

(1991) 01 MAD CK 0068
In the Madras High Court
Case No : O.S.A. No. 196 of 1990

M.K. Chandrakanth

APPELLANT

Vs

M/s. Appan Betelnut Company, M.K. Kuppuraj and M.K.
Ananthakumar

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Companies Act, 1956 — Section 284, 397, 398, 399, 399(5)

Citation : (1991) 01 MAD CK 0068

Hon'ble Judges : Venkataswami, J; Abdul Hadi, J

Bench : Division Bench

Advocate : V.V. Lakshminarayanan, for the Appellant; Harikrishnan and R. Meenakshisundaram, for the Respondent

Judgement

Abdul Hadi, J.—This original side appeal by the petitioner applicant is against the dismissal of C.A. 1147 of 1990 in C.P. No. 65 of 1987. The said company petition by the appellant is under Ss. 397 and 398 of the Companies Act (hereinafter referred to as "the Act") alleging oppression and mismanagement. The said company application therein under S. 402 of the Act is for injunction, pending disposal of the company petition, to restrain the respondents from proceeding with the general meeting on 15.10.1990. The said company application was dismissed on 29.10.1990. Earlier when the said company application came up before the learned Company Judge, at the request of the Learned judge, the 1st respondent company agreed to postponing the said meeting to 30.10.1990, enabling the Court to hear the said application and pass orders thereon before 30.10.1990. After the above said order was passed on 29.10.1990, the company held the said meeting on 30.10.1990. So, the said meeting having been held on 30.10.1990 itself, there is nothing that the appellant could canvass in this appeal dated 2.11.1990 and filed subsequent to the holding of the said meeting, though it is open to him to move any fresh application before the learned Company Judge himself, if he is aggrieved by anything happened in the said meeting already held. So, we agree with the learned Counsel for the respondents that this

appeal is misconceived and infructuous after the above said meeting had been already held. On this short ground, this appeal is liable to be dismissed.

2. Anyway, since both the Counsels argued on other aspects also, we briefly touch upon those aspects also. The appellant and the respondents 2 and 3 herein are brothers and the 1st respondent is a private limited company in which all of them and about 14 others, mostly their family members are share-holders. As per the Articles of Association of the said company, the said three brothers shall, subject to the provisions of the Companies Act, be the first and permanent directors of the company. But the grievance of the appellant appears to be that he was removed from the permanent directorship of the company at the instance of respondents 2 and 3 and that the respondents had issued a notice dated 5.9.1990 calling for the above said general meeting on 15.10.1990 to pass a resolution appointing M.K. Kannan and M.A. Geethalakshmi, who are close relatives of respondents 2 and 3, as directors for life time and to pass another resolution to raise the share capital of the company to Rs. 24,00,000/- from the present Rs. 7,00,000/- and odd, which are now shared equally by each of the three brother's group. His further grievance seems to be that while the company's business is of betel nuts, the respondents are unnecessarily venturing into computer business.

3. We find that clause 113 of the Articles of Association of the company only says as follows :-

The persons hereinafter named shall subject to the provisions of the Act be the first and permanent Directors of the company.

- 1) M.K. Kuppuraj
- 2) M.K. Chandrakanth
- 3) M.K. Ananthakumar

But clause 112 therein says as follows:-

The number of Directors shall not be less than two or more than seven.

So, it cannot be said that because of Art. 113 the above said two persons cannot be appointed as life time directors. Further, the learned Counsel for the respondents also points out that the earlier application No. 336 of 1989 questioning the appointment of another person A.R. Balakrishnan is still pending, that only an interim order in that application was passed and that under S. 403 of the Act any interim order could be passed for regulating the conduct of the company's affairs and there could be no question of res judicata to prevent the Company Court from passing any suitable interim order in the interest of the company.

4. It cannot also be said that because of the above Cl.113, the appellant could not be removed from his permanent directorship. The said Cl.113 itself says that the three persons named therein are permanent directors "subject to the

provisions of the Companies Act". As per S. 284 of the Act, any director, other than the director appointed by the Central Government in pursuance of S. 408, can be removed before the expiry of his period of office. It has also been held in *Tarlok Chand Khanna v. Rajkumar Kapoor* (1983) 54 CC 12 (Del) that a permanent director under the Articles of Association of a company to hold office for life could be removed from office. In the decision reported in *S. Labh Singh v. Panesar* (1975) 61 CC 618 also has held that where no provision for retirement of directors is there, or, no period of tenure is fixed for directorship, the director can continue till he is removed under S. 284 of the Act.

5. The further argument of the learned Counsel for the appellant that the above said increase of capital was only to make the share-holding of the appellant's group to below 10% limit fixed under S. 399 of the Act as a qualification for filing application under S. 397 and 398 of the Act, has no substance, because the increase was only to Rs. 24,00,000/- from the present Rs. 7,00,000/- and odd and not Rs. 24,00,000 + Rs. 7,00,000 and odd and consequently the appellant's group's share-holding would not go below the said 10%. Further as per S. 399(5) of the Act, even if the share-holding is less than 10%, petition under S. 397 and 398 of the Act could be filed if the Central Government permits the petitioners to that effect.

With the above observations, the original side appeal is dismissed. Anyway, it is made clear that the learned Company Judge need not be influenced by the above observations if and when the abovesaid questions crop up in the main company petition or in any application that may be filed by the appellant attacking the resolutions passed in the above referred to general meeting which took place on 30.10.1990. It is also open to the learned Company Judge to consider in the main company petition or the abovesaid company application whether the abovesaid increase in capital was a bona fide one and whether the extension of the business of the 1st respondent-company to computer is justified, in the light of the attacks if made in that regard by the appellant.