
(2015) 08 KAR CK 0103
In the Karnataka High Court
Case No : COMPA No. 2/2015

Malind Properties Pvt. Ltd. and Others APPELLANT
Vs
Murugayah Kanapathy and Others RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0103

Hon'ble Judges : Vineet Saran and B. Manohar, JJ.

Bench : Division Bench

Advocate : D.L.N. Rao, Senior Advocate for T.S. Venkatesh, Advocate, for the Appellant; Udaya Holla, Senior Advocate for R.G. Hegde, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—This is an appeal filed by the Company as well as other shareholders [who were arrayed as respondents No. 1, 2, 3 and 5 in the Company Petition No. 76/2014 filed before the Company Law Board ("the Board" for short)]. The petition before the Board was filed by respondents No. 1, 2 and 3 in this appeal, alleging oppression and mismanagement in the affairs of the Company. By an order dated 22.12.2014, an interim order was passed by the Board whereby certain prayers for interim relief had been granted. At the time of issuing notice of this appeal an ex-parte interim order was passed by this Court on 22.05.2015:

"The respondents 1 to 3 filed a petition under Sec. 397 and other provisions of the Companies Act, 1956 claiming mismanagement of the company by appellants 2 to 4 who are said to be holding 60% share in the appellant No. 1 company.

2. In the petition the main reliefs sought were numbered as (a) to (m) and the interim reliefs sought were numbered as (a) to (p). The dispute herein relates to the grant of interim reliefs sought under the heads (c), (e) and (h) by the Company Law Board ("the Board" for short) which read as under:

"c) Pass an order that Mr. Jagadeesh, Practicing Chartered Accountant Bangalore shall be joint signatory to all the cheques issued by the Company;

e) Pass an order restraining the 2nd, 3rd and 4th Respondents from in any manner alienating or encumbering the assets of the company;

h) Pass an order to maintain status quo with regard to the share holding and Board of directors of the Company."

By the impugned order dated 22-12-2014 reliefs (c) and (h) are granted until further orders and as regards relief (e) the appellants 2, 3 and 4 (respondents 2 to 4 before the Board) have been restrained from alienating or encumbering the moveable and immoveable assets of the company without leave of the Bench. Aggrieved by the said order this appeal has been filed.

3. Sri. D.L.N. Rao, learned Sr. Counsel appearing for the appellants along with Sri. T.S. Venkatesh, submits that no reason whatsoever has been assigned for granting the aforesaid reliefs. It has been submitted that while granting prayer (c) Sri. Jagadeesh, Chartered Accountant, who is a total stranger to the proceedings, has been allowed to be a joint signatory to all the cheques issued by the company. It is submitted that the said Mr. Jagadeesh is neither a party-respondent in the proceedings before the Board nor has he anything to do with the affairs of the company and as such allowing a total stranger to be a signatory to all the cheques issued by the company would paralyse the functioning of the company. As regards prayer (e) learned counsel for the appellant submits that in case the appellants are restrained from alienating or encumbering the moveable and immoveable assets of the company, no buyer would negotiate with the company and as such the business interests of the company would be put to jeopardy. Learned Sr. Counsel does not object to the grant of prayer (h) during the pendency of the proceedings before the Board.

4. Having heard learned counsel for the appellant and considering the facts and circumstances of the case, we are prima facie of the opinion that allowing a stranger to be a joint signatory for signing the cheques issued by the company, without assigning any reasons therefor by the Board, cannot be justified. As regards the grant of prayer (e) we are of the view that the same may be considered after obtaining a response from the respondent. The appellants do not object to the grant of prayer (h) at this stage.

5. Accordingly in the aforesaid facts, we direct issuance of notice to the respondents fixing a date in the week commencing 6th April, 2015. Till the next date of listing, the interim relief granted by the Board allowing prayer (c) i.e. directing that Mr. Jagadeesh, practicing Chartered Accountant in Bangalore, be made a joint signatory to all the cheques issued by the company shall remain stayed. As regards prayer (e) the matter shall be considered on the next date of hearing. There shall be no interim order as regards prayer (h)."

2. After service of notice, Sri Udaya Holla, learned Senior counsel appearing

along with Sri R.G. Hegde, has put in appearance on behalf of the contesting respondents No. 1 to 3.

3. We have heard Sri D.L.N. Rao, learned Senior counsel appearing along with Sri T.S. Venkatesh for the appellants as well as Sri Udaya Holla, learned Senior Counsel appearing for the contesting respondents No. 1 to 3 and perused the record. With the consent of learned counsel for the parties, this appeal has been heard and is being finally disposed of at the admission stage.

4. Sri D.L.N. Rao, learned Senior Counsel for the appellants, has submitted that by the impugned order passed by the Board does not assign reasons for granting the interim reliefs. By granting prayer (c), a stranger to the proceedings has been directed to sign the bank cheques to be issued by Company with regard to which there is no mention or discussion in the impugned order as to why such arrangement was necessary by way of interim relief. As regards the other interim prayer (e), which has been granted, whereby the appellants have been restrained from alienating or encumbering the moveable and immoveable assets of the company without leave of the Board, it has been submitted that since the appellant-Company is in the business of Real Estate and if such restrain order is allowed to continue, no buyer would negotiate with the Company and thus that the business of the Company would come to stand still, which would not be in the interest of the Company or its shareholders. He thus prayed that the grant of the aforesaid two prayers is wholly unjustified. With regard to the third prayer (h) that has been granted, which is to maintain status-quo with regard to the shareholding and Board of Directors of the Company, learned counsel for the appellants does not have any objection to the same.

5. Sri Udaya Holla, learned Senior counsel appearing for the contesting respondents, however could not justify the grant of the first prayer (c) directing that Sri Jagadeesh, Practicing Chartered Accountant to be the joint signatory to all the bank cheques to be issued by the Company, without even discussing as to why the same was necessary or in the interest of the Company. As regards the other interim prayer (e) which is for restraining the appellants-respondents-2 to 4 from alienating or encumbering the assets of the Company, it has not been disputed by Sri Holla that no adequate reason for passing such order has been given by the Board. It has thus been submitted that a fresh order in this regard may be directed to be passed by the Board by giving a reasoned order, after hearing both parties and considering the facts and circumstances of the case.

6. On having heard learned counsel for the parties and on perusal of record, what we notice is that though the Board has stated in the order that the petitioners therein have made out a prima facie case for grant of interim reliefs but nowhere it has been mentioned in the order as to how any such prima facie case has been made out in favour of the petitioners therein. Only certain facts have been stated in the order but it is not mentioned as to how the petitioners before the Board would be prejudiced, if the interim order was not passed, but has still granted the interim order.

7. Accordingly, for the reasons which have been given in detail in the order dated 25.02.2015 passed by this Court and also keeping in view the fact that no discussion as to why the prayer (c) was being granted, whereby Sri Jagadeesh, Practicing Chartered Accountant has been directed to be the joint signatory to all the bank cheques to be issued by the Company, we are of the view that the order with regard to such direction requires to be set aside, and is accordingly quashed. However, the Board shall be at liberty to pass fresh reasoned orders with regard to prayer (c) after hearing learned counsel for the parties.

8. As regards the other prayer (e), by which the appellants have been restrained from alienating or encumbering the assets of the Company, since there is no adequate reason assigned for passing such order, we direct the Board to pass fresh reasoned order with regard to such prayer within thirty days from today, after giving adequate opportunity of hearing to the parties. The parties are directed to file copy of this order before the Board within one week. The order restraining the appellants from alienating or encumbering the assets of the Company would remain in operation only for a period of thirty days and thereafter the order, if any, passed by the Board with regard to such prayer shall come in force. In case no order is passed by the Board within 30 days, the order dated 22.12.2014 with regard to prayer (e) shall stand vacated.

9. As regards prayer (h), since the counsel for the appellants had himself agreed before the Board (and in appeal also the learned Senior Counsel appearing for the appellants does not object to grant of such prayer), it is provided that the interim relief granted with regard to prayer (h) shall continue to operate.

The appeal stands allowed to the extent as indicated above.

10. It is made clear that passing of this order would not mean that the Board is not to consider the other prayers made in the application. It is also made clear that this Court has not expressed any opinion on the merits of the case, which shall be considered by the Board after giving fresh adequate opportunity to the parties.