
(2012) 07 CAL CK 0095

In the Calcutta High Court

Case No : A.P.O No. 45 of 2010, A.P.O.T. No. 186 of 2009 and A.C.O. No. 43 of 2009

Anup Agarwalla and Others

APPELLANT

Vs

Castron Mining Limited and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398, 402
Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : (2012) 4 CALLT 654 : (2012) 111 CLA 405

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : S. N. Mukherjee, Sr, Mr. Ratnanko Banerjee and Mr. Kuldip Mallick, for the Appellant; Anindya Kumar Mitra Mr. Tilok Bose, Mr. Debangsu Basak, Ms. Anima Abdulla and Mr. Piyush Meharia, for the Respondent

Final Decision : Dismissed

Judgement

Patherya J.

1. This appeal has been filed by Anup Agarwalla and his group from the order dated 17th April, 2009 passed by the Company Law Board (CLB). Sections 397 and 398 proceedings were filed by the appellant before the CLB on grounds of oppression. An interim order was passed on 8.5.2007 restraining the respondents from using the name of the Company or acting on its behalf. On an application for vacating the interim order the proceedings before the CLB has been stayed till disposal of the Title Suit filed in Alipore Court. The interim order dated 8.5.2007 although extended it is stay of the CLB proceedings by which the appellants are aggrieved. As mere filing of the suit cannot be a ground for stay of the proceedings under Sections 397 and 398 of the Companies Act, therefore the CLB ought not to have stayed its proceedings, especially as there is no prospect of the suit filed being decided as till date no writ of summons has been served. Section 397 read with Section 402 of the Companies Act expands the jurisdiction

of the CLB and therefore reliefs though not prayed can also be granted to the Company by CLB. The proceedings before the CLB is not in abuse of process of law. The stay granted is u/s 10 of the CPC which does not empower the Tribunal to stay its proceedings as Section 10 is not to apply to Tribunals. Therefore the first question that arises for consideration is the competence of the CLB to stay its proceedings. It has been held in the order dated 17th April, 2009 that the proceedings before the CLB is maintainable though the same has been stayed till the disposal of the Title Suit filed before the Alipore Court. By virtue of Section 10 of the CPC trial of a suit can be stayed but as the requisites of Section 10 has not been satisfied therefore the proceedings before the CLB could not have been stayed and the reason for staying the proceedings is based on an incorrect conclusion. The identity must be complete as also the subject matter and the parties. In the Title Suit, there are 150 defendants, therefore for lack of identity of subject matter or parties as held in AIR 1985 Cal. 154 there has been illegal exercise of powers as the CLB has indefinitely stayed the proceedings filed before it. A question of law has arisen and therefore this appeal u/s 10 of the 1956 Act is maintainable. When the conditions of Section 10 is not fulfilled, there can be no stay as Section 151 is not to apply as held in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, could not have stayed its proceedings.

2. Reliance has also been placed National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, In the 1956 Act there is no provision as Section 10 of the Code. The discretion has been exercised on the basis of the Division Bench Order of 2005 and the decision of Lopchu Tea and such exercise not being proper renders the order dated 17th April, 2009 perverse. Parallel Boards were held to be prejudicial to the interest of the Company and judicial prudence would warrant continuance of CLB proceedings as Sections 397 and 398 of the Companies Act are a complete Code. Regulation 44 of the 1991 Regulation in the absence of Section 10 ought to be read with Section 151 strictly. While exercising inherent powers Section 10 cannot be applied to CLB proceedings as Section 10 is to apply only to suits and not to Tribunal. In the order of the Division Bench in 2005, the proceedings u/s 397 has been accepted and it has not been held that the suit bars 397 proceedings. The filing of a suit cannot bar statutory rights and the only remedy available to the appellant is to file proceedings under Sections 397 and 398. With 150 defendants and no writ of summons filed the prospect of the Title Suit before Alipore Court being heard is bleak. As the CLB has no inherent jurisdiction to stay its own proceedings and analogous principles is to apply and in view of the question of law raised the order be set aside to the extent it stays the CLB proceedings. Regulation 44 is applicable to proceedings before CLB and therefore CLB could not have stayed its own proceedings by exercising power and in doing so the CLB has acted perversely. In fact in the Title Suit filed there is no order restraining the CLB proceedings, therefore the order dated 17th April, 2009, staying the CLB proceedings till disposal of the Title Suit, be set aside.

3. In opposing the said appeal counsel for the MKA Group submits that the points

urged by the appellant is (i) that the Tribunal u/s 397 of the Companies Act is vested with statutory powers and cannot refuse to exercise it (ii) the filing of a prior suit will not tantamount to stay of 397 proceedings (iii) only in cases of lack of jurisdiction the CLB ought to stay its proceedings (iv) as the issues are different, Section 10 is not to apply and (v) the suit is not ready for hearing.

4. In the suit which has been filed the parties are the same as in the proceedings before the CLB. An application has also been filed under Order 1 Rule 8 of the Code of Civil Procedure, in the suit therefore the parties in the suit (defendants) and the parties in the CLB proceedings are similar. In fact the group can be identified in 397 proceedings which is not possible to do in the suit filed before the Alipore Court. The CLB is exercising powers u/s 397, which was previously vested in the High Court. *Adhish Chandra Sinha Vs. Hindusthan Gas and Industries Ltd. and Another*, so also *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara*, are distinguishable on facts, as the issues were different. In fact the issues in the Title Suit and the CLB is the same. *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, is distinguishable and it is incorrect to say that no steps has been taken in the suit. Reliance has been placed on *Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another*, In fact by order dated 19th March, 2010 stay of Title Suit was directed.

5. In reply counsel for the appellants submit that Section 10 has no application, therefore the principles analogous thereto ought to be applied to prevent abuse of process. It is not known on what ground the CLB has stayed its proceedings no reason has been given for exercise of discretion. Identity of parties is not relevant, as admittedly there are two groups. It has been admitted that Section 10 is not to apply therefore Regulation 44 and Section 151 are to apply. There is no finding by the CLB that the proceedings is in abuse of process and the power has been exercised in the interest of justice. The Alipore suit is preemptive in nature and the interim order has been continued as PKA is running the mines, CLB should have proceeded with the 397 proceedings on equitable grounds, on considering that the Alipore suit is dormant. It is by applying the principles of res-judicata that stay of the proceedings has been granted. This is not a valid ground. In *Lopchu Tea's* case the suit was active therefore the said decision is distinguishable so also *Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another*, By the order dated 19th March, 2010, in fact the Alipore suit in a revisional application has been stayed. Therefore stay of proceedings before the CLB be set aside.

6. Having considered the submissions of the parties from a perusal of the plaint and the application filed before the CLB it will appear that in the Alipore suit all the share-holders have been made parties. Leave under Order 1 Rule 8 CPC has also been taken whereby any share-holder omitted as a party will be entitled to apply for addition of party whereas all the parties in the suit are not parties before the CLB.

7. The issue raised before the CLB is with regard to oppression of the majority by

the minority whereas in the Alipore suit the share-holding of the PKA group is under challenge. Once the said issue is decided the question of the share-holding and its oppression will arise. It is true that Section 10 is not to apply to a Tribunal, but under Regulation 44 of the 1991 Regulation the CLB is empowered to stay proceedings before it when it finds that parallel proceedings are pending in another Court involving the same subject-matter and identical issues, even though the CLB proceedings is not an abuse of process. In proceedings before the CLB it has been admitted that one Mr. Modi and Mr. Upadhyay were appointed as Directors with the consent of the MKA group and at the meeting on 29.12.2004 the resignation of the MKA group was accepted. In the Title Suit the MKA group has sought for cancellation of the said meetings, so also the relevant forms filed with the Registrar of Companies.

8. In fact before the CLB, the appellants seek an investigation by the Tribunal into the correctness of the claim made by the MKA group. This issue is substantially and directly in issue in the Alipore Suit. Similarly the appellants have sought cancellation of all statutory records filed by the MKA group. Similar prayer is sought by the MKA group in respect of the appellants. Therefore the issues are identical as rightly held by the Tribunal and the decision reported in Adhish Chandra Sinha Vs. Hindusthan Gas and Industries Ltd. and Another, is distinguishable in view of the above facts Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, and National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, will also not apply in the said facts. Therefore the "judicial prudence" exercised by the Tribunal in view of 102 Co. Cases 292 in staying its proceedings on the ground of substantial identity of subject-matter and of the parties so also the Title Suit being filed in 2005 and the CLB proceedings in 2007 i.e. subsequent to the Title Suit and to prevent conflict of decision is based on sound principles and no interference is called for with the order dated 17.4.2009 in so far as it seeks to stay its proceedings till a decision is taken in the Title Suit of 2005.

9. It is true that the Title Suit has been stayed in Revision but steps can be taken to activate the hearing of the said application. Steps can also be taken in the Title Suit in accordance with law. For all the aforesaid reasons, this 10F appeal merits no order and is dismissed.