

(2014) 04 MAD CK 0191

In the Madras High Court

Case No : O.S.A. No. 359 of 2013 and M.P. Nos. 1 and 2 of 2013

M/s. Laxmi Selvaraaj Tex Private Limited

APPELLANT

Vs

M/s. Selvaraaj Tex Private Limited and K.P.S. Selvaraaj

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Companies Act, 1956 — Section 392, 397, 398, 402, 403

Citation : (2014) 04 MAD CK 0191

Hon'ble Judges : M. Venugopal, J;M. Jaichandren, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This Original Side Appeal has been filed against the order of the learned single Judge, dated 24.10.2013, made in Company Application No. 258 of 2012, in C.P. No. 153 of 2010. The facts in brief are as follows:

1.1) The second respondent and his four brothers are holding the entire shares of the first respondent company. The second respondent, being the elder brother, was the managing director. The other four brothers are directors of the first respondent company. While so, disputes had arisen between the second respondent and his brothers, relating to the management of the affairs of the first respondent company, which is carrying on the business of manufacturing and trading in textiles and in the export of fabrics.

1.2) In order to settle the disputes, amicably, the second respondent and his four brothers had entered into a family agreement, on 23.9.2008. It had been agreed that the assets and liabilities of the first respondent company should be apportioned in the ratio 35:65 percent and that the individual properties of all the brothers and the properties belonging to the first respondent company should be sold to discharge the secured liabilities of the Union Bank of India.

1.3) The Board of the first respondent company had passed a resolution on 14.9.2009 approving the draft scheme of demerger between the first respondent

company and the appellant. The appointed date of demerger had been fixed as 1.4.2009. It had also been decided that all the properties belonging to the family would be divided in the ratio of 35:65 percent. The personal properties of the brothers were also included in the scheme. The scheme of demerger had been approved by the respective boards of the appellant and the first respondent company.

1.4) This court had sanctioned the scheme of demerger, in C.P. Nos. 153 and 154 of 2010, on 8.4.2011. The assets and liabilities of the first respondent company had also been apportioned in the ratio 35:65 percent. However, a spate of litigations had arisen after the scheme of demerger had been sanctioned by this court, by its order, dated 8.4.2011.

1.5) It had been contended that, as per the sanctioned scheme, the spinning and weaving undertaking of the first applicant company, the first respondent in the present appeal, was to be hived off. However, instead of the sanctioned scheme being implemented, the second applicant in the company application, in Company application No. 258 of 2012, the second respondent in the present appeal, had been removed from the post of managing director, on 16.5.2011.

1.6) Even though the second respondent herein had filed a company petition, in C.P. No. 57 of 2011, on the file of the Company Law Board, complaining of oppression and mismanagement, in terms of Sections 397 and 398 of the Companies Act, 1956, no interim order had been issued to stall the process. Thus, the second respondent had been removed from the directorship, based on the resolution of the extraordinary general meeting, held on 5.8.2011. While so, the brothers of the second respondent had filed an application, in Company Application No. 483 of 2011, seeking a direction from this court to direct the second respondent to pay certain amounts of money to the resultant company and to the Union Bank of India. However, the said application had been withdrawn.

1.7) Thereafter, the brothers of the second respondent had moved a petition, in C.P. No. 18 of 2012, on the file of the Company Law Board, under Sections 397, 398, 402 and 403, seeking a declaration declaring that the second respondent had ceased to be a director of the first respondent company. The Company Law Board had passed an interim order, on 29.2.2012, restraining the second respondent in the present appeal from making any representation, as the director of the first respondent company and restraining the second respondent from dealing with the movable and immovable properties in question. However, the said interim order had been set aside by this court, in Company Appeal No. 6 of 2012, on the ground of violation of principles of natural justice. Thereafter, the matter had been remitted to the Company Law Board for fresh consideration.

1.8) While so, the respondents herein had filed a company application, in Company Application No. 258 of 2012, seeking the reliefs, as stated therein, for the allotment of 1,78,494 equity shares in the appellant company, to the share

holders of the first respondent company, in consideration of 16,22,688 shares held by the second respondent, in the first respondent company and to allot 27,500 equity shares of the appellant company to the second respondents wife, in consideration of 2,50,000 shares held by her in the first respondent company. In effect, the respondents had sought the allotment of shares, as per the scheme sanctioned by the order passed by this court, dated 8.4.2011, in C.P. Nos. 153 and 154 of 2010.

2. A counter affidavit had been filed on behalf of the appellant company raising the issue of maintainability of the application and opposing the granting of the relief sought therein. The learned single Judge had found that the following issues had arisen for the consideration of this court:

11. The Managing Director of the respondent filed a detailed counter affidavit, objecting to the very maintainability of the above application and the reliefs sought therein. On the basis of those objections, I found that three issues actually arose for consideration, namely.

(a) whether the respondent is entitled to seek a direction to the applicants to account for all the transactions, after having withdrawn a similar application filed by them in Com. A. No. 483 of 2011;

(b) Whether the second applicant has discharge all liabilities as per the Scheme and accounted for all the transactions; and

(c) whether the second applicant is entitled to the allotment of shares as per the Scheme of Demerger, without first fulfilling his obligations.

3. Paragraphs 26, 27 and 28 of the order of the learned single Judge, dated 24.10.2013, read as follows:

26. It must be pointed out that the scope of the enquiry to be conducted just to find out the validity of the defence set up by the respondent, cannot be the same as the scope of the enquiry that could be conducted in an application filed by the respondent itself. Today, the respondent has not come up with any application. In an application filed by the applicants, the respondent has set up a defence. That defence is found by the Chartered Accountants to be only a ruse or at the most, the outcome of a misunderstanding. In such circumstances, no further enquiry is warranted.

27. Therefore, in the light of the conclusions reached by the Chartered Accountants, the applicants deserve to succeed. I must also point out here that by removing the second applicant from the post of Managing Director and later from the very Directorship of the company, the respondent and the other brothers have virtually taken control of the company. Today, they cannot talk about the inventories or about packing credit. This is one more reason as to why the objections to the audit report cannot be sustained.

28. In view of the above, the application is allowed as prayed for. The respondent

is given a time limit of four weeks to effect allotment of shares. Till it is done, the resolutions removing the second applicant from the Directorship and Managing Directorship cannot be given effect to. The Chartered Accountants appointed by this court shall be paid a remuneration of Rs. 1,00,000/- (Rupees one lakh only) by the first applicant.

4. The main contentions raised on behalf of the learned counsel appearing on behalf of the appellant is that the learned single Judge had erred in granting the reliefs which had not been prayed for by the respondents. The learned single Judge had erred in holding that the removal of the second respondent from the post of managing director of the first respondent company and from the directorship of the company is invalid. The learned single judge had held that the removal of the second respondent from the post of managing director and the directorship of the first respondent company cannot be given effect to till the appellant company effects the allotment of shares, as per the Scheme of Demerger.

5. It has been contended that the Scheme of Demerger is out side the scope of Section 392 of the Companies Act, 1956, and beyond the scope of the application filed on behalf of the respondents. Since the removal of the second respondent is the subject matter of C.P. No. 57 of 2011 and C.P. No. 18 of 2012, pending on the file of the Company Law Board, Chennai, the learned single Judge ought not to have decided the said issue in the application filed on behalf of the respondents.

6. It had also been stated that the removal of the second respondent from the post of managing director of the first respondent company and from the directorship of the said company was not an issue that should have been decided in the said application. The learned single Judge had failed to note that the appellant had discharged a substantial portion of the liabilities, which should have been discharged by the second respondent, as per the sanctioned Scheme of Demerger. Further, the conclusions arrived at by the chartered accountants appointed by the court that the second respondent had fulfilled his obligations, to a substantial extent, is disputed. It had also been submitted that the second respondent had not fulfilled his part of the obligations, as per the approved Scheme of Demerger. While so, the appellant cannot be compelled to effect allotment of shares, as directed by the learned single Judge.

7. It had been further submitted that the learned single Judge had also erred in holding that the resolutions removing the second respondent from the post of managing director and from the directorship of the first respondent company cannot be given effect to until the appellant effects the allotment of shares within the time limit of four weeks granted by the court. It had also been stated that an extent of 1.62 acres of land, situated at Vadipatti, which had been allotted to the appellant, under the sanctioned Scheme of Demerger, had been sold without the knowledge of the appellant and without obtaining the permission of the court. The learned single Judge ought to have noted that the report submitted by the

chartered accountants cannot be relied upon without giving an opportunity of hearing to the appellant.

8. The learned single Judge had also failed to note that, as per the approved Scheme of Demerger and as per the family arrangement, the entire assets and liabilities of the first respondent company and also the various properties existing in the name of the shareholders of the first respondent company should be sold and the sale proceeds should be deposited in the Union Bank of India. However, the said condition had not been complied with by the second respondent.

9. Per contra the learned counsel appearing on behalf of the respondents had submitted that the conditions of the approved Scheme of Demerger had been given effect to the extent possible. However, the appellant has been acting in a manner contrary to the letter and spirit of the sanctioned Scheme of Demerger. It could not be possible for the second respondent to fulfill all his obligations, unless he is permitted to continue in the post of managing director of the first respondent company and by being a director of the said company for implementing the sanctioned Scheme of Demerger, in full measure. In spite of the second respondent fulfilling his obligations to the extent possible, the appellant has been employing delaying tactics in order to scuttle the implementation of the Scheme of Demerger with mala fide motives. Therefore, the present appeal filed by the appellant is liable to be dismissed, as it is devoid of merits. In view of the submissions made by the learned counsels appearing for the parties concerned and in view of the records available, we find that the appellant has not shown sufficient cause or reason for this court to interfere with the impugned order passed by the learned single Judge, dated 24.10.2013. The learned single Judge had given sufficient reasons, while arriving at his conclusion that the removal of the second respondent from the post of managing director and the directorship of the first respondent company should not be given effect to till the allotment of the shares are effected within the time limit specified by the court. The learned single Judge had also relied on the findings of the chartered accountants appointed by the court to arrive at the conclusion that the second respondent had fulfilled his part of the obligations, as per the sanctioned Scheme of Demerger, substantially. Therefore, we find it appropriate to dismiss the present Original Side Appeal, as it is devoid of merits. However, we make it clear that the observations made by the learned single Judge, with regard to the validity of the resolution passed for the removal of the second respondent from the post of managing director and from the directorship of the first respondent company, would not have any influence when the said issue is being decided, in C.P. Nos. 57 of 2011 and 18 of 2012. The Original Side Appeal filed by the appellant stands dismissed, leaving the issue with regard to the validity of the resolution removing the second respondent from the post of managing director and from the directorship of the first respondent company to be decided by the Company Law Board, on merits and in accordance with law, in C.P. Nos. 57 of 2011 and 18 of 2012. No costs. Consequently, connected miscellaneous petitions are closed.