Appeal No. 4 of 2013 and I.A. No. 1673 of 2015 in Company Ap

Abraham Baby and Others APPELLANT

Vs

Bobby Kuriakose and Others RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Citation : (2015) 10 KL CK 0166

Hon'ble Judges : Ashok Bhushan, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : M.R. Sreelatha, for the Appellant; Joseph Kodianthara, T. Krishnanunni, Senior Advocates, S.A. Saju, P. Harihas, Sheeja P.A. and Meena T., Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—R.P. No. 434 of 2015 is filed by respondents 8 and 9 in Company Appeal No. 4 of 2013, while R.P. Nos. 448 of 2015 and 478 of 2015 are filed by the appellants in Company Appeal No. 6 of 2013; and the Interlocutory Applications for correction are filed by respondents 1 to 3 in both the Company Appeals.

2. The Interlocutory Applications for correction to this extent have to be allowed: The judgment in paragraph 4 indicates that the Company was commenced with the first Directors of the Company holding 1000 shares each, which is, in fact, 100 shares of Rs. 10/- each. Further, in paragraphs 32, 38 and 45, Bobby Kuriakose has been described as a Director, which, in fact, is contrary to the facts and he is only a shareholder.

3. The review petitions are filed mainly on the ground that this Court committed an error insofar as declaring that the decision taken on 17.04.2002 with respect to the transfer of shares from Binu Zachariya to Abraham Baby; Bobby Kuriakose

to Gigy Kuriakose and Bobby Kuriakose to T.O. Abraham are bad in toto. The review is urged mainly on the ground that there was no challenge to the other two transfers before the Company Law Board [for brevity "CLB"] and the challenge raised under Section 111 of the Companies Act, 1956 [for brevity "the Act"] was confined to the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham. It is also contended that on 17.04.2002 itself, there have been substantial changes in the constitution of the Board of Directors; with Abraham Baby and Gigy Kuriakose, the other two transferees of 17.04.2002, having been inducted as Directors. The transfer of shares made to these persons and their status as Directors have been disturbed without any challenge to the same, which could not have been; especially when there was no challenge against the said transfers and the appointment too.

4. There is also a ground raised with respect to the earlier Minutes, having been constantly referred to in the judgment, as the Minutes of the meeting on 28.11.2001. That obviously was an error, since the Minutes itself is described in its title as "Minutes of the 28th meeting of the Directors of the Company held at 10.30 AM on Friday, the second day of November, 01". The 28th meeting held on 02.11.2001 was referred as the meeting held on 28.11.2001, which is an error apparent on the face of the record and the same is, hence, corrected and the meeting referred to as held on 28.11.2001 would stand corrected as decisions taken on 02.11.2001. The same does not constitute a review as such and is a mere correction.

5. The compelling argument addressed on behalf of the review petitioners by learned Senior Counsel Sri. L. Nageswara Rao and Sri. Joseph Kodianthara are that the challenge before the CLB was confined to the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham and there was no warrant for this Court to consider whether the other decisions taken were correct or not; or whether the same is properly evidenced. There is no dispute that a meeting was held on the said date and T.O. Aleyas does not at all dispute that he was not present at the meeting. The challenge raised was with respect to the Minutes having been tampered with and the transfer of 2,20,000 shares being effected from a shareholder to the Managing Director; without any consideration and which transfer was never intended. It is also stated that all parties have conceded to the other two transfers having been validly effected and the two transferees were also inducted into the Board of Directors. The subsequent decision allegedly taken by the Board to remove them was also challenged successfully before the CLB. The transfers effected were duly recorded in the registers of the Registrar of Companies. The status, of shareholders, conferred on the transferees, and that as Directors being a consequential decision validly taken, cannot, hence, be set aside, lightly, especially when there was no challenge to it.

6. The learned Senior Counsel appearing for the respondents Sri. Bechu Kurian Thomas, however, would contend that the powers of the CLB under Sections 397

and 398 of the Act and this Court under Section 10F are wide enough to cause interference to any instance of oppression or management, revealed in the course of the proceedings. It is also submitted that though the Hon''ble Supreme Court had specifically directed the CLB to look at the matter, untrammelled by the observations in the earlier round before this Court, the reference to the decision of the Division Bench in the earlier round is only an approval of the findings thereon regarding picking and choosing decisions; to reach the conclusion arrived at in the judgment. There is no cause for review, is the submission.

7. At the outset it is to be noticed that this Court had noticed the judgment of the Hon''ble Supreme Court, affirming the remand order made by the Division Bench in the earlier round, in paragraph 7 and as stated by the respondents, the reference to the judgment in the earlier round, was not as a binding precedent, since the Hon''ble Supreme Court had directed the CLB to consider the issue uninfluenced by the observations of the High Court. However, it is to be noticed that the reference to the findings in the earlier writ petition were made on the premise that there was a challenge to the entire decisions taken on 17.04.2002.

8. In this context, the reliefs sought for by the review petitioners, who were before the CLB in C.P.30 of 2003, as has been noticed by the CLB, are relevant, which are extracted hereunder:

"The petitioners have prayed that the following be declared as null and void:-

(a) EOGM dated 25/04/2003.

(b) Notice of Board Meeting dated 03/06/2003.

(c) Notice of EOGM dated 30/06/2003

(d) Transfer of 2,20,000 shares from Baby Kuriakose (P-2) to T.O. Abraham (R-2) at the Board Meeting held on 17.04.2002".

9. Evidently the applications under Sections 397, 398 and 402 read with Section 111 of the Act was inter alia for rectification, only with respect to the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham at the meeting held on 17.04.2002. There was no challenge to the meeting or the other decisions taken thereat. The reliefs were grounded on the allegation of oppression, urged by one group against the other. The Directors present in the said meeting, as is evidenced from the Minutes itself, are T.O. Abraham in the Chair as the Managing Director, T.O. Aleyas and Binu Zachariah. T.O. Aleyas, who was one of the petitioners before the CLB and an appellant before us, did not challenge any of the other decisions taken on 17.04.2002. He admits of having been present at the meeting and he also affirms the other two transfers having been validly made; but contended that while the Minutes were drawn up, there was a tampering as to the decisions taken; to the extent of including the transfer made of 2,20,000 share from Bobby Kuriakose to T.O. Abraham, which was never intended and which never took place.

10. Bobby Kuriakose, the alleged transferor, also being one of the petitioners before the CLB along with T.O. Aleyas and also an appellant before us, does not challenge the other transfers made and confines his challenge to the transfer effected from himself to the Managing Director. In fact, it is to be noticed that the contention of the Aleyas Group was that there was intended a parity of shares among the five branches of the family; which intention was found by the judgment under review to have been not substantiated. The Aleyas Group contended that the decisions taken on 17.04.2002 was in consonance with the decisions on 02.11.2001, but the minutes of 17.04.2002 deviated from that, except to the extent of the transfers to Abraham Baby and Gigy Kuriakose and this Court had not accepted the claim of parity, none challenged the other two transfers on 17.04.2002.

11. In this context, it is to be specifically noticed that the respondents, particularly T.O. Abraham and Binu Zachariya, does not at all dispute any of the decisions taken on 17.04.2002. They in fact assert that all the three decisions were validly taken at the Board meeting and that the transfers were also effected validly for consideration. They also admit to have inducted the other two transferees to the Board of Directors.

12. In this context, one has to look at the specific stand of the respondents before the CLB, which has been extracted in paragraph 8, by the CLB, in its order:

"xii. The meeting of the Board of Directors of the 1st Respondent company held on 17.04.2002 accepted and approved all the transfer of shares and the transfer of shares were registered with the Registrar of Companies, Kerala by filing Form No. 23 dated 06.05.2002. All these transfers were inter se transfers for valuable consideration as agreed between the transferor and transferee and no written agreement in relation to such transfer was ever made or registered along with the form No. 23.

xvii. In the Board Meeting on 17.04.2002, Boby Kuriakose (P-2) transferred 2,20,000 shares to 2nd Respondent for valuable consideration. He also transferred 1,70,000 shares to his elder brother Gigi Kuriakose. Similarly, the 3rd Respondent transferred 1,40,000 shares in favour of the 3rd Petitioner. All these share transfers have been approved by the Board of Directors in their meeting held on 17.04.2002. And accordingly the transfer of share were duly registered with Registrar of Companies by filing Form No. 2".

13. In the context of the above facts, we are in agreement with the contention of the review petitioners that there was no warrant for consideration of the sustainability of the entire decisions taken on 17.04.2002. Both parties admit that such a meeting took place and both assert that the two other transfers; to Abraham Baby and Gigy Kuriakose took place as evidenced by the Minutes. None dispute the meeting having been held. The applicants before the CLB only challenge the decision taken of transfer of 2,20,000 shares from Bobby Kuriakose

to the Managing Director T.O. Abraham. At the risk of repetition, the challenge made before the CLB was only with respect to the decision of transfer of shares from Bobby Kuriakose to T.O. Abraham.

14. We had in the judgment under review, looked into the aspect of whether, a Board meeting as indicated in the Minutes, alleged to be drawn up on 17.04.2002, could be evidenced, going by the provisions of the Act. This was on the mistaken premise that there was a dispute, with respect to the holding of such a meeting. We were also considerably swayed, since admittedly there was not available; the Minutes of the meeting, which, as noticed in the judgment under review; both alleged, to have been suppressed by the other.

15. On looking at the records again, we are convinced that an error has been committed insofar as looking at the sustainability of the other two transfers, which all parties have admitted to have taken place. The question of going into the fact of whether the meeting on 17.04.2002 had taken place; and whether it is supported by the minutes book would arise only in the event of such a challenge having been made. It is trite that what is admitted need not be proved. None dispute the meeting having been held on 17.04.2002. While Aleyas Group contend that the transfers effected were to be as decided on 02.11.2001; the Abraham Group refute any such decision having been taken on 02.11.2001. But both admit the other two decisions taken on 17.4.2002; and the dispute is only with respect to the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham.

16. We also notice that the other prayers sought for by the petitioners before the CLB were allowed by the CLB, setting aside the decision by which the said Abraham Baby and Gigy Kuriakose were removed from the Directorship; they were inducted to, on 17.04.2002. The EOGM dated 25.04.2003, in which the said decision was taken and the Board meeting dated 03.06.2003 were both interfered with by the CLB. All the other three prayers of the petitioners were allowed by the CLB and the prayer for rectification of transfer of shares from Bobby Kuriakose to T.O. Abraham alone was rejected by the CLB, against which alone the aforesaid Company Appeals were filed.

17. If the respondents had a case that the other transfers were not valid, definitely they would have filed an appeal from the decision of the CLB, setting aside the removal of Abraham Baby and Gigy Kuriakose from the Director Board; on the ground that they could never be Directors, since they had no shareholding in the Company. The removal in the subsequent meeting only shows that the two transfers were validly made and on the strength of such shareholding, the transferees were also inducted into the Board of Directors.

18. We are convinced that the setting aside of the decisions on 17.04.2002, in toto, is an error apparent on the face of the record, especially since the other two transactions were never disputed or challenged. Sufficient support for the same can be garnered from Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and

Others, (2010) 6 JT 41 : (2010) 6 SCALE 151 : (2010) 11 SCC 557 : (2010) AIRSCW 6282 : (2010) AIRSCW 6821 : (2011) AIRSCW 2158 , which held: "in view of the above, law on the issue can be summarised that the court cannot grant a relief which has not been specifically prayed by the parties" [para 34], after referring to a host of decisions of the Hon''ble Supreme Court. The all encompassing power under Section 397, to eschew any manner of oppression does not arise for consideration, in the teeth of the admitted facts and the respondents having never complained of the other two transfers of 17.04.2002, having been oppressive.

19. We, hence, review our judgment to that extent and hold that the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham on 17.04.2002 would alone stand rectified in the records of the Registrar of Companies. The said shares would remain in the name of Bobby Kuriakose.

20. We also notice that the appointment of the Special Officer has not served its purpose. We relieve him of such duty entrusted by the judgment.

21. The Company Appeals, hence, would be allowed revising and modifying the order of the CLB in C.P. No. 30 of 2003 setting aside the order confirming the transfer of shares from Bobby Kuriakose to T.O. Abraham; as having not been validly made. The Registrar of Companies shall cause rectification of its registers causing the name of Bobby Kuriakose to be retained as holding the 2,20,000 shares in addition to the 10,000 shares. The orders of valuation and transfer of shares made by the CLB also would stand set aside. The review shall also be to the extent of reviewing that portion of the judgment reverting the parties and the Company to the shareholding as on 19.10.2001. The parties shall have the shareholding as on 17.04.2002 with the transfers to Abraham Baby and Gigy Kuriakose affirmed; as admitted by both parties. The shareholding and the constitution of the Board of Directors shall be as on 17.04.2002.

The review petitions are allowed to that extent.

