

(1993) 07 AP CK 0031

In the Andhra Pradesh High Court

Case No : Company Petition No. 39 of 1992

K.K. Maheshwari and Another

APPELLANT

Vs

Rockhard Building Materials Limited and Others

RESPONDENT

Date of Decision : 23-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Companies Act, 1956 — Section 10(1), 2(11), 284

Citation : (1993) 3 ALT 160

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : K.K. Waghay, for the Appellant; P. Venkateswarlu, for Respondents 1 and 2 and V.S. Raju, for Respondents 7 and 8, for the Respondent

Final Decision : Dismissed

Judgement

V. Sivaraman Nair, J.—The petitioners seek two reliefs in this petition which is filed u/s 284 of the Companies Act. Those are (i) that an order be passed directing the respondents to relieve and release the petitioner from the personal guarantee (surety executed by him in favour of respondent No.8), and (ii) to declare the removal of the petitioner from the Joint Managing Directorship under Resolution passed by the 1st respondent in the Annual General Body Meeting held on 28-12-1991 as illegal, arbitrary and contrary to the provisions of Section 284 of the Companies Act.

2. I have not been referred to any provision which confers jurisdiction on this Court to consider a complaint by a person who is removed from the post of Director in defiance of the provisions of Section 284 of the Companies Act. Counsel for the petitioner submits that the authority which is competent to entertain and consider the disputes alleging non-compliance of Section 284 of the Act is not specified in the Section except to the limited extent of naming the Company Law Board as the authority to deal with complaints that the representation seeking removal of the Director contains defamatory matters.

Counsel submits therefore that the forum which can entertain and consider complaints in relation to non-compliance with the provisions of Section 284 of the Companies Act shall be this Court. He refers me to Section 10 of the Act which identifies the Court which can have jurisdiction as the High Court having jurisdiction in relation to the place at which the registered office of the Company is situate. He submits that the Court in this case must be this High Court since the registered office of the Company is situate within the jurisdiction of this Court, he also invited my attention to the definition of Court in Section 2(11) of the Act which defines the Court as (a) with respect to any matter relating to company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in Section 10; and (b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence. Submission of counsel is that wherever Court is mentioned as the forum, that Court has to be located and identified with reference to Section 2(11) and Section 10 of the Companies Act.

3. It is not difficult to accept this submission. Difficulty arises only when there is no provision in the Act or any notification issued by any competent authority conferring such power to consider the complaints relating to non-compliance u/s 284 in the matter of removal of Directors, on the Court. I requested counsel specifically whether there is any provision which confers residuary powers on the Court, in which case also, he may be in a position to point out that the Court having jurisdiction must be the High Court of Andhra Pradesh. Apparently, there is no such provision.

4. Counsel invited my attention to the decision of my learned brother Immaneni Panduranga Rao, J., in Nizamabad Corn Products Private Limited by its Nizamabad Corn Products (P) Ltd. by its Director and Others Vs. Vasudev Dalia, . That decision referred to the forum u/s 10(1)(a) and Section 283(2) of the Act. In paragraph 8, the learned Judge held that the Civil Court cannot have jurisdiction and consequently held that this Court should consider complaints of that nature.

5. There is no decision directly in point u/s 284 of the Act. I am inclined to take the view that in a case where there is no exclusion of jurisdiction of Civil Court either by express provision or by necessary implication, the Civil Court shall have jurisdiction u/s 9 of the Code of Civil Procedure. I do not understand Section 2(11) or Section 10(1) to exclude the jurisdiction of Civil Courts in any manner. I dismiss this petition for the only reason that the petitioners are not able to point out any provision of law conferring on this Court the exclusive power to decide the dispute relating to the removal of Directors.

6. In view of the above, I dismiss this petition leaving it open to the petitioners to seek appropriate remedy from any Court which may have jurisdiction.