

(2016) 02 KAR CK 0117
In the Karnataka High Court
Case No : COMPA Nos. 25 and 24/2015

M. Krishna Reddy and Others

APPELLANT

Vs

ACE Forge Private Limited and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2016) 199 CompCas 332 : (2016) 135 SCL 1

Hon'ble Judges : Jayant M. Patel and S. Sujatha, JJ.

Bench : Division Bench

Advocate : K.V. Satish, Advocate, for the Appellant;

Final Decision : Disposed off

Judgement

Jayant M. Patel, J.—1. The present appeals are directed against the order dated 12.11.2015 passed by the Company Law Board (hereinafter referred to as the "CLB" for short) in Company Petition No. 37/2014, whereby the CLB has dismissed the petition.

2. We have heard Mr. Satish, learned Counsel appearing for the appellants and Mr. Udaya Holla, learned Senior Counsel for the respondents.

3. The principal grievance raised by the learned Counsel for the appellants is that the CLB on one end having found that whether documents are forged or not are beyond the scope of the jurisdiction of the CLB, since it has a summary jurisdiction, but on the other end, the CLB further found that the petition is barred by law of limitation and declined to grant any relief in the petition. It was submitted that so far as the forged documents and the consequential reliefs are concerned, the appellants have filed Civil Suit Nos. 9950/2015 and 9952/2015 before the appropriate Civil Court and there the question as to whether the documents are forged or not and the incidental questions are to be decided by the Civil Court.

4. The submission of the learned Counsel for the appellants was that the

observations made by the CLB may not operate as a bar or may not come in the way of the appellants in pursuing the remedy of civil suit. He therefore submitted that this Court even if not inclined to entertain the appeals on the subject matter, may make suitable observations for the pending aforesaid two suits enabling the appellants to pursue the civil suits in accordance with law.

5. Whereas the learned Senior Counsel appearing for the respondents-Company and others submitted that the statement made during the course of the hearing of holding 43,990 shares by the first petitioner-appellant herein contrary to the statement made in the petition, wherein it is stated that the petitioner and his group are holding shares of 2,30,000. It was also submitted that there are large number of incorrect statements made and therefore this Court may not accept the contention raised on behalf of the appellants. However, on the aspects of pending civil suits and the power of the Civil Court to examine as to whether the signature or the documents are forged or not, the learned Counsel for the respondents could not dispute that the Civil Court has a wider power on the said aspects vis-?-vis the jurisdiction of the CLB which is a summary jurisdiction.

6. Having considered the aforesaid submissions made by the learned Counsel appearing for both the sides, we do find that the CLB has observed that it has summary jurisdiction and the question of document being forged or the signature being forged or not, cannot be examined in the proceedings of the Company Petition and the CLB has further observed that such an exercise can be undertaken in the civil suit by the Civil Court. Based on the said observations, the appellants have filed Civil Suit Nos. 9950/2015 and 9952/2015 before the appropriate Civil Court. The said observations are not under challenge on the point of limited jurisdiction with the CLB and the wider jurisdiction with the Civil Court.

7. However, it appears to us that the CLB proceeded to examine the question of limitation on the presumptive value of the document of the annual return filed on behalf of the Company from time to time on the premise that the documents are genuine unless otherwise proved to the contrary before the competent forum and the declaration so made by the competent Civil Court after considering the respective date of the documents for filing of the return and other related documents thereto. The CLB has examined the question of limitation and has found that the petition was barred by law of limitation.

8. There is substance in the contention of the learned Counsel appearing for the appellants to the extent that in the event the documents are found to be forged, the operation of the period of limitation would vary and would not remain based on the documents of annual return which are found to be valid as per its presumptive value. It is hardly required to be stated that the presumption can always be rebutted. But in the present case, such rebuttal would be conclusive only if before the Civil Court it is proved that the documents were forged or that the signatures were forged and the declaration was so made by the Civil Court in the appropriate Civil Suit proceedings. Therefore, if the documents are found to

be forged, naturally the question of limitation would vary and it will not remain only depending upon the date mentioned in the annual return filed on behalf of the Company. Of course, it will also be upon the appellants to show the knowledge by demonstrating satisfactory material, if the appellants were to contend that the limitation period has not expired and the grievance is brought before the appropriate forum within the prescribed period of limitation.

9. Under these circumstances, we find that the observations made by the CLB on the question of limitation may remain only on the presumptive value but it should not be read to control or to curtail in any manner the jurisdiction of the Civil Court in the above referred two civil suits and further the consequential computation of the period of limitation.

10. Even otherwise also, as rightly observed by the CLB, the question of genuineness of forged document or forged signature could be examined in the proceedings of the Civil suit and there cannot be any dispute that the Civil Court on the said aspects will have wider jurisdiction vis-?-vis jurisdiction of the CLB which is a summary jurisdiction. We leave it at that, since the Civil Court is yet to examine the matter in accordance with law.

11. In view of the aforesaid, we find it appropriate to observe that the Civil Court in the proceedings of Civil Suit Nos. 9950/2015 and 9952/2015 shall be at liberty to take an independent view of the matter on the basis of material and the evidence produced before it and the observations made by the CLB on the point of limitation shall not operate as a bar upon the power of the Civil Court to examine the controversy in accordance with law.

12. In view of the above, we find that the submission made regarding holding of the share capital contrary to the statement made in the petition as raised by the learned Counsel for the respondents need not be gone into, since in our view, the same would be inconsequential, if the matter is to rest for the clarification and the observations as made hereinabove.

13. In view of the aforesaid observations and discussions, the present appeals do not deserve to be entertained, but with the observation that the Civil Court in Civil Suit Nos. 9950/2015 and 9952/2015 shall be at the liberty to take an independent view of the matter on all aspects including the question of limitation and any observations made by the CLB in the present proceedings shall not operate as a bar upon the jurisdiction of the Civil Court in examining the controversy including on the point of limitation.

14. Appeals are disposed of accordingly. No order as to costs.

In view of the final disposal of the appeals, both the applications I.A. Nos. 1/2015 and 2/2015 shall not survive and shall stand disposed of.