
(2013) 10 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 8034 of 2009 and M.P. No. 1 of 2009

M/s. Leela Scottish Lace Pvt. Ltd.

APPELLANT

Vs

The Chief Controlling Revenue Authority and Inspector
General of Registration, District Registrar (Audit) Additional
Charge (Administration), Pattukottai II Joint Sub-Registrar
and M/s. Leela Lace Holdings Pvt. Ltd.

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2014) 2 MLJ 164 : (2014) WritLR 91

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Aravind P. Datar, for Mr. A.R. Karunakaran, for the Appellant; K.V. Dhanapalan, Additional Government Pleader, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner company and the 4th respondent are constituents of group of companies. During 2004-2005, the petitioner was a subsidiary company of the 4th respondent. The 4th respondent held 96.30 % of the petitioner's total shareholding. It is not in dispute that the petitioner was a subsidiary company of the 4th respondent. In fact, it is also not in dispute that the 4th respondent held more than 90% of the petitioner's total shareholding. The 4th respondent is a leading exporter of garments from India for several decades. During the course of its business, the petitioner company acquired several properties for its offices, godowns and factories and they are located in Tamil Nadu at Ambattur Industrial Estate, Sidco Industrial Complex, Guindy and Amalapattu in Tanjore District.

2. A petition was filed by the said group of companies in Company Application No. 360 of 2005 before the High Court at Bombay under Sections 391 to 394 r/ w. Sections 100 to 103 of the Companies Act for sanction of a Composite Scheme of Arrangement amongst the group companies due to restructure of the business.

3. The Bombay High Court passed an order dated 09.09.2005 granting sanction to the Scheme presented by the said companies under the provisions of the Companies Act. Under the said Scheme, only the garment business of the 4th respondent stood transferred to the petitioner.

4. It is the categorical case of the petitioner that the order of the Bombay High Court pertains only to the sanctioning of a Composite Scheme of Arrangement amongst the companies and there was no liquidation of the petitioner or the 4th respondent.

5. The 4th respondent intended to purchase a property in Pattukottai in Thanjavur District in Tamil Nadu, in order to establish a front office to explore the possibility of setting up an industrial unit in the nearby rural area. The 4th respondent executed an Indenture of Transfer on 19.04.2005 by way of Document No. 432 of 2005 registered in the office of the third respondent in favour of the petitioner, whereby, several properties belonging to the 4th respondent were transferred to the petitioner for a consideration of Rs. 25 Crores including the property that was purchased by 4th respondent on 19.04.2005 at Pattukottai. The 4th respondent had chosen Pattukottai for execution of Indenture of Transfer on 19.04.2005 as it was considered convenient.

6. It is relevant that the Document No. 432 of 2005 that was registered in the office of the 3rd respondent was executed in the non-judicial stamp paper for the value of Rs. 100/- and no other stamp duty was paid.

7. By the aforesaid registered Document No. 432 of 2005, the properties of the 4th respondent were transferred to the petitioner without stamp duty, pursuant to G.O.Ms. No. 1224 Revenue Department, dated 25.04.1964 and the amendments issued thereon.

8. According to G.O.Ms. No. 1224 dated 25.04.1964 and the subsequent amendments, the following criteria should be satisfied for remission of stamp duty:-

a) The registered offices of the transferor and transferee companies should be located in Tamil Nadu.

b) The Transferee company should be a subsidiary company of the Transferor.

c) 90% or more of the share holding in the subsidiary company should be held by the other company and

d) The properties should be located within Tamil Nadu with the Registrar of Companies certifying that the conditions a) to c) are complied with.

9. The third respondent on being satisfied that G.O.Ms. No. 1224 was complied with, registered the Document No. 432 of 2005 on 19.04.2005 as stated above.

10. As on 19.04.2005, the date of execution of the deed, the registered office of the 4th respondent was at Plot No. 22 (SP), Thiru-vi-ka Industrial Estate, Guindy,

Chennai-600032 and the registered office of the petitioner was at Super A8 & 9, Guindy Industrial Estate, Chennai. All the properties that were transferred are located within Tamil Nadu. The Transferee company viz., the petitioner is a subsidiary company of the Transferor viz., the 4th respondent. As stated above, more than 90% of the shareholding in the subsidiary company was held by the 4th respondent. Hence, the document was registered as stated above.

11. If there was no remission of stamp duty as per G.O.Ms. No. 1224, the stamp duty of Rs. 2 crores were to be paid for the value of property at Rs. 25 crores.

12. While so, after about ten months, the third respondent issued a notice in Na.Ka. No. 50/2006 dated 24.02.2006 stating that the stamp duty for registration of the Document No. 432 of 2005 to the value of Rs. 25 crores was Rs. 2 Crores and that the petitioner paid only Rs. 100/- towards stamp duty. Therefore, the petitioner was asked to show cause as to why the balance amount of Rs. 1,99,99,900/- towards stamp duty payable by the petitioner could not be recovered within 15 days.

13. The petitioner sent a reply dated 14.03.2006 stating that no stamp duty need be paid as the transfer was between the holding company and subsidiary company. The petitioner also enclosed various documents in this regard. The petitioner stated that they were willing to give further clarification if it is necessary and also to provide further documents if it is required.

14. While so, the second respondent issued a notice dated 17.05.2006 to appear for personal hearing on 15.06.2006 at Pattukottai. The petitioner sent a reply dated 01.06.2006 seeking to give an opportunity of being heard before passing any order. While so, the second respondent passed the impugned order dated 20.07.2006 directing the petitioner to pay the balance stamp duty of Rs. 1,99,99,900/-.

15. The petitioner as well as the 4th respondent filed an appeal u/s 33 of the Indian Stamp Act before the first respondent in August 2006. The first respondent treated it as review petition u/s 56(1) of the Indian Stamp Act and rejected the appeal against the order of the second respondent on 04.02.2009.

16. This writ petition is filed challenging the order of the first respondent dated 04.02.2009 and for a consequential direction to respondents 1 to 3 to drop all further proceedings.

17. A counter affidavit is filed by the first respondent. A rejoinder to the counter affidavit is filed by the petitioner.

18. Heard both sides.

19. The learned Senior Counsel appearing on behalf of the petitioner has submitted that the show cause notice dated 24.02.2006 issued by the third respondent does not state reasons as to why the third respondent sought to recover the alleged deficit stamp duty of Rs. 1,99,99,900/-. The show cause

notice refers to only Article 23 of the First Schedule to the Indian Stamp Act and Section 38 of the Indian Stamp Act. It is submitted that Article 23 stipulates the rate of stamp duty payable on conveyance. Section 38 is relating to impounding of instrument. It is also submitted that the show cause notice does not state anything about G.O.Ms. No. 1224 and as to how the petitioner is not entitled to remission under the said Government Order.

20. The learned Senior Counsel further submitted that by notice dated 17.05.2006, the second respondent directed the petitioner to appear for personal hearing on 15.06.2006. Subsequent to the said notice, the petitioner has sent a letter dated 01.06.2006 enclosing certain documents and requested to give an opportunity of being heard before passing any order.

21. However, there is no explanation on the side of the petitioner as to why they did not appear on 15.06.2006.

22. The learned Senior Counsel submitted that in the facts and circumstances of the case and particularly when the petitioner produced various records, the second respondent should have given one more opportunity to the petitioner in view of his letter dated 01.06.2006 seeking for opportunity of hearing before passing any order.

23. It is submitted by the learned Senior Counsel that the only reason given by the second respondent was that there was liquidation of transferor company on 01.04.2004 and hence, as on 19.04.2005, the transferor company was in liquidation. It is further submitted that the second respondent misunderstood the order of the Bombay High Court in Company Application No. 360 of 2005 on 09.09.2005 as liquidation of the transferor company though it was only a Scheme of Arrangement. By the Scheme of Arrangement, the garment business of the 4th respondent stood transferred to the petitioner. The aforesaid facts have been categorically stated in paragraph 4 of the affidavit and the same is not disputed by the respondents.

24. The learned Senior Counsel contended that the reference to Sahayanidhi Virudhunagar Ltd. Vs. A.S.R. Subrahmanya Nadar and Others, by the second respondent in his order dated 20.07.2006 has no relevance to the facts of the case and the said case arose in a totally different context and not out of G.O.Ms. No. 1224.

25. The learned Senior Counsel further submitted that when the appeal was filed u/s 33(3) of the Indian Stamp Act, the first respondent treated it as revision u/s 56(1) of the Indian Stamp Act. In any event, he submitted that the first respondent gave two reasons for rejecting the revision petition. The first reason was that the registered office of the petitioner company as well as 4th respondent company were transferred to Mumbai after the registration of document and it was malafide action and also fraud upon Registration Law. The second reason was that the registration of document at Pattukottai was by creation of artificial jurisdiction and therefore, the registration would be

ineffective and it would become invalid.

26. The learned Senior Counsel appearing for the petitioner contended that there is no prohibition for transfer of registered office from Chennai to Mumbai and there is no condition in G.O.Ms. No. 1224 that after transfer of properties from holding company to subsidiary company, the companies should not transfer its registered office. Even there is no condition stipulating that for certain period, they shall not transfer the registered office. He also submitted that except transfer of the registered office, the entire business activities and the properties are only in Tamil Nadu and there is no malafide intention or fraud on the department. He submitted that the registered office was transferred only for the purpose of pursuing Company Application No. 360 of 2005 before the Bombay High Court. He also submitted that if the registered office of two of the group companies are at Chennai and the rest of the registered office of the companies are at Mumbai, the Scheme of Arrangement has to be approved by both the High Court at Chennai and Mumbai. Hence, to avoid multiplicity of proceedings, the registered office was transferred to Mumbai.

27. The learned Senior Counsel submitted that it was not pointed out to the petitioner that the transfer of the registered office would be held against the petitioner in the case of remission of stamp duty under G.O.Ms. No. 1224. Had they made these allegation at any point of time, the petitioner could have explained its stand. The learned Senior Counsel further submitted that the registration of document at Pattukottai or at any place in Tamil Nadu would make no difference since the issue is as to whether the petitioner is entitled to remission of stamp duty under G.O.Ms. No. 1224 or not.

28. In the aforesaid circumstances, the learned Senior Counsel submitted that the order of respondents 1 and 2 could be quashed and the matter may be remanded back to the second respondent to issue fresh show cause notice making specific allegation so that the petitioner could meet the same. He relied on the judgment of the Supreme Court reported in *Surath Chandra Chakrabarty Vs. State of West Bengal*, in this regard.

29. On the other hand, the learned Additional Government Pleader besides basing his submissions on the averments made in the counter affidavit strenuously contended that the petitioner failed to satisfy the conditions stipulated in G.O.Ms. No. 1224 for claiming the remission of stamp duty. The petitioner failed to produce relevant records before the authorities resulting in the passing of the impugned order and therefore, the petitioner could not seek to quash the same. He further submitted that the petitioner was directed to appear on 15.06.2006 for personal hearing but he did not choose to appear on the said date. Therefore, he could not complain that he was not given personal hearing.

30. I have considered the submissions made by the learned counsel on either side.

31. It is relevant to extract the show cause notice dated 24.02.2006:-

32. As rightly contended by the learned Senior Counsel the show cause notice is solely based on Article 23 of the First Schedule of the Indian Stamp Act. It is not in dispute that in the matter of conveyance one should pay the rate as prescribed under the Article. Here it is not the issue. The document was registered based on G.O.Ms. No. 1224. But it is not stated as to how the petitioner is not entitled to remission as provided under G.O.Ms. No. 1224.

33. The petitioner produced various documents along with its explanation dated 14.03.2006 to show that it satisfied the criteria stated in G.O.Ms. No. 1224 and therefore requested to drop the proceedings. But the second respondent passed the impugned order dated 20.07.2006 rejecting the request of the petitioner and directed to pay deficit stamp value of Rs. 1,99,99,900/-. The relevant portion of the order of the second respondent is extracted hereunder:-

34. The only reason given by the second respondent was that the transferor company was in liquidation as on 19.04.2005. The petitioner has categorically pleaded in Paragraph 4 of the affidavit filed in support of the writ petition that the Scheme of Arrangement as ordered by the Bombay High Court in Company Application No. 360 of 2005 is only transferring the garment business of the 4th respondent to the petitioner and it was not really any liquidation proceedings. The petitioner asserted that both companies and group of companies continue to exist.

35. In this context, it is relevant to extract Paragraph 4 of the affidavit which reads as follows:-

4. Due to restructuring of the business of the said group of companies, a Petition was filed by them bearing Company Application No. 360 of 2005 before the Hon"ble High Court of Judicature at Bombay under Sections 391 to 394 read with Section 100 to 103 of the Companies Act for sanction of a Composite Scheme of Arrangement of several of the group of companies. By an order dated 09.09.05 the Hon"ble Bombay High Court granted sanction to the scheme presented by the said companies under the provisions of the Companies Act, 1956. Under the said Scheme, only the garment business of the 4th respondent herein stood transferred to the Petitioner. It is reiterated that the said order pertains only to the sanctioning of a Composite Scheme of Arrangement amongst the companies.

There was no liquidation of the Petitioner or the 4th Respondent vide either the said scheme or by the Hon"ble Bombay High Court's order.

36. The first respondent has not controverted the said fact in the counter affidavit filed by them.

37. As rightly submitted by the learned Senior Counsel, the second respondent solely proceeded on the basis that transferor company was in liquidation and the same is not correct and it is without any basis. The learned Additional Government Pleader is not able to substantiate the statement made by the second respondent in the impugned order.

38. Further the judgment reported in Sahayanidhi Virudhunagar Ltd. Vs. A.S.R. Subrahmanya Nadar and Others, referred to by the second respondent in the impugned order has nothing to do with the issue that is under consideration since the said case did not arise out of G.O.Ms. No. 1224.

39. The impugned order dated 04.02.2009 of the first respondent proceeded on the basis that the petitioner acted with malafide intention and also committed fraud by transferring the registered office from Chennai to Mumbai after registering the deed of transfer on 19.04.2005. The authority also took exception for registering the document at Pattukottai.

40. The relevant passage in the impugned order dated 04.02.2009 is extracted hereunder:-

The above said notification regarding remission of stamp duty is available only in the State of Tamil Nadu. Other States have repeated the same. In order to avail the said remission, the registered office of both the companies transferred from Mumbai and incorporated in Tamil Nadu on 01.03.2005. On completion of registration, the registered offices were once again transferred to Mumbai. Further when most of the properties were situated in Chennai, in order to obtain the jurisdiction, an extent 1.5 cents was purchased on the date of presentation of document in question by way of sale registered at Joint Sub Registrar's Office-II, Pattukottai in and by Doct. No. 431 of 2005 and the document in question was presented before the said Sub Registrar. In order to avail the remission, the registered offices were transferred to Tamil Nadu. This seems to be a misuse of the process of law. The sole aim seems to be to avail the stamp duty concession available in the State of Tamil Nadu. Moreover, with a malafide intention, the company has been moved into the State of Tamil Nadu. Secondly to create jurisdiction a very small extent of land has been purchased in Pattukottai, District Registrar's jurisdiction. Both these activities are fraud upon Registration Law. In many of the cases apex Court and other courts have held that artificial creation of jurisdiction to register a document is fraud upon Registration Law and such registration obtained by fraud is invalid.

It was held in AIR 1936 91 (Privy Council) , the privy council has held that creation of artificial jurisdiction will make the registration ineffective and the deed invalid. Other cases are mentioned in Standing Order 241 (k), (l), (m), (n), (o). The appellants have acted with a malafide intention at the outset and when the registration of the document itself has been made questionable, the appeal has no merit of consideration.

41. The petitioner cannot be found fault with for registering the document at Pattukottai since the issue is only relating as to whether the petitioner is entitled to stamp remission under G.O.Ms. No. 1224. The petitioner is entitled to stamp remission wherever the document is registered within Tamil Nadu if he satisfies the conditions stipulated in G.O.Ms. No. 1224. Therefore, the first respondent is not correct in taking exception for registering the document at Pattukottai.

42. The other reasons stated by the first respondent in the impugned order are that the petitioner acted malafide and also characterised his action as fraud on the Registration Department in transferring the registered office to Mumbai after the transfer. Firstly, as rightly contended by the learned Senior Counsel, the objection regarding transfer of registered office to Mumbai was not put on notice to the petitioner. As stated by the learned Senior Counsel, there is no prohibition in G.O.Ms. No. 1224 for transferring the registered office. If the said objection was put on notice to the petitioner before the impugned order was passed, the petitioner could have explained the same to the first respondent.

43. Therefore, the aforesaid facts make it clear that at every stage new reasons were given. Firstly, the show cause notice dated 24.02.2006 simply states about Article 23 of the First Schedule to Indian Stamp Act and there is nothing about liquidation of transferor company or taking exception to the transfer of registered office. Secondly, in the order dated 20.07.2006, the second respondent proceeded as if the transferor company was under liquidation and therefore, passed an order directing the petitioner to pay the deficit stamp duty. The said fact was also not put on notice. Thirdly, the impugned order of the first respondent dated 04.02.2009 is solely based on the transfer of registered office of the petitioner and the 4th respondent after registration. The same was also not put on notice to the petitioner before passing adverse order. Had these allegations made known to the petitioner and it was asked to explain on those allegations, the petitioner could have submitted its explanation. Thereafter, it is left to the authorities to decide one way or other. But the allegations itself were not made known to the petitioner. Hence, as rightly contended by the learned Senior Counsel for the petitioner, the same is violative of principles of natural justice.

44. At this juncture, I am of the view that the judgment cited by the learned Senior Counsel reported in 1971 SCC 752 : (1972) 86 L.W. 8 S.N. [Surath Chandra Chakravathy v. The State of W.B.] is on the point. In that case, the appellant therein was an Assistant Director of Fire Services and Regional Officer, Calcutta Industrial Area. He was appointed on 12.07.1949. On 19.07.1949 a charge memo was issued containing serious allegations including the allegation that he took an active part in a conspiracy to implicate the Director of Fire Service in a false case by planting firearms in his office and to injure him by planting a time bomb in his car when he might be going on inspection. Ultimately he was removed from service. The appellant filed a suit in 1952 before the Calcutta High Court questioning the removal. The Trial Court granted the relief by deciding various issues in his favour in the suit. The respondent filed an appeal before the Division Bench. The Division Bench reversed the judgment of the learned Single Judge. The appellant approached the Apex Court. The Apex Court has held that the appellant was not given the statement of allegations along with the charge sheet so that he could meet the charges. The Apex Court held that charges should be specifically made so that the person facing charges could face the same.

45. The following passages of the said judgment in this regard is extracted hereunder:-

4...The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

... Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges.

...The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him. In this situation, for the above reason alone, the trial Judge was fully justified in decreeing the suit.

46. In my view, the said judgment of the Apex Court referred to above squarely applies to the present case. The show cause notice issued to the petitioner does not state about liquidation or about the alleged malafide transfer of registered office.

47. In these circumstances, I am of the view that the impugned order is liable to be set aside. Accordingly, it is set aside and the matter is remanded back to the second respondent to issue fresh show cause notice, making it clear about the allegations made against the petitioner for recovery of deficit stamp duty relating to the registration of Document No. 432 of 2005 within a period of 12 weeks

from the date of receipt of a copy of this order. On receipt of such show cause notice, the petitioner shall give his explanation enclosing the documents that it relies on. The second respondent shall pass final order within a period of three months thereafter, after giving an opportunity of personal hearing, if the petitioner so desires. The writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.