
(1981) 02 MAD CK 0043

In the Madras High Court

Case No : Second Appeal No. 41 of 1978

Devi Talkies P. Ltd. and Another

APPELLANT

Vs

V.R. Parthasarathi Iyengar

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Companies Act, 1956 — Section 255(1), 283, 283(1)

Citation : (1981) 02 MAD CK 0043

Hon'ble Judges : P.K. Sethuraman, J

Bench : Single Bench

Advocate : R.S. Venkatachari, for the Appellant; P. Veeraraghavan, for the Respondent

Judgement

Sethuraman, J.—This second appeal has been filed by the defendants in O.S. No. 120 of 1975, in the court of the district munsif of Tiruchirapalli.

2. The plaintiff filed a suit for declaration that he continued to be a director of the first defendant-company and for an injunction restraining the second defendant from preventing him from participating in the administration of the company. The first defendant is a company incorporated under the Indian Companies Act, 1913, and is running a theatre for screening cinematographic films. The plaintiff claimed that he became a director of the company and that he had been re-elected for many periods. He alleged that due to ill-feeling and enmity the second defendant had procured the passing of a resolution on 30th May, 1974, removing him from the directorship on the ground that he was absent from the meetings of the board of directors held on 22nd January, 1974, removing him from the directorship on the ground that he was absent from the meetings of the board of directors held on 22nd January, 1974, 20th February, 1974, and 15th May, 1974, and that by reason of such absence without leave, he had become disentitled under s. 283(g) of the Companies Act, 1956, from continuing as a member of the board. According to the plaintiff there was no such meeting held on 22nd January, 1974, or on 20th February, 1974. As regards the meeting on

15th May, 1974, which was to have been held at 10.00 a.m. he claimed to have received the notice only at 11.00 a.m. on the same day. He thus pleaded that his absence from the said meeting was not due to any fault of his own. As he did not have proper notice of any such meetings, his removal was stated to be illegal.

3. That there was no meeting on the 22nd January, 1974, and 20th February, 1974, as alleged by the plaintiff, was denied in the written statements. As regards the meeting on 15th May, 1974, it was stated that the notice was tendered and that it was refused and that, thereafter, it was sent by post and it should have reached the plaintiff at about 9.00 a.m. on the same day. His absence at three consecutive meetings was thus said to have disentitled him from continuing as a director of the company.

4. The learned district munsif dismissed the suit holding that the plaintiff had failed to attend the three consecutive meetings and that he was lawfully removed from the directorship.

5. In the appeal that the plaintiff filed before the Sub-Court, Tiruchirapalli, it was held that the two meetings 22nd January, 1974, and 20th February, 1974, were not held, so that the absence of the plaintiff from those meetings could not involve the consequence of the loss of directorship under s. 283(g). As regards the meeting on 15th May, 1974, it was held that he had received the notice only after 11.00 a.m. and that his evidence to that effect stood un rebutted, with the result that there was no proof that the plaintiff had absented himself from three consecutive meetings of the board of directors. It was, therefore, held that he still continued as a director in the first defendant-company. This second appeal has been filed by the defendants contesting this conclusion of the lower appellate court.

6. At the time of the admission of the second appeal, the following question were framed as required by s. 100 of the civil Code Procedure as amended :

1. Whether the suit is not maintainable in the civil court because of the provisions of the Companies Act ?

2. Whether in law the plaintiff ceased to be a director ?

7. At the commencement of the hearing the learned counsel for the appellant submitted that the second question of law may be taken up first and he contended that under the provisions of the articles of association of the company read with the relevant provisions of the Companies Act, the plaintiff had ceased to be a director, at any rate, after the annual general meeting held subsequent to 30th May, 1974, because he had not been re-elected. The learned counsel for the respondent vehemently contended that this objection is a wholly new one and that it had not been put forward at any earlier stage. He submitted that this question should not be permitted to be urged at this stage.

8. I consider that the present objection of Mr. R. S. Venkatachari falls within the ambit of question No. 2, framed at the time of admission of the second appeal. I,

therefore, proceed to consider the objection on the basis of the evidence already on record. The company was incorporated on or about 16th March, 1938. The articles of association are brief. Article 6 provides that any member holding not less than 10 shares is eligible to become a director of the company, except the first directors.

9. The meaning obviously is that the first directors need not have the said 10 shares. As regards the first directors of the company the provision runs as follows :

"The following shall be the first directors of the company and shall hold office for a period of 3 years after which they shall be eligible for re-election."

10. It is unnecessary for our present purpose to set out those names as the plaintiff's name is not one of them. It is clear that the plaintiff must have been elected some time later. The question is as to whether he ceased to be a director despite the resolution under consideration.

11. It is not in dispute that in the absence of any specific provision in the articles of association, the directors of the company would have to retire every year and would have to be re-elected or elected at each annual general meeting. Under s. 255(1) of the Companies Act, 1956, it is provided that :

"Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall -

(a) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(b) save as otherwise expressly provided in this Act, be appointed by the company in general meeting."

12. The language of the section itself shows that it is not applicable to a purely private company. It applies only to a public company or to a private company which is subsidiary of a public company. In these circumstances, it is not possible to proceed to apply the rule of rotation prescribed therein. As there is no specific provision made in the articles of association, it is clear that the directors have to retire at the end of each annual general meeting.

13. Even proceeding on the basis that the plaintiff-respondent was justified in asking for a declaration that the resolution dated May 30, 1974, was wrong in so far as it removed him because he could not be said to have failed to attend three consecutive meetings, still, as he has ceased to be a director at the annual general meeting following May 30, 1974, no purpose would be served by granting him the declaration which he has asked for.

14. Mr. P. Veeraraghavan, the learned counsel for the respondent, contended that I have to look to the position on the date when the plaint was filed and so long

as the plaintiff was entitled to the relief as on the date of the plaint, there would be no justification for refusing him the relief. But there is the well-known principle that where it is shown that the original relief claimed has, by reason of a change of circumstances, becomes inappropriate, then it is incumbent on the court of justice to take not of the events that have taken place since the institution of the suit and mould the decree according to the supervening circumstances. It may be that the plaintiff is justified in claiming that he had not ceased to be a director by reason of the resolution. It is unnecessary for my present purpose to pronounce finally on it. It is enough to say that the plaintiff has by reason of the supervening event of not having been elected at any subsequent annual general meeting, ceased to be a director. Granting him the relief that he has asked for in the plaint would serve no purpose.

15. The learned counsel for the respondent submitted that the relief asked for in the plaint falls into two parts and that he may be entitled to the relief to the extent claimed in this first part. The relevant paragraph of the plaint runs as follows :

"The plaintiff, therefore, prays that the hon"ble court may be pleased to pass a decree -

(a) declaring that the resolution No. 1 dated 30-5-1974 the plaintiff from the office of director is invalid and inoperative and consequently that the plaintiff continues to be director of the 1st defendant-company and consequently restraining the second defendant from preventing the plaintiff from participating in the administration of the 1st defendant-company as a director."

16. The learned counsel pointed out that the finding that the plaintiff had not ceased to be a director under s. 283(1)(g) of the Companies Act has not actually been attacked in the second appeal and that, therefore, he would be entitled at least to that declaration. Even that declaration is going to be of no use as I have already pointed out. Even assuming that the plaintiff is entitled to declaration that the resolution removing him from the directorship is invalid and inoperative, still, as he cannot continue to be a director after the annual general meeting following May 30, 1974, no purpose would be served by granting him the declaration in the manner done by the court below.

17. The result is that the second appeal is allowed and there will be no order as to costs.