

(2014) 03 BOM CK 0137

In the Bombay High Court

Case No : Company Application (L) No. 32 of 2013 with Company Appeal (L) No. 51 of 2012 and Company Application No. 38 of 2013 and Company Application No. 39 of 2013

Jagdish Lal Gupta

APPELLANT

Vs

Tara Industries Limited and Others

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Companies Act, 1956 — Section 10F 17
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 5

Citation : (2014) 4 BomCR 665 : (2014) 120 CLA 236 : (2014) 183 CompCas 249

Hon'ble Judges : G.S. Patel, J

Bench : Single Bench

Advocate : Z.T. Andhyarujina and Mr. Kunal Dwarkadas, Ms. Vaidehi Naik, Ms. Shruti Sardesai, instructed by Phoenix Legal, for the Appellant; Sunila Chavan, instructed by Mr. Satyan Irani for Respondent 1 to 5, Mr. R.I. Chagla and Mr. Hemand Telkar, instructed by y M/s. Haresh Mehta and Co., for the Respondent

Judgement

G.S. Patel, J.—This is a company application filed by the appellant in an appeal u/s 10F of the Companies Act, 1956. The appeal is directed against an order dated 24th January 2012 passed by the Company Law Board, Principal Bench, New Delhi. The company application seeks that the delay in filing the appeal be condoned. The question is not whether a court can condone delay beyond the maximum period of 120 days specified in Section 10F--that a court cannot is now well-settled--but from what date should that period be reckoned. Mr. Andhyarujina, learned counsel for the appellant, Jagdish Lal Gupta ("Jagdish Gupta"), claims that his client had a right to receive a copy of the impugned order under Regulation 29(4) of the Company Law Board Regulations, 1991 ("CLB Regulations"). He was not given a copy. He chanced upon it much later, in

August 2012, and since this appeal was filed on 22nd November 2012, it is within the extended period of 60 days (beyond the initial period of 60 days). It is, he argues, therefore permissible for the Court to exercise discretion in Jagdish Gupta's favour, the more so since this is an appeal, a substantive right. Mr. R.I. Chagla, learned counsel for the contesting 7th respondent, Sanjay Gupta ("Sanjay Gupta"), disputes this with a degree of vehemence that borders on the disconcerting. It was not only in August 2012 that Jagdish Gupta learned of the impugned order, says Mr. Chagla. He knew of it in several months earlier, no later than April 2012, and very likely in January 2012: the appeal is, therefore, hopelessly out of time.

2. Given the facts, I propose to dismiss this Company Application. I have found that it is beyond doubt that Jagdish Gupta knew of the impugned order at least in April 2012, perhaps earlier. The argument that his appeal should be treated as a cross-appeal or cross-objections to the appeal already filed by Sanjay Gupta is not one that I can accept in view of the specific and unambiguous wording of Section 10F of the Companies Act, 1956.

3. Before the Company Law Board, Sanjay Gupta (the 7th respondent) filed Company Application No. 35 of 2011 for modification of an earlier order dated 23rd November 2011. The previous order of 23rd November 2011 rejected impleadment applications made by, among others, Jagdish Gupta. The modification sought by Sanjay Gupta, a contesting party, was on the basis that while dismissing the impleadment application(s), the Company Law Board travelled beyond the scope of those applications. Jagdish Gupta was not a party to the modification application. It was this application, by Sanjay Gupta, for modification that the Company Law Board dismissed on 24th January 2012, and this is the order that Jagdish Gupta now seeks to challenge in this appeal.

4. According to Mr. Andhyarujina, the delay is of 55 days beyond the initial period of 60 days prescribed in Section 10F. Mr. Chagla says that the delay is not merely 55 days, but is 213 days. It is well beyond the period of 120 days, the outer limit stipulated in Section 10F.

5. Shortly stated, Mr. Andhyarujina's submission is that the delay must be computed under Regulation 29(4) of the Company Law Board Regulations, 1991, i.e. from the date when the order was communicated to Jagdish Gupta, the appellant. The impugned order was not passed on his application. The order is, Mr. Andhyarujina says, one that was passed without hearing Jagdish Gupta, though it has "important relevance to [Jagdish Gupta's] rights". Jagdish Gupta learned of this order when he noticed on the website of the Bombay High Court some particulars about a company appeal filed by another contestant or contestants before the Company Law Board. In paragraph 11 of the affidavit in support of the present company application, Jagdish Gupta makes several submissions in support of this application for condoning delay. This one paragraph sets out the appellant's case in its entirety and is, therefore, reproduced below.

11. (i) It is submitted that the present Appeal is not barred by limitation as the proceedings of Company Application No. 35 of 2012 were conducted behind the back of the Appellant and the Order dated 24th January 2012 was passed without hearing and without notice to the Appellant. (ii) Without prejudice to the said contention, the delay in filing the present Appeal may be condoned as the present Appeal is being filed within 120 days of the information and details about Company Application 35/2012 being obtained. It is submitted that computed from 15th August 2012, the present Appeal is being filed after 60 days of the said date but within 120 days i.e. Approx. 100 days from the date of knowledge i.e. delay of 40 days after the first 60 days. (iii) In the alternative, It is submitted that computed from 1st August 2012, the present Appeal is being filed after 60 days of the said date but within 120 days i.e. Approx. 115 days from the date of knowledge i.e. delay of 55 days after the first 60 days (iv) Further, without prejudice to the said contentions it is submitted that the present Appeal may be treated as Cross Objections-Cross Appeal vis-?-vis Company Appeal (Lod.) No. 15 and 17 of 2012. (v) Further, without prejudice, it is submitted that if required, the present Appeal may also be treated as a petition under Article 227 of the Constitution of India due to the peculiar circumstances of the matter. (vi) Lastly, it is submitted that the Appellant has already stated his stand in the Company Applications filed in Company Appeal (Lod.) No. 15 and 17 of 2012 and the same may also be treated as Appeal, Cross Appeal, Cross Objection in the matter along with the present Appeal. The said Applications were filed on 11th October 2012 i.e. within 60 days of the information being available to the Applicant.

6. These statements are seriously controverted by Mr. Chagla. He points to the affidavit in reply filed by Sanjay Gupta, who says that Jagdish Gupta filed a SLP No. 8513-8514 of 2012 in the Supreme Court against the Company Law Board's order dated 23rd November 2011. In that Special Leave Petition, the appellant filed an Interim Application for leave to file additional documents. Annexure P-45 to that application was a copy of the Company Application no. 35 of 2012 filed by Sanjay Gupta before the Company Law Board for modification of the 23rd November 2011 order. Annexure P-46 was a copy of the very order dated 24th January 2012 against which this appeal is filed. The copy annexed to Jagdish Gupta's I.A. before the Supreme Court was a certified true copy. That I.A. was filed on 23rd April 2012. Therefore, submits Mr. Chagla, Jagdish Gupta had knowledge of the order under appeal since at least 23rd April 2012. In actuality, according to him, Jagdish Gupta's knowledge of the impugned order dates back to 27th January 2012, the date on which the impugned order was certified as a true copy by the Bench Officer, this being the document produced by Jagdish Gupta himself before the Supreme Court. The present appeal is, however, lodged only on 22nd November 2012. Computed from either date, i.e., 27th January 2012 or 23rd April 2012, the appeal is completely out of time. There is, Mr. Chagla submits, also no valid explanation in the affidavit for the delay. Even assuming that the delay can be condoned--in his submission it cannot--absent any tenable explanation, no case has been made out such condonation.

7. Mr. Chagla also point out that the Company Law Board had rejected applications for impleadment including by Jagdish Gupta. These impleadment applications were heard on several dates in May 2011. Jagdish Gupta was among those who made submissions. Final arguments concluded on 23rd November 2011. On that day, Jagdish Gupta filed further company applications. The Company Law Board, by its order of 23rd November 2011, declined to issue notice on these Company Applications and also declined to allow the applications for impleadment.

8. I am not, at this stage, considering the merits of the appeal. That can only be done if Mr. Andhyarujina succeeds and the delay--and it is admitted that there is a delay--is condoned. For, if it is not then the appeal itself cannot be filed or heard.

9. Mr. Andhyarujina's first submission is based on his reading of Regulation 29(4) of the CLB Regulations, extracted below:

29. Order of the Bench-

(1) Every order of the Bench shall be in writing, and shall be signed by the member or members constituting the Bench which pronounces the order.

(2) * * *

(3) * * *

(4) A copy of every interim order granting or refusing or modifying interim relief and final order passed on any petition or reference shall be communicated to the petitioner or the applicant and to the respondents and other parties concerned free of cost:

Provided that in the case of an order u/s 17 confirming change of registered office, two copies of the order shall be supplied to the petitioner company free of cost.

(5) * * *

(6) * * *

(7) * * *

(emphasis supplied)

10. Mr. Andhyarujina submits that the appellant, Jagdish Gupta, is "any other person concerned". It must be noted however that the appeal is not directed against the order of 23rd November 2011, but against the order dated 24th January 2012. That was passed in company applications to which Jagdish Gupta was not a party. The impugned order was passed on Sanjay Gupta's Company Application No. 35 of 2012 for modification of the order of 23rd November 2011. Mr. Andhyarujina's submission is that since he was a party before the Company Law Board for the 23rd November 2011 order, and since the impugned order of

24th January 2012 was on an application for modification of the earlier order, therefore he was "a person concerned", and a copy should have been made available to him.

11. I must disagree. The words "other parties concerned" must receive a somewhat more restricted meaning than Mr. Andhyarujina suggests. It is a reference to persons who are in some capacity before the Company Law Board in that particular matter in which the order is passed. Moreover, the purpose of sub-rule (4) is to ensure that copies are made available free of cost to these parties. This is evident from the provisions of sub-regulations 2, 3 and 4 of Regulation 30 of the CLB Regulations:

30. Inspection of records and supply of certified copies-

(1)---

(2) Subject to the provisions of sub-regulation (4) of Regulation 29, a person who is not a party to the proceedings, may after the final orders are passed, for sufficient reasons shown to the satisfaction of the Bench, obtain copies of the petitions, replies and counter-replies on payment of such fee, as may be fixed by the Bench by general or special order.

(3) A person, who is not a party to the proceedings, may also obtain, as of right, at any time after the final orders are passed by the Bench, copies of the orders, on payment of such fee, as may be fixed by the Bench by general or special order.

(4) A person, who is not a party to the proceedings, has, however, no right to inspect the records of the proceedings or to obtain copies of the Exhibits put in evidence, except with the consent of the person by whom they were produced or under the orders of the Bench.

Thus, any other party is also entitled to order copies but must apply for these and pay the necessary fees. He or she may also be required to give reasons why these order copies are sought.

12. As Jagdish Gupta was not a party to Sanjay Gupta's Company Application No. 35 of 2012, he is not a person concerned within the meaning of Regulation 29(4). Mr. Andhyarujina's formulation seems to me to be utterly impracticable. It would require the Company Law Board or its registry to embark on an argosy in quest of every single person with some connection, however remote, to the matter at hand and provide him with free copies. This cannot have been the intention of Regulation 29(4). Jagdish Gupta was not concerned with Company Application No. 35 of 2012 at all. There was no attempt to vary, modify or recall the previous order declining his application for impleadment. It was an application by Sanjay Gupta to obtain certain clarifications on the basis that the Company Law Board had, while disposing of Jagdish Gupta's impleadment application, made observations that were beyond the scope of those impleadment actions.

13. The factual basis for the present Company Application for condonation of delay is in paragraph 8 of its affidavit in support. That paragraph says:

8. The Applicant learnt about the aforesaid proceedings in CA 35/2012 in the first week of August 2012 when the Company Appeal Lodging No. 15 and 17 of 2012 filed by Sanjay Gupta group were noticed on the website of the Bombay High Court. The Applicant was able to obtain more information including the contents of the Application No. 35 of 2012 by 15th August 2012.

14. Jagdish Gupta thus pins himself down to two dates in August 2012. The first of these is 1st August 2012, the date on which he says he first came to know from the Bombay High Court's website that Sanjay Gupta (among others) had filed an appeal. The second date is 15th August 2012, when, according to Jagdish Gupta, he obtained further information about Sanjay Gupta's appeal.

15. Neither of these dates can possibly be correct. Jagdish Gupta does not explain how from the lodging or registration number of an appeal filed in this Court, he was able to discern the details of the order impugned or the application before the Company Law Board on which that order was passed. These details are not readily available on the High Court website's case status system. All that it could have told him was that Sanjay Gupta had filed some appeal. The information would show the lodging or registration numbers, the name of the first appellant and the name of the first respondent, but little else. It would not have been possible for Jagdish Gupta to have known of the order challenged in Sanjay Gupta's appeal, or to have, from the website, gleaned any information about the application on which the order under challenge by Sanjay Gupta was passed. Secondly, I am unable to understand how the appellant could possibly have obtained any further detailed information on 15th August 2012, a national holiday. All registries were closed on that day. Neither of these dates is, therefore, credible as a starting point of limitation. Neither of Jagdish Gupta's assertions can be believed.

16. Jagdish Gupta also glosses over the fact that several months earlier, in April 2012, he clearly knew about the impugned order. He had a certified copy. He annexed it to his interim application in a SLP before the Supreme Court. This discrepancy is not sufficiently explained.

17. In the affidavit in support of the Company Application, a submission is also made that this appeal be treated as a petition under Article 227 of the Constitution of India due to "the peculiar circumstances of the matter". That cannot be done. There are no peculiar circumstances; certainly, none in favour of the appellant. The peculiar circumstances, such as they are, are against the appellant.

18. Mr. Andhyarujina also submits that the present appeal may be treated as a cross-objection in the appeal filed by the 7th respondent and others. He relies on a decision of the Supreme Court in *Superintending Engineer and Others Vs. B. Subba Reddy*, to submit that since an appeal is a substantive right and a cross-

objection is like an appeal, he is therefore entitled, *ex debito justitiae*, to an enlargement of time, or, alternatively to have his appeal treated as a cross-appeal or cross-objections. The decision in *B. Subba Reddy* arose in the context of the 1940 Arbitration Act. The observations made in paragraph 53 of that decision are in relation to the provisions of that Act and Order 41 Rule 22 of the Code of Civil Procedure, 1908. The words of limitation that we find in Section 10F are not to be found in Order 41. To very similar effect are the decisions in *Bhagat Ram V/s. Raghbar Dial and others*, 1925 Lahore 57 and in *Sm. Nripjit Kaur V/s. Sardar Satinder Singh*. AIR 1955 Punjab 190

19. Mr. Andhyarujina also relies on a decision of a learned Single Judge of the Andhra Pradesh High Court in *Dewan Bahadur Ramgopal Mills Limited V/s. Appellate Authority for Industrial & Financial Reconstruction and others*. (1999) 98 SC 398; per Bilal Nazki, J. (as he then was) This decision says that an appeal u/s 5 of the Sick Industrial Companies (Special Provisions) Act, 1985 must be filed within forty-five days from the date the certified copy of the order of the BIFR is issued. The appellants' knowledge is irrelevant if the appeal is maintainable, provided it is filed within forty-five days of the issuance of the order copy. That decision is clearly distinguishable. In that case, the appeal was filed within forty-five days of the date of issuance of the copy. In the present case, there is an admitted delay beyond the first period of sixty days. The appellant also reckons the starting point of limitation from the date of knowledge. These are the precise words used in paragraph 11 of the affidavit in support of the company application. The question, in the present case, is not whether the limitation would start running from the date of issuance of a copy but even on the appellant's own showing, what should be taken as the date of his knowledge. Would it be the date when the appellant, Jagdish Gupta, claimed to have first learned, from the Bombay High Court website, of the appeal filed by the 7th respondent, Sanjay Gupta? Or should it be the public holiday (Independence Day) when he claims to have obtained further information? Or must it be, as Mr. Chagla says, from the date when he annexed a certified copy of the impugned order to his affidavit in the Supreme Court, or perhaps the date of issuance of that certified copy?

20. In my view, it can only be the dates suggested by Mr. Chagla. There is no manner of doubt that in April 2012 the appellant had with him a certified copy of the impugned order. He said as much. He annexed it in proceedings that he himself filed in the Supreme Court. Reckoned from either of the dates that Mr. Chagla mentions (i.e. 27th January 2012 or 23rd April 2012) the appeal is well beyond the maximum period of 120 days within which it could be filed.

21. The question of whether this period can be extended u/s 10F has now been settled by a decision of a learned Single Judge of this court in *Smt. Hetal Alpesh Muchhala V/s. Adityesh Educational Institute (P) Limited and others*. (2009) 4 Comp LJ 577 (Bom.) The very question arose before that Court. Kathawala, J. in terms held that the right of appeal u/s 10F is restricted. It must relate only to

questions of law. To ensure that there is a quick finality to the disputes, all decisions on facts by the Company Law Board are final and conclusive. It is not, therefore, possible to afford a liberal construction to the discretion vested under the proviso to Section 10F. To do so would be to render it meaningless and contrary to the plain intent of the statute. The Court's power in condonation of delay beyond sixty days itself is prescribed in mandatory language:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

22. The learned Single Judge held that on a correct reading of the Supreme Court decision in *Union of India Vs. M/s Popular Construction Co.*, it is clear beyond all doubt that the legislative intent underlying the constitution and establishment of the Company Law Board and insertion of section 10F is to limit the time within which an appeal can be filed. This time limit is absolute. It cannot be extended by a Court u/s 5 of the Limitation Act.

23. That decision binds me. It is not possible to distinguish it. To substantially the same effect is the decision of a learned single Judge of the Madras High Court in *Sivakumar Spinning Mills Pvt. Ltd. Vs. Shanmughavelayutham and Others*, There, too, *Popular Construction* was cited and relied on.

24. The appellant not only had knowledge of the impugned order in April 2012, but had a certified copy of it. The delay is beyond the maximum period of 120 days prescribed in Section 10F. There is absolutely no explanation for the delay. The company application is dismissed. There will be no order as to costs. In view of dismissal of the Company Application, Company Appeal (L) No. 51 of 2012 does not survive and is also dismissed. Similarly, Company Application No. 38 of 2012 and Company Application No. 39 of 2012, both filed by the present appellant for stay of the proceedings in Company Petition No. 79 of 2006 and Company Petition No. 84 of 2007 also do not survive, and are accordingly dismissed.