

(2015) 06 KAR CK 0091

In the Karnataka High Court

Case No : Company Appeals Nos. 13 and 12 of 2012

Krishna Enterprises Ltd.

APPELLANT

Vs

Donaman International Panama S.A. and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Citation : (2016) 130 CLA 126 : (2015) 193 CompCas 226

Hon'ble Judges : Vineet Saran and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : C.K. Nandkumar, for the Appellant; C.M. Poonacha for Lex Plexus, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—These two appeals have been filed questioning the correctness and legality of the order passed by the Company Law Board dated May 15, 2012 in C.P. No. 793 of 2007 (Donaman International Panama S.A. v. Venlon Enterprises Ltd. , [2012] 110 CLA 272 (CLB)) whereunder the petition filed by the first respondent herein under section 111A of the Companies Act, 1956 (for short "Act") came to be allowed by directing the second respondent-company herein to enter the name of the first respondent herein as a member of the company in the register of members and also directing removal of the name of the petitioner herein as member of the second respondent-company with a further direction to pay the first respondent herein all the benefits including dividends that might have been declared subsequently in respect of 1,53,75,128 shares of the second respondent-company and the direction issued to the second respondent-company herein to give necessary instructions to respondent No. 6 herein to carry out appropriate changes with regard to the ownership of the said shares. Prayers sought for by the petitioner before the Company Law Board, Southern Region Bench, Chennai in C.P. No. 793 of 2007 read as under:

"(a) The register of members of the respondent-company be rectified by removing the name of respondent No. 2 as a member of the company.

(b) The register of members of the respondent-company be rectified by re-entering therein the name of the petitioner as the member of the company and thereby restoring it the ownership of 15,375,128 (one crore fifty three lakhs seventy five thousand one hundred twenty eight) equity shares of the company representing 70.50 per cent of the paid-up capital of the company together with any bonus shares/rights shares that might have been subsequently issued/allotted in respect of the same.

(c) The respondent-company may be directed to pay to the petitioner all the benefits including dividends that might have been declared subsequently in respect of the abovementioned shares.

(d) The respondent may be directed to pay the costs and damages to the petitioner for the damages sustained by it due to fraudulent transfer of shares.

(e) Such further or other orders be made and directions be issued affording necessary relief to the petitioner as the hon"ble Company Law Board may deem fit and proper."

2. Though in these appeals, the learned advocates appearing for the parties have made a valiant attempt to buttress their respective contentions to assail or support the order passed by the Company Law Board, Southern Regional Bench, Chennai dated May 15, 2012, we are of the considered view that on the ground of respondent No. 2 before the Company Law Board, i.e., appellant in Comp. A. No. 13 of 2012 was not served and as such the order passed by the Company Law Board is in violation of the principles of natural justice, same is liable to be set aside and matter requires to be remitted back to the Company Law Board for being adjudicated on the merits and in accordance with law afresh and for the reasons indicated hereinbelow. Hence, we do not propose to go into the merits of the case.

3. The parties are referred to as per their rank before the Company Law Board. The learned advocate appearing for the appellant in Comp. A. No. 13 of 2012 has filed the paper books enclosing the order sheet of the Company Law Board and so also the learned advocate appearing for the first respondent in both the appeals.

4. Perusal of the order sheet of the Company Law Board would clearly indicate that undisputedly as on January, 2008 respondent No. 2 was not served. Hence, counsel appearing for the petitioner had submitted before the Company Law Board that despite efforts made by the petitioner, they could not serve notice on respondent No. 2. Said submission came to be recorded by the Company Law Board as under:

"Heard counsel representing the petitioner and xxx by respondents Nos. 1, 3 and 5. Shri K. Krishnamoorthy, learned counsel representing the petitioner submitted that in spite of efforts taken by him they could not serve notice on respondent No. 2, who is a necessary party to this petition. He further xxx to the petitioner.

Counsel for the petitioner requested this Bench to grant two weeks time to get the address of the second respondent and ensured service of notice on them. Failing which, he will take steps in publishing in news paper the pendency of the present petition before this Bench seeking direction against him."

Thus, it would indicate that respondent No. 2 was not served as on January, 2008. When the matter was listed again on March 25, 2008, learned senior counsel appearing on behalf of the petitioner before the Company Law Board has fairly conceded that service of notice on respondent No. 2 could not be effected. After recording his submission, the Company Law Board permitted the petitioner to file appropriate application for passing necessary orders. Relevant portion of the order dated March 25, 2008, passed by the Company Law Board reads as under:

"Counsel appearing for the parties are present. Shri Habibullah Badsha, learned senior counsel admits that M/s. Krishna Enterprises Ltd., though arrayed as second respondent, the notice could not serve because of non availability of correct address, in spite of efforts put by them. He further xxx address of second respondent. In view of the matter the petitioner may file an appropriate application for passing the necessary order on or before April 9, 2008, after serving the copy on the respondents."

5. Thus, it would emerge that even as on March 25, 2008, notice was not served on respondent No. 2. However, on account of leave or permission having been granted by the Company Law Board, an application came to be filed by the petitioner seeking for direction being issued to first respondent-company to furnish address of respondent No. 2. The said application came to be allowed on July 16, 2008 and the Company Law Board directed first respondent to furnish address of respondent No. 2. Thereafter, learned senior counsel appearing on behalf of the petitioner has made a submission as is evident from the order sheet of the Company Law Board dated August 6, 2008, that the petitioner would send notice to respondent No. 2 and file "proof of service" within a period of four weeks. Pursuant to the same, notice has been taken out by the petitioner and only the receipt for having forwarded the said notice came to be produced before the Company Law Board. The Company Law Board without recording as to whether there is service of notice effected, has proceeded to adjudicate the matter on the merits.

6. Regulation 21(4) of the Company Law Board Regulations, 1991, indicates that issue of notice and its determination to the effect that notice on the parties have been effected is required to be indicated in the order sheet. Regulation 26(3) would indicate that recording of such finding is mandatory. For the purpose of convenience, these two regulations are extracted hereinbelow:

"21. Service of notice and process issued by the Bench.--... (4) Where a notice is served by the registered post, the Secretary or Bench Officer may, if the acknowledgment is not received, determine the question as to the sufficiency of

the service of the notice.

26. Procedure to be followed where any party does not appear.--... (3) Where, on the date fixed for hearing or any other date to which such hearing may be adjourned, the petitioner appears but the respondent does not appear when the petition is called for hearing, the Bench, may, in its discretion, adjourn the hearing or hear and decide the petition ex parte."

7. A perusal of the above regulations would indicate that until and unless the Company Law Board records a finding that there has been service of notice on the respondents, it cannot be presumed that there has been effective service of notice. Undisputedly, in the instant case, there was no notice served on respondent No. 2 and the order of the Company Law Board which is under challenge in these two appeals would indicate that at various places namely, paragraphs 11 and 16, it has been indicated as though service of notice on respondent No. 2 is effected or completed which otherwise was not. This is the factual error which has occurred as is evident from the discussions made hereinabove.

8. In that view of the matter, we are of the considered view that the order passed by the Company Law Board cannot be sustained. Hence, we proceed to pass the following:

(1) The company appeals are hereby allowed.

(2) The order passed by the Company Law Board, Southern Region Bench, Chennai, dated May 15, 2012, is hereby set aside.

(3) The matter is remitted back to the Company Law Board, Southern Region Bench, Chennai for adjudication of the petition on the merits afresh and in accordance with law.

(4) All parties to the present proceedings are directed to appear before the Company Law Board on August 3, 2015, without waiting for any further notice from the Company Law Board.

(5) Respondent No. 2 who is the appellant in Comp. A. No. 13 of 2012 is at liberty to file statement of objections within 30 days from the date of such appearance, i.e., August 3, 2015 and the petitioner would be at liberty to file reply/rejoinder if any, within 15 days thereafter.

(6) The Company Law Board shall issue fresh notice to respondent No. 6 and from the date of appearance of respondent No. 6 or in the event of respondent No. 6 being placed ex parte, the Company Law Board shall dispose of the petition within six months from the said date namely, either from the date on which respondent No. 6 appears or is placed ex parte whichever is earlier.

Ordered accordingly.