
(1993) 07 BOM CK 0034

In the Bombay High Court

Case No : Company Petition No. 242 of 1993

Minoo H. Mody

APPELLANT

Vs

Hemant D. Vakil and others

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 26, 27, 986
Companies Act, 1956 — Section 10F, 2(11), 397, 398, 483
Trade Marks Act, 1999 — Section 76

Citation : AIR 1994 Bom 39 : (1994) 2 BomCR 560 : (1994) 96 BOMLR 466 :
(1997) 89 CompCas 456 : (1994) 1 MhLj 78

Hon'ble Judges : V.A. Mohta, J;B.P. Saraf, J

Bench : Division Bench

Advocate : R.A. Dada, Ferdoon Devitre and J.J. Bhatt, instructed by M/s. Federal Rashmikant, for the Appellant; K.S. Cooper Shroff, T.S. Cooper, Dara Zaiwalla and P.M. Mody, instructed by . M/s. Bodhanwalla and Company, Shekhar Shetye instructed by . Shaunak Satpute and Co., for the Respondent

Judgement

V.A. Mohta, J.—This is a reference to consider the following three questions pertaining to the practice and procedure concerning an Appeal u/s 10F of the Companies Act, 1 of 1956 (the Act):-

1. Whether an Appeal u/s 10F of the Companies Act, 1 of 1956 against an order of the Company Law Board can be entertained by the High Court in exercise of its "Ordinary Original Civil Jurisdiction"?
2. Whether such an Appeal can be filed in the form of a petition to the Company Court by following the procedure prescribed for making original application to the Company Court under the Companies" Court Rules (1959) instead of presenting a Memorandum of Appeal formulating questions of law arising out of order under Appeal ?
3. Whether such an Appeal is liable to be heard by a single Judge or Division Bench on the Original Side or Appellate Side till the appropriate rules are made

and published by the appropriate authority in this behalf?

2. Basic factual background is this:

Some shareholders of M/s. RDI Print and Publishing Private Limited (having its registered office in Bombay) filed a petition before the Company Law Board (CLB) under Sections 397 and 398 of the Act. Aggrieved by the adverse order dated 21-4-1993 passed thereupon, Mr. Minoo H. Mody (the Original Respondent No. 2) has filed an Appeal in this Court u/s 10F of the Act. It was labelled and presented in the form of a petition and was registered as Company Petition No. 242 of 1993 on the Original Side of this Court as per the prevailing practice. It was heard by the learned single Judge who came to prima facie conclusion that (i) an Appeal u/s 10F cannot be in the form of a petition to the Company Court and will have to be in the form of a Memorandum of Appeal formulating questions of law arising out of the order impugned, and (ii) it cannot be filed and entertained on the Original Side of this Court and will have to be filed and entertained only on the Appellate Side, till appropriate rules pertaining to the practice and procedure concerning such Appeal are made by the appropriate authority in this behalf. In view of the importance of the questions, the learned single Judge, by order dated 17-6-1993, suggested to the Honourable Chief Justice to make a reference to a Division Bench for consideration of the questions and this is how the matter is placed before us.

3. Section 10F has been brought on the statute book by the Companies (Amendment) Act, 1988 with effect from 31-5-1991. Before this amendment, the High Court was empowered to entertain the petitions under Sections 397 and 398 of the Act. By this amendment, this original jurisdiction has been transferred to the CLB. Having transferred the jurisdiction to the CLB, an Appeal to the High Court has been provided on any question of law arising out of such an order.

4. Section 2(11) of the Act defines the term "the Court" as meaning "with respect to any matter relating to the company, the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in Section 10". Section 10(1) of the Act specifies that the Court having jurisdiction under the Act shall be the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to the High Court in pursuance of sub-section (2). Section 643 deals with the rule-making power of the Supreme Court in exercise of which the Companies (Court) Rules, 1959 (the Rules) have been made. Rule 2 defines various terms such as "Court", "High Court", "Judge", etc. Naturally the definitions are in consonance with Sections 2(11) and 10 of the Act.

5. This takes us to the Rules framed by the High Court of Judicature at Bombay -- Original Side as well as Appellate Side.

First the Rules on the Original Side: Rule 26 specifies that the Court for the exercise of the Original Jurisdiction of the High Court on its several sides may be

held before one or more Judges of the High Court subject to the rules of the Court and that the Ordinary Original Civil Jurisdiction of the High Court extends to Greater Bombay including certain specified areas. Rule 27 which is most important reads thus :

"27. Suits, Summary Suits, Matrimonial Suits, Commercial Causes, Testamentary and Intestate Suits and matters, Writ Petitions, Company Matters, Land Acquisition References, Income Tax and other tax matters, Insolvency matters, Admiralty and Vice-Admiralty Suits, Disciplinary Matters and all other matters and proceedings in the exercise of the Original Jurisdiction of the High Court shall be heard before such Judges as the Chief Justice shall from time to time appoint."

We are concerned with the expression "Company Matters". In the absence of any qualification, it would mean and include all its varieties -- Original as well as Appellate. It may be mentioned that as per Rule 986-A all applications under the Act in respect of areas of the State of Maharashtra (excluding Vidarbha region) in respect of which u/s 10(1) of the Act the High Court has jurisdiction, shall be filed in the office of the Prothonotary and Senior Master, i.e. the Original Side.

6. There is no scope even to have a lurking doubt on this score, in view of the Rules on the Appellate Side. Chapter XXIII of those Rules deals with petitions under the Act. It specifies that all applications under the Act in respect of a Company having its registered office, or in the case of a Company incorporated outside India its principal place of business outside the territorial limits of Greater Bombay, and in respect of which u/s 10(1) of the Companies Act, the High Court has jurisdiction, shall be filed on the Original Side of the High Court, Bombay, provided however that in respect of the eight Districts of Vidarbha region, such applications shall be filed in the office of the High Court at Nagpur. In other words, even the petitions under the Act from the moffusil areas are entertainable only on the Original Side.

7. It is plain that when all these rules were framed by the High Court or the rules u/s 643 were framed by the Supreme Court, Section 10F was not on the statute book. Rules governing the practice and procedure in the matter of Appeals u/s 10F have so far remained to be framed by the High Court. We strongly suggest to the Hon^{ble} Chief Justice to take immediate steps to frame the relevant Rules so that controversies on such technicalities are minimised.

8. But that apart, as the position stands today, there can be no manner of doubt that in relation to "Company Matters" arising from all areas in Maharashtra (excluding eight Districts of Vidarbha region), only the Original Side of the High Court has the jurisdiction.

9. In this connection, a submission was made in one voice by all the learned Counsel before us that it would be better if this jurisdiction of the High Court is described as "Company Civil Jurisdiction" and not "Ordinary Original Civil Jurisdiction". This undoubtedly is a matter of mere form but it is submitted that the separate description would remove the anomaly and facilitate the

identification of the matters. In our view, the suggestion is just and proper and can be considered at appropriate level and stage.

10. The learned single Judge has relied upon the Supreme Court decision in the case of National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), , in taking a prima facie view that in the absence of Rules, Appeals u/s 10F can be presented and entertained only on the Appellate Side. The ratio of that decision will not apply to the present matter. The said decision pertains to the question of maintainability of Appeal under Clause 15 of the Letters Patent against an appellate order passed by the High Court u/s 76 of the Trade Marks Act. It is held that the High Court has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by the learned single Judge, the judgment becomes subject to appeal under Clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act.

11. It is true that there is a practice of filing Appeals u/s 10F of the Act in the form of petitions and labelling them as such. There is no justification whatsoever for this. The practice should be stopped forthwith. There is a dear distinction between a Petition and an Appeal. By its very nature, an Appeal has to be in the form of Memorandum clearly indicating the grounds of Appeals. The Appeal u/s 10F lies on only questions of law arising from the order and hence the questions of law will have to be stated. Failure to do so would be against the very letter and spirit of Section 10F.

12. What about the pending matters? Right of Appeal u/s 10F is a valuable statutory right and it cannot be whittled down for the mistake in the form. In this connection, following passage from the case of Arati Dutta Vs. Eastern Tea Estate (P) Ltd., , may be usefully quoted.

"It is true that there is perhaps no procedure to file an appeal from the decision of the learned single Judge of the Gauhati High Court. If that is so rules should be framed by the High Court in its jurisdiction of rule-making power for filing and disposal of such appeals. But absence of the procedure rules do not take away a litigant's right to file such appeals when the statute confers such a right specifically and the jurisdiction of the High Court to dispose of such an appeal if so filed."

13. In view of the consistent practice followed by all concerned in labelling and entertaining these Appeals as Petitions, the pending matters cannot be thrown out solely on that ground. The parties are free to apply for appropriate amendment as expeditiously as possible. But the Appeals under Sec. 10F in the form of Petitions shall not be accepted by the Office in future. They should be accepted only in the form of a Memorandum of Appeal stating the questions of law.

14. We are informed by the parties that such Appeals are heard in Bombay, Gujarat and Madras High Courts by a single Bench and in Delhi and Calcutta High

Courts by a Division Bench. We are further informed that Delhi as well as Calcutta High Courts are treating these Appeals on par with Appeals u/s 483 of the Act. There was some debate before us as to whether the Appeals under Sections 10F and 483 could be equated. We refuse to be drawn in that controversy in this reference.

15. To conclude, we answer the reference as under:--

Question No. 1 : This Appeal can be entertained by the High Court only on the Original Side and not on the Appellate Side.

Question No. 2: Such Appeals cannot be presented in the form of a Petition. They will have to be presented in the form of Memo- random of Appeal formulating questions of law arising out of the Order impugned. The practice followed so far is not in accordance with law. But the pending matters cannot be dismissed for this defect in the form in view of the prevailing practice and the parties can be allowed to make appropriate amendments.

Question No. 3 : Appeal u/s 10F is liable to be heard by the Company Court on the Original Side as a "Company Matter" till the appropriate rules are made.

We direct that copy of this judgment be placed before the Hononurable Chief Justice for taking steps to frame Rules pertaining to practice and procedure concerning an Appeal u/s 10F. Copy be sent also to the Prothonotary and Senior Master for compliance in future.

16. Shri Dada, learned Counsel for the appellant prayed for interim relief, but in this reference we are not inclined to entertain that prayer. Needless to mention that the petitioner is free to move the learned Company Judge for interim relief.

17. Certified copy expedited.

Reference answered.