

(2002) 06 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition (P.D.) No. 861 of 2002 and C.M.P. No. 6960 of 2002

K.M. Hameed Sultan

APPELLANT

Vs

K.M. Mohammed Abubacker Siddique, K.M. Mohamed Younus, K.M. Akbar Ali, K.M. Mohamed Idris, K.M. Musthafa Kamaludeen, K.M. Mohamed Yousuff, K.M. Umar Farooq, K.M. Fairouse Khan and Shaik Minhaj Firdose

RESPONDENT

Date of Decision : 05-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Companies Act, 1956 — Section 169, 169(6)

Citation : (2002) 06 MAD CK 0029

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : M. Venkatachalapathy, for M. Sriram, for the Appellant; S.S. Rajesh, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The petitioner/4th respondent in I.A.No.142 of 2002 and the fourth defendant in O.S.No.36 of 2002 has filed the above

Civil Revision Petition praying to set aside the order dated 2.5.2002 made in I.A.No.142 of 2002 in O.S.No.36 of 2002 by the Court of District

Munsif, Kamudhi.

2. On facts, the petitioner would allege that he is a shareholder Director of Mohamed Idris Brothers Private Limited, a company registered under

the Companies Act, 1956 having 1/7 shares in the said company; that originally joining hands with his brothers, numbering six, he incorporated the

said company on 8.12.1989 and in the course of business, the firm adopted the trade mark KIBS and became popular; that in the second week of

October, 2001, the petitioner was given to understand that four of his brothers viz. 1.K.M.Mohammed Idris, 2.K.M.Mohammed Younus,

3.K.M.Mustaffa Kamalluddin and 4.K.M.Akbar Ali got themselves respectively allotted 2000, 2060, 2120 and 2180 equity shares of the said

company at face value purported to have been made in lieu of sale consideration for the alleged sale of their respective undivided share in the

property at 190, Thambu Chetty Street, Chennai-600 001 in an illegal and arbitrary manner and in violation of the provisions of the Companies

Act resulting in the petitioner filing a suit in O.S.No.6404 of 2001 on the file of the XVIII Assistant City Civil Court, Chennai for a declaration that

the issue of equity shares by the company to the aforementioned persons is illegal and unlawful and contrary to the provisions of the Companies

Act and void ab initio and for permanent injunction restraining the said company from in any manner giving effect to the said shares issued to the

said persons. The further case of the petitioner is that he also took out I.A.No.18895 of 2001 seeking interim injunction and the same was ordered

on 8.11.2001 as an interim measure which on contest was made absolute by the said Court.

3. The further case of the petitioner is that he requisitioned the company to convene an Extraordinary General Meeting u/s 169 of the Companies

Act to consider and pass resolutions as mentioned in the notice dated 22.3.2002 and accordingly by notice dated 26.3.2002, an Extraordinary

General Meeting was convened on 17.4.2002 to consider the resolutions; that while so, one of the shareholders of the company, the 8th

respondent, having only 100 shares, also filed a suit on the file of the Court of VI Assistant City Civil Court, Chennai on 15.4.2002 impleading

only the company as the defendant for declaration that the notice dated 26.3.2002 convening the Extraordinary General Meeting on 17.4.2002

and the resolution proposed thereat are void ab initio and for permanent injunction restraining the second respondent company from issuing any

further shares to any person/shareholder either by way of right, bonus or otherwise; that in the said suit, the 8th respondent took out an application

in I.A.No.6337 of 2002 seeking interim injunction restraining the company from proceeding with the Extraordinary General Meeting to be held on

17.4.2002 and not to consider any of the resolutions proposed in the notice dated 26.3.2002 or any other meeting of such type; that on coming to

know the filing of the said suit, petitioner filed I.A.No.6495 of 2002 to implead himself as a party defendant in I.A.No.6337 of 2002 , but the said

Court while ordering notice in I.A.No.6495 of 2002 returnable by 16.7.2002, had allowed the I.A.No.6337 of 2002 by order dated 16.4.2002

thus directing the company not to hold the meeting on 17.4.2002, which is a gross injustice done to the petitioner with denial of opportunity to put

forth his case in I.A.No.6337 of 2002 resulting in the petitioner's impleading application becoming infructuous and hence he filed C.R.P.No.689 of

2002 before this Court and the same is pending; that as the company did not convene the meeting, the petitioner along with other requisitionist

Mr.K.M.Muhammed Yousuff exercising the powers u/s 169(6) of the Companies Act issued a notice convening Extraordinary General Meeting

on 23.5.2002 to consider and pass the resolutions as per the requisition dated 22.3.2002 at which point of time, the petitioner received the order

in I.A.No.142 of 2002 in O.S.No.36 of 2002 filed by the first respondent herein before the Court of District Munsif, Kamudhi restraining the

petitioner and other Directors from convening any Board or General Meeting and allotting fresh shares. Therefore, the petitioner has come forward

to file the above Civil Revision Petition.

4. No counter would be filed on the part of any of the respondents. But, the learned counsel appearing on behalf of the first respondent would

choose to argue on instructions.

5. So far as the petitioner is concerned, the learned senior counsel Mr. M. Venkatachalapathy would not only point out that the first respondent is

the contesting party so far as the above Civil Revision Petition is concerned, but also would give up the other respondents being formal parties to

the contest and would bring forth the salient features from out of the factual position of the case pleaded on the part of the revision petitioner. The

learned senior Counsel would make a particular mention of the first respondent having only a meager 100 shares as against the total number of

29240 shares and that he is challenging and making the activities of the petitioner and company stand still in spite of the petitioner being one of the

major shareholders and founder director of the company. Regarding jurisdiction, the learned senior counsel would point out the wrong address

offered by the first respondent as the plaintiff in the suit as it is glaringly seen in

the very cause title itself whereas the permanent address and the place of residence is given in the paragraph No.11 of the plaint to be Madurai, which has been offered as his permanent residence in the memorandum and Articles of Association and therefore, the very suit filed before the lower Court by the first respondent is without jurisdiction.

6. At this juncture, the learned counsel would cite a decision reported in Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others, , wherein

the Apex Court remarking that ""the respondents therein were indulging in judicial adventurism by filing suits at places away from the registered

office of the company where no cause of action arose and held on facts, courts erred in issuing ex parte interim order in favour of the respondents

thus aiding the judicial adventurism without even determining whether they had jurisdiction.

The learned senior counsel would end of his arguments with a note that unless the order passed by the lower Court is nullified, the meeting cannot

go on and would ultimately pray to allow the C.R.P.

7. On the other hand on the part of the learned counsel appearing on behalf of the first respondent besides strongly supporting the order passed by

the lower Court which is impugned herein dated 2.5.2002 thereby passing an interim order restraining the respondents therein from in any manner

passing any resolution towards distribution of the shares, convening the board meeting which is warranted in the circumstances of the case and

therefore, the said order has been passed by the lower Court at the appropriate time restraining the respondents till 3.6.2002. The learned counsel

would also cite a judgment reported in A. Venkatasubbiah Naidu Vs. S. Challappan and Others, wherein it is held that ""against an order passed

under Order 39 Rule 1 C.P.C., principle is well recognised that High Court ought to direct the party to seek other available remedies before

invoking constitutional remedy.

On such averments, the learned counsel for the respondent would pray to dismiss the C.R.P. as not maintainable.

8. In consideration of the facts pleaded by the petitioner in the above C.R.P., having regard to the materials placed on record and upon hearing the

learned counsel for both, what comes to be known is that the petitioner herein who is the 4th respondent in the Interlocutory Application and the

4th defendant in the suit having become aggrieved of the interim order passed by the lower Court on 2.5.2002 thereby generally restraining all the directors of the Mohamed Idris Bros. Pvt. Ltd. from convening the Extraordinary general Meeting or the Board Meeting of the company or from passing any resolution for the purpose of distribution of the shares of the company till 3.6.2002, testifying the validity of which, the petitioner has come forward to file the above C.R.P. under Article 227 of the Constitution of India thereby praying to invoke the supervisory powers of this Court and to set aside the interim order dated 2.5.2002.

9. The order passed by the lower Court has not been passed in the manner expected by law, nor having afforded proper opportunity for the petitioner to be heard, nor even having discussed any point valid in the context of the case since it is not an ex parte order passed by the Court, but parties are already in picture represented by their counsel and therefore, the time and the manner in which the said order has been passed by the lower Court is definitely not in accordance with law and therefore, the same has not only passed in violation of the principles of natural justice but also against all principles governing the provisions of law wherein an order of that sort could be passed. Therefore, the petitioner herein is perfectly right in challenging the order dated 2.5.2002 passed by the Court below invoking the provisions of Article 227 of the Constitution of India on illegality.

10. So far as the facts, circumstances and jurisdiction of the Court to pass such order in a pending suit as it has been dealt with vividly by both parties during enquiry, there is absolutely no need on the part of this Court to go into such of the merits not only on account of the illegalities that have crept in passing the said order as aforementioned, but also it must be spelt out that since the said order restraining the respondents therein including the petitioner herein who are the directors of that company from convening the Board Meeting or passing any resolution in the distribution of shares only up to 3.6.2002 and the said date having already been gone by, it should be held that the very C.R.P. has become infructuous on account of the very order passed by the lower Court having lapsed as on date and not in force.

11. For all the above reasons though it is held that in initiating the above Civil

Revision Petition, the same has been legally done, still by efflux of time, today since the order passed by the lower Court itself has been lapsed dying a natural death as on 3.6.2002, the above Civil Revision Petition becomes only liable to be dismissed as infructuous.