(2013) 04 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5041 of 2013

M/s. Asten Mather Realtors Pvt. Ltd. APPELLANT

Vs

M/s. Mather and Co. Pvt. Ltd. and Another RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:
Companies Act, 1956 — Section 22, 22(1)(i), 22(1)(ii), 23(2)
Constitution of India, 1950 — Article 226, 226(2)

Citation : (2013) 115 CLA 232 : (2013) 2 ILR (Ker) 865 : (2013) 2 KLJ 719 : (2013) 2 KLT 904

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : R. Harikrishnan, Smt. A Sindhulakshmy and Smt. Sindhu Sarah Thomas, for the Appellant; Nalini Chidambaram , Sri Praveen K. Joy and Sri P. Parameswaran Nair, ASG of India, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The correctness and sustainability of Ext. P-14 order passed by the 2nd respondent in a petition filed u/s 22 of the Indian Companies Act, 1956 is under challenge in this writ petition, while, the very maintainability of the writ petition is challenged by the first respondent, by filing I.A. No. 3562 of 2013, praying to have it decided as a preliminary issue. The sequence of events is as follows:

A common factor (the word ''Mather'') appears in the name of the petitioner as well as in the name of the first respondent. The first respondent Company was registered with its registered office in Kochi, Kerala, before the Registrar of Companies, Ernakulam as early as in the 1944. Ext. P-1 is the Memorandum of Association of the first respondent Company. The petitioner Company was registered before the Registrar of Companies, Tamil Nadu, Coimbatore and Ext. P-2 forms the Memorandum of Association and Articles of Association in respect of the petitioner Company. The first respondent has obtained the Certificates of Registration of Trademark u/s 23(2) r/w Rule 62 (1) of the Trademarks Act, 1999, as borne by Exts. P-3 and P-4.

2. On coming across the registration of the petitioner Company with the name as registered and in view of the adverse consequences which results in connection with the nature of the business being pursued by the first respondent Company and similar business sought to be pursued by the petitioner, Ext. P-5 application was filed by the first respondent u/s 22 of the Companies Act, 1956, before the second respondent for rectification of the name of the petitioner Company, who was shown as the respondent therein.

3. On receipt of the application, the second respondent called for the comments of the Registrar of Companies as well as the respondent therein, who is the petitioner herein. A detailed statement of objection was filed from the part of the petitioner herein with reference to the factual situation and the relevant provisions of law. After hearing, the second respondent passed Ext. P-14 order dated 7-2-2013, whereby Ext. P-5 application was allowed and the respondent in the said application was directed to delete the word ''MATHER'' from its name, which in turn is under challenge in this writ petition.

4. When the matter came up for admission before this Court on 22-2-2013, the maintainability of the writ petition was doubted and hence ''Notice on Admission'' was issued on that date, simultaneously directing to maintain status quo with regard to implementation of Ext. P-14 till the next date of posting.

5. On coming to know about the filing of this writ petition, the first respondent entered appearance and filed I.A. 3562 of 2013 raising the question of maintainability. It was accordingly, that the matter was listed before the Bench on 7-3-2013.

6. The parties were heard on the question of maintainability.

7. Mr. Harikrishnan, the learned Counsel for the petitioner submitted that the writ petition is maintainable before this Court, as part of the cause of action had arisen in Kerala. It is stated that the first respondent Company, which had been registered in the State of Kerala, as borne by Ext. P-2, filed Ext. P-5 application u/s 22 of the Companies Act, before the second respondent, which is situated in Chennai, for the reason that the said authority is having jurisdiction in the State of Kerala as well. The second respondent has wide jurisdiction over a vase area and the alleged intrusion or encroachment into the business activities of the first respondent and the adverse circumstances are stated as resulted in Kerala and as such, the cause of action has partly arisen in Kerala as well, submits the learned Counsel.

8. It is pointed out that, by virtue of the mandate under Article 226 of the Constitution of India, this Court has jurisdiction to deal with the matter, even if only a part of the cause of action has arisen in the State. It is further pointed out that the disputed fact with reference to the name ''MATHER'' as it appears as trade name of the Company, is admittedly the name referable to a family in Kochi and that the Director who is representing the petitioner Company is also a member belonging to the said family and hence there cannot be any prohibition

in using the said name in relation to the cause of action. The learned Counsel seeks to rely on two decisions rendered by the Apex Court, i.e. Eastern Coalfields Ltd. and others v. Kalyan Banerjee(1) and Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income Tax and others(2) and submits that the challenge raised against maintainability is thoroughly wrong and misconceived.

9. Mrs. Nalini Chidambaram, the learned Sr. Counsel appearing for the first respondent submits that there is no cause of action for the petitioner to have approached this Court by filing the present writ petition. It is pointed out that the cause of action in respect of a proceeding u/s 22 of the Companies Act has to be with reference to the ''Registration'' of the Company and since the registered office of the petitioner company is at Coimbatore, in Tamil Nadu. Ext. P-34 order passed by the second respondent, if aggrieved, has to be challenged before the High Court of Tamil Nadu at Chennai. It is also pointed out that, no cause of action has arisen in the State of Kerala and as such, no proceedings will lie before this Court. The learned Sr. Counsel also submits that the decisions rendered by the Apex Court, sought to be relied on by the petitioner, stand on a different footing, which cannot have any application to the case in hand.

10. To have a proper analysis and understanding as to the scope of Section 22 of the Companies Act, it is extracted below:

S.22. Rectification of name of company.--(1) If through inadvertence or otherwise, a company, on its first registration or on its registration by a new-name, is registered by a name which,--

(i) in the opinion of the Central Government, is identical with, or too neatly resembles, the name by which a company in existence has been previously registered whether under this Act or any previous companies law, the first -mentioned company, or

(ii) on an application by a registered proprietor of a trademark, is in the opinion of the Central Government identical with, or too nearly resembles. a registered trademark of such proprietor under the Trademarks Act, 1999, such company,--

(a) may, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name, and

(b) shall, if the Central Government so directs within twelve months of its first registration or registration by its new name, as the case may be or within twelve months of the commencement of this Act, whichever is later, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name within a period of three months from the date of the direction or such longer period as the Central Government may think fit to allow.

[provided that no application under clause (ii) made by a registered proprietor of a trademark after five years of coming to notice of registration of the company shall be considered by the Central Government.]

(2) If a company makes default in complying with any direction given under clause (b) of sub-section (1) the company, and every officer who is in default, shall be punishable with fine which may extend to (one thousand rupees) for everyday during which the default continues.

11. The factual position that the petitioner''s company is registered at Coimbatore, in the State of Tamil Nadu, is not disputed and the factual position is more discernible from Ext. P-2 Memorandum and Articles of Association. The scope of the said provision is in respect of a circumstance leading to the first registration of the name of a Company or on its registration by a new name, if in the opinion of the Central Government, it is identical with or too nearly resembles the name of an existing Company as provided u/s 22(1)(i) of the Act Section 22(1)(ii) deals with a similar situation in respect of "Trademark". If such an opinion is rendered by the Central Government, the further course of action/ consequence, is provided by way of sub-clauses (a) and (b) of the said provision, as extracted herein before. On reading the provision meticulously, it is obvious that the root cause for enabling a party to invoke the course/proceedings u/s 22 of the Act is with reference to the Registration of the Company, whether it be the first registration or on its registration by a new name. Registration of the petitioner company is admittedly with the Registrar of the Companies at Coimbatore in Tamil Nadu, having been incorporated on 3-12-2012, as borne by Ext. P-2 Memorandum of Association/Articles of Association. Significance of the place of registration in respect of the petitioner and the first respondent Company has been sought to be highlighted also by the petitioner, with reference to the merits of the case as given in paragraph 10 (at page 9) of the writ petition in the following terms:

***** it is further contended that the petitioner''s Company is having its registered office at Coimbatore in Tamil Nadu and the 1st respondent Company is having registered office at Kochi and its business is in Kerala. Petitioner submits that the 1st respondent never ever had occasion to have its presence in the State of Tamil Nadu. Projects have not been launched and no advertisements are released. Hence it is further contended that the registered Trademark ''MATHER'' with ''M'' logo is not identical with or too nearly resembles with that of the petitioner Company. The 1st respondent Company failed in proving the factum of its identical nature or the resemblances of its registered Trademark with that of the petitioner''s company ''ASTEN MATHER REALTORS PVT. LTD.''

Merely for the reason that the first respondent Company has been registered in Kerala as borne by Ext. P-1 Memorandum/Articles of Association or for the reason that the area of operation of business of the first respondent is in Kerala, does not in any way extend the cause of action with reference to the place of Registration as contemplated u/s 22 of the Act. Even though the petitioner may be right in contending that the second respondent. being the competent authority to deal with matters in respect of a wider area of jurisdiction covering over two or more States, what is more relevant to be adjudicated herein is with regard to the further cause of action, if at all an order passed by the second respondent is to be challenged, i.e., whether it is to be before the Hon''ble High Court of Chennai or before this Court.

12. There cannot be any dispute that while invoking the power under Article 226 of the Constitution of India, the High Court may have the power and jurisdiction to deal with matters relating to territories within which the cause of action, wholly or in part, arises, for the exercise of such power, notwithstanding that the seat of such Government or Authority or the residence of such person is not within its territories.

13. In other words, the question is whether this Court can invoke the power with reference to Article 226(2) of the Constitution, holding that part of the cause of action has arisen in the State of Kerala. The learned Counsel for the petitioner has sought to heavily rely on the decisions in Eastern Coalfields Ltd. and others v. Kalyan Banerjee(1) and in Rajendran Chingaravelu v. R.K. Mishra, Addl. Commissioner of Income Tax(2). In the former case, an employee working in the State of Jharkhand appointed by the Appointing Authority in Jharkhand, was the subject-matter of challenge before the Hon''ble High Court at Calcutta and the proceedings filed on behalf of the employee before the said Court, though was not initially entertained by the learned Single Judge, the Division Bench, on filing Review, allowed the application and it was held that the Court had jurisdiction, thus extending the relief sought for. This in turn was under challenge before the Apex Court at the instance of the Company/employer, whose registered office was situated in the State of West Bengal.

14. After analysing the facts and figures and the relevant provisions of law, the Apex Court observed that, if part of the cause of action had arisen in the State of West Bengal, it could have been held that the High Court of Calcutta was having jurisdiction to deal with the matter. But in view of the factual position that not even a part of the cause of action had arisen in the State of West Bengal, as the Appointing Authority in Jharkhand was competent to have effected appointment--which was made in the State of Jharkhand and that no permission/approval/ sanction from the Head office at West Bengal was necessary for dismissing the employee, no part of the cause of action had arisen in the State of West Bengal and in turn, there was no jurisdiction for the High Court of Calcutta to have assumed jurisdiction merely for the reason that the Head Office/registered office of the employer was situated in the State of West Bengal. The said decision does not help the petitioner in any manner except to the extent that, if only a part of the cause of action had arisen in the State of Kerala, interference can be made by virtue of Article 226(2) of the Constitution of India.

15. Coming to the case in (2010) 1 S.C.C. 457 (cited supra), the appellant therein wanted to purchase some property in Chennai. He withdrew a sum of Rs. 65 lakhs from his Bank after ascertaining that there was no bar in carrying such bulk cash and travelled from Hyderabad to Chennai, carrying the cash along with

a certificate issued by the Bank with regard to the source. The fact that he was carrying cash, was declared in the Air Port at Hyderabad. But on reaching the Chennai Air Port, based on the information passed on by the authorities of the Hyderabad Air Port, the Income Tax Wing at Chennai searched the travellor, seized the amount and detained him for nearly 15 hours and also informed the ''Mass Media'' as to the big haul of Rs. 65 lakhs in cash, that they had seized, making it appear as though the appellant was illegally and clandestinely carrying the cash, they had successfully caught him. Nearly two months later, on completing the investigation, it was found that there was nothing irregular and accordingly the cash was returned, however without any interest. Having suffered much loss and hardships, mentally, physically as well as monetarily, the petitioner moved the High Court of Hyderabad for taking appropriate action against the officers concerned and for compensating the loss. The writ petition was dismissed by the High Court, holding that no part of the cause of action had arisen in Andhra Pradesh and the writ petitioner was directed to approach the High Court of Chennai, which was sought to be challenged by filing SLP before the Apex Court. The scope of the subject-matter was considered and analysed by the Apex Court in detail. The appellant had projected the case in a wider perspective so as to mitigate the hardships of the travelling public at the hands of overenthusiastic officers, as the appellant was put to much hardship, even though he was entitled to carry Rs. 65 lakhs in cash with him, which was supported by a valid certificate issued by the Bankers revealing the source of the amount. It is also revealed from the judgment that the Government had come forward with a well-settled guideline/Circular issued in this regard, prescribing the modalities for search, seizure or such other proceedings so as to reduce the hardships of bona fide travellers; at the same time without compromising with the necessity to have a detailed check in order to meet the requirements of the day, when terrorists and such other objectionable and detrimental activities are becoming rampart, which may shatter the economic equilibrium of the country. The Apex Court observed that, though the appellant was entitled to carry cash, as there was no ban/legal bar, it was equally important to ascertain the purpose for which the cash was being carried, which came within the purview/purpose of search and investigation. The observation and direction in this regard may not be of much significance for the purpose of the present case, as the question involved herein is only with regard to jurisdiction/maintainability. In respect of the question of jurisdiction declined by the High Court of Andhra Pradesh, the Apex Court observed that the search and seizure at the Air Port at Chennai was pursuant to the declaration of baggage given at the Airport of Hyderabad and the instructions passed on by the concerned authorities there to their counterparts in Chennai. It was further observed by the Apex Court that the consequential income tax proceedings initiated against the appellant were also at Hyderabad. Accordingly, considering the genesis of the entire episode of search, seizure and detention, it was held by the Apex Court that a part of the cause of action had arisen at Hyderabad and as such, the High Court of Andhra Pradesh was not correct or justified in having dismissed the writ petition on the ground that no part of the cause of action had arisen within the State of Andhra Pradesh. From the said verdict as well, what follows is that the present writ petition can be entertained by this Court only if part of the cause of action has arisen in the State of Kerala. Coming to the question of cause of action in the instant case, it is to be noted that the root cause is filing of Ext. P-5 application before the second respondent u/s 22 of the Companies Act. As mentioned herein before, the scope of the proceedings u/s 22 is with reference to the factum of first registration of a Company or the registration of a new name of an existing company with name/trade mark, which is identical or almost resembles that of an existing company, as in the opinion of the Central Government. In other words, it is not with reference to the business that is sought to be carried on in a particular State, but with reference to the place of registration of a Company. Admittedly, the cause of action for the first respondent to have preferred Ext. P-5 was pursuant to registration of the petitioner Company at Coimbatore in the State of Tamil Nadu, finally leading to Ext. P-14 order passed by the second respondent. The said cause of action arose exclusively in the State of Tamil Nadu and no cause of action in relation to the registration of the petitioner company, either in part or in whole, has taken place in the State of Kerala. This being the position, this Court is not in a position to invoke the power and jurisdiction under Article 226 of the Constitution of India in respect of a matter which is exclusively within the territorial jurisdiction of the High Court of Tamil Nadu at Chennai and the petitioner, if aggrieved and if so advised, has to pursue the matter before the appropriate Court. The only connection pointed out in the writ petition, to sustain the writ petition before this Court is the residential address of the Director, who is representing the petitioner Company, which is given as residing at Kochi, as shown in the cause title of the writ petition. It is true, that the address of the petitioner Company is also given and that by itself would have been sufficient and there was no need, necessity or occasion for the petitioner to have given the residential address of the Director as it does not have any relevance or significance.

In the above facts and circumstances, this Court finds that the above writ petition is not maintainable before this Court. It is dismissed accordingly.

