

(2015) 06 BOM CK 0312

In the Bombay High Court

Case No : Company Appeal No. 5 of 2015 in Company Law Board/Company Application No. 319 of 2014, Company Law Board/Company Petition No. 53 of 2014, Company Appeal No. 6 of 2015 in Company Law Board/Company Application No. 320 of 2014, Company Law Board/Company Peti

Gautam Ahuja and Others

APPELLANT

Vs

Gopal Bhagwandas Ahuja and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 136, 226

Citation : (2015) 06 BOM CK 0312

Hon'ble Judges : S.C. Gupte, J.

Bench : Single Bench

Advocate : J.N. Dwarkadas, Aspi Chinoy, Sr. Advocates, Z.T. Andhyarujina, R.V. Gandhi, P.S. Damodar, M.A. Kamdar, R.A. Jain i/b Kanga and Co., for the Appellant; Darius Khambata, Senior Advocate, Prateek Saksaria, Pankaj Kode and Gauraj Shah i/b P.P. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Gupte, J.—The appeals challenge the orders passed by the Company Law Board on 28 November 2014. The impugned orders are passed in Company Petitions filed by Respondent No. 1 under Sections 397 and 398 of the Companies Act, 1956, alleging oppression and mismanagement. In these Petitions, original Respondent Nos. 2 and 3, who are Appellants before this Court, filed a preliminary objection, as to the maintainability of the Petitions. It was submitted that the Petitioners do not fulfill the threshold requirement of a minimum one-tenth of issued share capital or total number of members to maintain an application under Sections 397 and 398. The Petitioners claim that the Petitions are composite petitions, which not only challenge other acts of oppression and mismanagement on the part of the Respondents but also the

very dilution of the Petitioners' equity from 40.01 % held in 2003-04 to 1.95 % as of 2005, and therefore, maintainable. In answer, it is submitted by the Respondents that the Petitioners' equity was diluted to the Petitioners' own knowledge as of 2005 and the complaints regarding dilution are beyond the period of limitation and thus, in any event, the petitions are not maintainable. It was submitted by Respondent Nos. 2 and 3 herein to CLB that this maintainability issue may be decided as a preliminary issue. The Bench, whilst considering the prayer, passed the impugned order making it clear that although the Bench would hear the parties on the maintainability applications first, if after hearing the parties it came to a conclusion that the petitions were maintainable, in that case, without passing any order in detail, it would ask both the sides to continue and conclude their respective arguments on merits and only in the final order the order on the maintainability issue would be passed. This order is challenged by the Appellants herein (original Respondent Nos. 2 and 3) on the ground that CLB having decided to hear the maintainability applications, once it comes to a conclusion on the same one way or the other, CLB is bound to pass a reasoned order in support of its conclusion and cannot make the parties go through the gamut of hearing the parties on merits and declare its decision on the preliminary issue as part of its final order.

2. In the first place, CLB is not bound to hear any particular issue raised by the parties as a preliminary issue. Unlike in the case of a civil court, there is no procedure like Section 9A of the Code of Civil Procedure, 1908 ("CPC"), which requires CLB to do so. It is, however, submitted by Mr. Dwarkadas, Learned Senior Counsel appearing for the Appellants, that CLB may not be obligated to decide any issue as a preliminary issue, but once having decided to hear any matter as a preliminary issue, it is bound to decide that issue and pass a reasoned order before further proceedings are undertaken in the Petitions. Secondly, it is submitted that at any rate, CLB has made it clear that it would come to a conclusion one way or the other, before it hears the matter any further. In the premises, it is submitted that once CLB comes to a particular conclusion, it is bound to communicate its reasons for such conclusion to the parties. This, it is submitted, would enable the parties to carry the matter further, without having to go through the contest on merits. Mr. Dwarkadas relies upon the judgment of the Supreme Court in *Mangat Ram Vs. State of Haryana*, in support of his contentions.

3. It is also submitted by Mr. Chinoy, learned Senior Counsel appearing for the Appellants in connected matters, that the Court must take into account the context in which the present application for deciding the preliminary issue was made by the Applicants. He took me through the pleadings of the parties to submit that the question of limitation did not involve any contest on facts and that it was a pure question of law, which might well be decided by CLB as a preliminary issue and in case it so decided the issue, as it has obviously proposed to do, it must communicate the reasons for such decision to the parties and could not continue any further without doing so.

4. Mr. Kamat, learned Counsel appearing for one of the Respondents, submits that reasons for a decision are fundamental to any judicial procedure and relies upon the judgment of the Supreme Court in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, in support.

5. On the other hand, it is submitted by Mr. Khambata, learned Senior Counsel appearing for Respondent No. 1, that the pleadings before CLB in the present Petitions were already complete by the time the preliminary objections came to be pressed and the impugned order came to be passed. It is submitted that the matter was anyway ripe for final hearing, when belatedly an application for deciding the maintainability of the Petition as a preliminary issue was made. It is submitted that CLB has not taken any decision as yet to determine the preliminary issue first. Learned Counsel relies upon judgments of the Supreme Court in the case of *D.P. Maheshwari Vs. Delhi Administration and Others*, , *National Council for Cement and Building Materials Vs. State of Haryana and Others*, and *Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others*, , and the judgment of Gujrat High Court in *Saurashtra Cement and Chemicals Industries Ltd. and Others Vs. Esma Industries P. Ltd. and Others*, in support of his contentions.

6. As noted above, at the outset, CLB was not bound to hear any issue as a preliminary issue. The Bench, in the premises, could very well have chosen to hear and decide all issues together and pass a final reasoned judgment and order. The impugned order indicates that, what the Bench proposed to do was to hear the parties on maintainability application first. This is evidently on the footing that the issue was likely to dispose of the Petitions if decided in favour of the objectors. If CLB decides the issue against the Petitioners, there is no doubt that there would be a final order disposing of the Petitions on the ground of lack of maintainability. On the other hand, if it comes to a conclusion that the Petitions are maintainable, it may well choose to decide the matter finally on merits and include its reasons for the former conclusion as part of its final order. There is nothing in law which requires CLB to declare its reasons for taking a particular view during the proceedings of the Petitions. No doubt, CLB would have to finally declare its reasons for taking a view in favour of the maintainability, when it passes final orders on the Petitions but it need not do so right away pending such final orders. There is nothing in law, which requires a trial court to furnish reasons on every issue it decides as part of a trial, as and when it decides the issue. The reasons for issues decided during the trial may well come finally, when the matter is disposed of by the trial court by passing of a final order.

7. There is no quarrel with the propositions laid down by the Supreme Court in *Mangat Ram's case* (supra) or in *Kranti Associates' case* (supra). In *Mangat Ram*, the High Court had disposed of the appeal without recording reasons, stating that reasons would follow. The Supreme Court deprecated this practice. The Court held that several questions would arise, if the final order is without any

reasons. Even in *Kranti Associates*, the National Consumer Disputes Redressal Forum had dismissed the revision application of the petitioner without recording any reasons. The Supreme Court underlined the importance of a quasi judicial authority recording its reasons in support of its conclusions. These decisions require that as and when a Court or a quasi judicial authority passes an order concluding the controversy, it is necessary for it to record its reasons. But these decisions do not support the Appellants' case that a Court or quasi judicial authority is bound, in the first place, to declare its conclusion by an order on every issue or aspect of the controversy or *lis* as and when it hears the same or that even if when it declares such order, which is only a step in the trial, it must indicate its reasons for such order then and there without awaiting the conclusion of the trial and making such reasons a part of its final order passed after the conclusion of the trial.

8. Learned Counsel for the Appellants relied upon the provisions of Order 14 Rule 2 of CPC in this behalf. Order 14 Rule 2 of CPC requires the Court to pronounce the judgment on all issues, notwithstanding the fact that a case may be disposed of on a preliminary issue. This is of course as a matter of ordinary rule. It is, however, subject to an exception which is contained in subrule 2 of Rule 2 of order 14, which provides that when issues of both law and facts arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It may, in that case, postpone the decision of other issues only after such issue of law has been determined. From the provisions of Rule 2, it is clear that ordinarily a trial court is expected to decide the matter on all issues in its final judgment. But that, as a matter of exception, it can choose to hear and decide any particular issue first. This is of course a matter of discretion and despite the conditions of sub-rule 2 having been met, the trial court may not choose to hear or decide any issue, even an issue of law which deals with the jurisdiction or bar to the action, except at the final hearing of the matter. Though the trial court is empowered to try any issue of law before determination of other issues, the provisions of Rule 2, thus, do not require the Court, as a matter of law, to decide that issue or if it decides that issue, to declare its reasons for such decision there and then and not at the conclusion of the trial.

9. Mr. Chinoy submitted that the trial court, if it chooses to decide any particular issue, must declare its reasons after such decision is taken, unless the statute permits the Court to act to the contrary. It is submitted that unlike the provisions of Section 16 of the Arbitration & Conciliation Act, 1996, under which the arbitral tribunal, if it decides in favour of its jurisdiction, may not declare its reasons for such decision and may incorporate such reasons in the final award, there is no similar provision contained in Rule 2 of Order 14 of CPC. Whilst it may in a given case be prudent for the trial court to declare its reasons for a particular decision on an issue of law taken by the Court immediately upon such decision being

taken, there is nothing in law to require the Court to do so. The trial court is free to conduct the trial in any manner it chooses so long as it keeps itself within the confines of law. If a party contends that the court must do or not do something, it is for that party to show the provision of law casting such obligation on the court. Mr. Chinoy contends that having chosen to decide any particular issue before other issues are decided in the trial, the trial court must immediately disclose its reasons as and when it decides the particular issue. It is for Mr. Chinoy, then, to show a provision of law requiring the court to follow such course. It is not sufficient to show that the statute does not authorize the Court to act to the contrary. What is necessary to be shown is that the statute prohibits the court from acting to the contrary. This is of course a first principle. But even otherwise, one must bear in mind the objective of sub-rule 2 of Order 14 Rule 2. The objective is to promote a quicker disposal of the proceeding or a part of it, on a consideration of a pure question of law which goes to the root of the matter. If such issue is decided in favour of the objector, the proceeding or a part thereof can be disposed of without having to go through the whole trial. This objective is achieved, if the trial court determines the issue and declares its reasons in the event of accepting the preliminary objection. That would be a final order disposing of the proceeding. If on the other hand, the preliminary objection is decided against the objector, the proceeding does not get disposed of, but a further trial of other issues is called for. No useful purpose is served by requiring the trial court to declare its reasons for holding the preliminary issue against the objector at any time before the trial concludes and final order is passed. If anything, it would merely delay the trial, since the aggrieved party is bound to carry the matter higher from the decision on the preliminary issue, possibly holding up the trial. That is what Chinnappa Reddy J meant when he passed his opening remarks in the judgment of D.P. Maheshwari (*supra*). The eloquent remarks of the learned judge are quoted below for their instructive value.

"It was just the other day that we are bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issue. Nor should High Courts in the exercise of their jurisdiction

under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

10. In the present case, the record indicates that after the Petitions were filed, preliminary replies were submitted by the Respondents on 17 July 2014. The objections to the maintainability were part of these replies. After these preliminary replies were filed on 8 August 2014, CLB made it clear to the Respondents that they shall be entitled to take pleas as to the maintainability of the Company Petitions in their respective replies. It was also made clear that that if the Petitions were not proceeded with for final hearing on the next date fixed, the Petitioners would be at liberty to press for urgent interim reliefs. The order clearly indicates that the Court wanted to hear the matter finally and not hear the maintainability aspect as a preliminary issue. Thereafter, it appears on 27 September 2014, a detailed reply was filed by the Respondents. On 11 October 2014, CLB listed the Company Petitions for final hearing on 28 November 2014 and 1 December 2014. The Petitioners proceeded to file rejoinder on 6 November 2014. The Respondents even filed their sur-rejoinder on 26 November 2014. A few days before the sur-rejoinder, the Respondents moved the present maintainability applications and prayed for hearing of the preliminary issue. It is in this context that the CLB, in its impugned order, held that whilst it shall proceed to hear the parties on the maintainability issue, it shall not pass any order in detail on maintainability in case it holds the Petitions to be maintainable, but will ask both the parties to continue and conclude their respective arguments on merits and decide all issues including the issue of maintainability in its final orders passed in the Petitions. In this context, it is clear that what the CLB proposed to do was to hear the maintainability issue as a matter of trial and for convenience before the other issues were heard, but at the same time, it

proposed to indicate its reasons for its decision on maintainability, in case it decided the issue in favour of the Petitioners, in its final order after hearing all the issues. The matter, anyway, is ripe for final hearing and the course which the CLB has chosen to adopt is a legitimate course. This does not give rise to any question of law for the determination of this Court in its jurisdiction under Section 10F of the Companies Act, 1956.

11. In that view of the matter, there is no merit in the appeals. The appeals are dismissed. There shall be no order as to costs.