
(2011) 09 AHC CK 0314
In the Allahabad High Court
Case No : Company Appeal No. 2 of 2011

K.V. Vikram Reddy and Others	Vs	APPELLANT
R. Sreenivasulu Reddi and Others		RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Companies Act, 2002 — Section 10F

Citation : (2011) 09 AHC CK 0314

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Sri Asit Kumar Chaturvedi on behalf of the Appellant and Sri Jaideep Narain Mathur, learned Additional Advocate General on behalf of the Respondents.

2. The present appeal has been preferred u/s 10F of Companies Act, 1956.

3. While assailing the impugned orders, the learned Counsel for the Appellant Sri Asit Kumar Chaturvedi relied upon the cases reported in Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., Dr. Bais Surgical and Medical Institute Pvt. Ltd. and Others Vs. Dhananjay Pande and Others, Dr. Bais Surgical and Medical v. Dhananjay Pandey and Ors. Central Park Farm and Developers Private Limited and Ors. v. Mohamed Ataulia and Ors. Company Appeal No. 3 of 2008 c/w Company Appeal No. 4 of 2008 decided on 31.8.2010. [Karnataka HC]; Smt. S. Kunjithamala v. HVAC Systems Pvt. Limited; COMPA No. 2 of 2010 decided on 3.2.2010 [Karnataka HC]; Smt. S. Kunjithamala v. HVAC Systems Pvt. Limited; COMPA No. 1 of 2010 decided on 3.2.2010. [Karnataka HC]; Manohar Rajaram Chhabaria Vs. Union of India and Others, decided on 18.2.2000. [Kolkata HC]; Company Appeal No. 14 of 2006 V.S. Krishnan and Ors. v. West Fort Hitech Hospital Limited decided on 14.11.2006 delivered by Division Bench of Hon''ble High Court of Kerala at Ernakulam affirmed by Hon''ble

Supreme Court in case of Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others, [Kerala HC] and Kumar Rajendra Tekriwal v. Unique Construction Pvt. Ltd. O.J.A./245/2007/1/28 judgment (Gujarat HC).

4. Sri Asit Kumar Chaturvedi submitted that the Board has passed the impugned orders without recording three necessary conditions i.e., prima facie case, balance of convenience, irreparable loss or injury and without discussing the controversy involved before it.

5. On the other hand, Sri Jaideep Narain Mathur, learned Additional Advocate General submits that the present appeal is not maintainable before the Division Bench of this Court. The attention has been invited to Chapter-V Rule 2 (vi) of the Allahabad High Court Rules, 1952, which is reproduced as under:

2. Jurisdiction of a single Judge:

(vi) a suit or a proceeding in the nature of a suit coming before the Court in the exercise of its ordinary or extraordinary original civil testamentary or matrimonial jurisdiction including a proceeding under the Indian Trusts Acts, 1882 55[the Companies Act, 1956] or the Indian Patents and Designs Act, 1911;

6. Learned Senior Counsel Sri Jaideep Narain Mathur, submits that the word, "proceeding", used in Clause (vi) (supra), relates to jurisdiction of Single Judge to all the proceedings of Companies Act including Appeal. A perusal of the High Court Rule reveals that while using the word, "proceeding", it has been clarified as in the nature of a suit coming before the Court in the exercise of its ordinary or extraordinary original civil testamentary or matrimonial jurisdiction including a proceeding under the Indian Trusts Acts, 1882 55[the Companies Act, 1956] or the Indian Patents and Designs Act, 1911 under the head "jurisdiction of a Single Judge".

7. Admittedly, Hon"ble Single Judge of this Court has been conferred jurisdiction to try the cases upto the winding up stage by the Hon"ble Chief Justice. Once the Hon"ble Single Judge has been specifically conferred the jurisdiction to try the cases upto winding up stage, then how and in what manner the Hon"ble Single Judge can exercise appellate jurisdiction, above it, does not prima facie seem to be correct approach of law. Hon"ble Single Judge may exercise jurisdiction provided by the Hon"ble the Chief Justice or jurisdiction conferred by Rules of Court not otherwise. The language of Clause (vi) of Rule 2 of Chapter v. of High Court Rules, is clear and once the Hon"ble Chief Justice confers the jurisdiction to Hon"ble Single Judge only upto the winding up proceeding and same has been shown in the cause list, then it is not open to this Court to interpret the provisions of Clause (vi) (supra), other than the jurisdiction conferred by Hon"ble the Chief Justice. Moreover, prima facie the original and appellate jurisdiction both may not be conferred to Single Judge.

8. A combined reading of provision of Chapter v. of the Rules shows that it deals with Clause (vii) onwards with regard to appeals to criminal and other matters.

Once the High Court Rule has not conferred to Hon"ble Single Judge the jurisdiction, then it cannot be conferred by pronouncement on judicial side. Hon"ble the Chief Justice is the master of roster to decide jurisdiction. The Stamp Reporter has also opined that the matter should be placed before the Division Bench. Though, we could have overruled the submissions of Sri Jaideep Narain Mathur, learned Additional Advocate General but keeping in view the facts and circumstances of the case as well as the Clause (vi), we are afraid to record the finding other than what has been provided under the Rules of the Court and jurisdiction conferred by Hon"ble Chief Justice, shown in the cause list.

9. Since in absence of any circular of Hon"ble the Chief Justice, and the Rules are being silent, we refer the matter to Hon"ble the Chief Justice to clarify the position so that the matter be listed before the Bench which has been conferred power to decide the appeal and accordingly be shown in the cause list.

10. Attention has been invited to Apex Court judgment reported in Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others, where the ground on which the appeal may be filed u/s 10F of Companies Act, has been dealt with by Hon"ble Supreme Court. The relevant portion of para 15 and 16 of the said judgment is reproduced as under:

15. Before going into the claims of both parties, it is useful to refer the scope of Section 10F of the Companies Act which provides appeal against the order of the Company Law Board. Section 10F reads as under:

10F. Appeals against the order of the Company Law Board -Any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

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 sixty days.

16. It is clear that Section 10F permits an appeal to the High Court from an order of the Company Law Board only on a question of law i.e., the Company Law Board is the final authority on facts unless such findings are perverse based on No. evidence or are otherwise arbitrary. Therefore, the jurisdiction of the appellate Court u/s 10F is restricted to the question as to whether on the facts as noticed by the Company Law Board and has placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was mala fide or for a collateral purpose or was burdensome, harsh or wrongful. The only other basis on which the appellate Court would interfere u/s 10F was if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to construe relevant materials.

11. A plain reading of the judgment of Hon"ble Supreme Court shows that there must be some material for interference. Their lordships observed that the jurisdiction of the appellate court u/s 10F is restricted to the question as to whether on the facts as noticed, and may arrive to such conclusion, that the Board's order is, (a) against law or (b) arose from consideration of irrelevant material or (c) omission to construe relevant materials. Board being statutory quasi judicial authority must record reason to interfering with the company's affair.

12. In the present case, a plain reading of the impugned order shows that while passing the order, the board, has not recorded the prima facie case based on material necessary to pass interim order. We are conscious that if an order affects rights of parties, then the Company Law Board should have recorded a finding that prima facie case is made out for interference and pass an order to secure the interest of parties.

13. Prima facie case, balance of convenience, irreparable loss and injury are basic principles on which interim orders may be passed. Even if it is given go by, it was incumbent on the Company Law Board to record prima facie case after discussing brief account of the dispute involved or prima facie misconduct committed by the Appellant while passing the impugned order which at the face of record is wanting.

14. Since, it has not been done we stay the order dated 26.5.2011 read with 31.5.2011 passed by the learned Company Law Board. Though, till next date of listing. We have stayed the impugned order, but we restrain the Appellants from transferring the Company's share or alienating the property. Let the record be placed before Hon"ble Chief Justice within a week, by the Registry of this Court for appropriate order with regard to jurisdiction of the Bench, thereafter the case shall be listed on 12.9.2011 before appropriate Bench, in term of order passed by Hon"ble Chief Justice.