
(2004) 03 MAD CK 0042
In the Madras High Court
Case No : L.P.A. No's. 127 and 128 of 2000

K.R.S. Mani

APPELLANT

Vs

Anugraha Jewellers Ltd.

RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Companies Act, 1956 — Section 397, 398, 402, 403

Citation : (2005) 126 CompCas 878 : (2004) 3 CTC 348 : (2004) 2 LW 650 : (2004) 52 SCL 488

Hon'ble Judges : N. Kannadasan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : B. Raviraja, for the Appellant; R. Senthilkumaran, for the Respondent

Final Decision : Dismissed

Judgement

N. Kannadasan, J.—Appellants are respondents in C.M.A. and the petitioners before the Company Law Board. The respondents 1 and 2

in L.P.A. No. 127 of 2000 and the respondents 10 and 11 in LPA 128 of 2000 are the appellants in the C.M.A. No. 1312 of 1998 and the

respondents 1 and 2 before the Company Law Board. The respondents 10 and 11 in L.P.A. No. 127 of 2000 and respondents 1 and 2 in L.P.A.

No. 128 of 2000 are the appellants in C.M.A. No. 1391 of 1998. The other respondents are the respondents in the above CMA and the

respondents in the Company Petition.

2. The appellants herein have filed a petition under Sections 397, 398, 402 and 403 of the Companies Act, 1956, before the Company Law

Board, Chennai for prevention of oppression and mismanagement in the affairs of the Company, viz., M/s. Anugraha Jewellers Limited,

Coimbatore. It is alleged that there has been irregularity in the allotment of

shares to them that the funds of the company have been siphoned off in the form of loans and advances to certain fictitious companies, that the appointment of the Managing Director is neither legal nor proper, that the appellants were removed from the Board in an irregular manner, that the Annual General Body meeting was not conducted in an orderly manner and alleged the Annual General Body meeting held on 4-9-1996 was invalid and illegal and that in order to prevent the oppression and management of the company, the relief prayed for in the petition should be ordered.

3. The said petition was opposed by the respondents before the Company Law Board that the petition is not maintainable in view of the fact that the petitioners have approached the Civil Court in respect of the same relief as claimed in the said petition and a criminal complaint was also lodged and the petitioners have initiated parallel proceedings and their act is nothing but to harass the respondents and the General Body Meeting was conducted in accordance with law and none of the allegations are based on true facts. The Company Law Board has passed an order dated 23-9-1998 to the effect that it would be appropriate to entrust the management of the company to an independent person so that the inter dispute between the promoters do not affect the business of the company and accordingly one Aghoramurthy, former Regional Director of the Department of Company Affairs, was appointed as the Administrator. Aggrieved against the same, the above C.M.A. was filed and the learned Judge of this Court by considering various relevant facts and circumstances of the case, with reference to the legal provisions has allowed the said appeal on 17-12-1999 and set aside the order of appointment of Administrator. Aggrieved against the said order, the above appeals are filed by the appellants herein.

4. The learned counsel for the appellants contended that the learned Judge has without adducing any valid reason by merely relying upon the legal provisions, has set aside the order of the Company Law Board, which is not permissible in law. Learned counsel further contended that inasmuch as a specific plea was raised with regard to the manner in which the Annual General Meeting was held on 4-9-1996 and extensive arguments were advanced before the Company Law Board and by considering all the facts and circumstances of the case, the order was passed by the company

Law Board, which has also gone into all the details and finally appointed an administrator, and as such the said order ought not to have been set

aside. The learned counsel further submitted that during the pendency of the appeal a Commissioner was appointed who has submitted a report

which substantiates the plea made by the appellants. It is also contended that inasmuch as the resolution which was passed in the Annual General

Body Meeting is not valid, the learned Judge ought not to have set aside the order of the Company Law Board.

5. Per contra, the learned counsel for the respondents has contended the appellants have not substantiated their plea before the Company Law

Board with reference to the conduct of the Annual General Body Meeting and other irregularities were not proved and the company petition is filed

only to harass the respondents and the learned Judge has passed the order after going through the entire materials placed on record, and as such

no interference is called for.

6. The points for consideration are ;

(a) Whether the appellants have made out a case for the grant of the relief on the ground of prevention of oppression and mismanagement of the

company affairs ?

(b) Whether the order of the learned single judge is sustainable in law in the facts and circumstances of the case ?

7. We have considered the rival submissions of the parties.

8. Admittedly, the company petition is filed under Sections 397, 398, 402 and 403 of the Companies Act, 1956. The relevant Chapter VI in the

Companies Act deals with "Prevention of oppression and mismanagement".

9. As regards various allegations urged before the Company Law Board, it is seen that the Board has not accepted the plea of the appellants as

stated by them. In fact, with regard to the allegations relating to allotment of shares and transfer of shares are concerned, the Board has rendered a

finding that the appellants/petitioners have not been able to substantiate their stand regarding the non receipt of share certificates they had applied

for. In fact, a finding is rendered that the share certificates which were applied for, had already been dispatched to the appellants/petitioners and as

such the Board has expressed that it did not intend to enter into the controversy, as to whether the instruments of transfer have been fabricated or

not.

10. As regards the next question, viz., the appellants/petitioners complaint on the resolution of the Annual General Meeting held on 4-9-1996 is

concerned, the Company Law Board having observed that it cannot normally entertain such complaints as set out in the company petition filed

under Sections 397 and 398 of the Companies Act, 1956 and the decision of the General Body, which is being conducted in a democratic manner

may not be subjected to judicial scrutiny, has passed an order of the appointment of Administrator without adducing any valid reasons.

11. As rightly pointed out by the learned Judge, none of the serious allegations alleged by the appellants were proved. In fact, one of the main

allegations that a sum of Rs. 65 lakhs was siphoned off by way of loans and advances, it is evident that the cheques were issued under the joint

signatures of one K.R.S. Anandkumar (one of the appellants herein) and Hari Loganathan. It cannot be suggested that all such transactions took

place without the knowledge or consent of the appellants. As regards the Commissioner's report is concerned, the said report is filed relating to

certain transactions about which no allegations or irregularity was pleaded. The learned Judge has rightly held that the Company Law Board has

not decided the issue of mismanagement with reference to material evidence on record. Inasmuch as there is no oppression or mismanagement is

established, the jurisdiction of the Company Law Board is very limited, more particularly when it revolves the dispute between the parties.

12. The learned counsel for the appellants vehemently contended that the report submitted by Commissioner appointed during the pendency of the

CMA should be looked into. Since the appeals are concerned about the correctness of the order of the Company Law Board, the subsequent

events have no relevance to decide the issue and accordingly we do not propose to go into that aspect.

13. Inasmuch as the Company Law Board having in not agreed with the appellants main grievances, more particularly about the conduct of the

Annual General Body Meeting and the resolution passed thereon, we are at a loss to know as to how the final conclusion was arrived at for

appointment of the independent Administrator. Even with regard to the allegations relating to the shortage of stock is concerned, the Company

Law Board has given a finding that there is an excess of stock available. Thus none of the allegations of the appellants/petitioners were found in favour of them.

14. Further, it is seen that the appellants/petitioners have not approached the Company Law Board with clean hands. Even though in their

company petition under the column "matters not previously filed or pending with any other courts" a reference is made that Original Suit is filed in

O.S. No. 945 of 1996 which is concerned only proceedings of the Annual General Meeting of the 1st respondent Company held on 4-9-1996

and O.S. No. 788 of 1996 on the file of the Sub Court, Coimbatore, which concerns only the issue as to the 2nd respondent holding Office as

Managing Director of the 1st respondent. However, the relief claimed in the said suit is almost identical with the relief claimed in the Company

Petition. It is only when a preliminary objection is raised about the maintainability of the company petition, the said suit seems to have been

withdrawn later on. Merely because, the appellants/petitioners have withdrawn the suit on subsequent date, the same will not absolve them about

their conduct in not approaching the Company Law Board with clean hands. Hence, we do not agree for the grant of relief the appellants on this

score also.

15. Further, as per the various decisions rendered by this Court as well as the Supreme Court, it is the duty of the courts to recognize the

Corporate Democracy of a Company in managing its affairs. The court should not restrict the powers of the Board of Directors and it shall not

interfere with the day to day affairs and management and administration of the company. The principles laid down in the decisions rendered by this

court in Vivek Goenka v. Manoj Sonthalia [1992] 2 MLJ 163; G. Kasturi and another Vs. N. Murali and others, and in Nurcombe v. Nurcombe

[1983] 3 CLJ. 163 (CA), makes it clear that the appellants/petitioners are not entitled to the relief as claimed for in the company petition.

16. For the foregoing reasons, we are of the opinion that the appellants have not made out a case of oppression and mismanagement in the affairs

of the company and as such the order of the learned Judge is perfectly valid in law. Accordingly, the appeals are dismissed. There will be no order

as to costs. Consequently, connected CMPs are also dismissed.