(2008) 06 KAR CK 0099

In the Karnataka High Court

Case No : Company Appeal No. 13 of 2007

Mukkadan Marine Exports P. Ltd. and Another APPELLANT

Vs

Thomas Chacko RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:
Companies Act, 1956 — Section 108, 111, 111 (5)

Citation : (2009) 150 CompCas 638 : (2010) 97 SCL 321

Hon'ble Judges : V. Gopala Gowda, J;Ravi Malimath, J

Bench : Division Bench

Advocate : G. Sarangan, for Vani H, for the Appellant; Lawyer Inc., for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The correctness of the order dated October 15, 2007, passed in C. P. Nos. 793 and 794 of 2006 by the Company Law Board, Southern Region Bench, Chennai, in exercise of its power u/s 111 of the Companies Act, 1956 (hereinafter in short called as "the Act") directing the appellants herein to register the transmission of shares in the name of the respondent herein within 30 days after publication of notice by the respondent by recording its reasons is questioned in this appeal by the appellants urging various grounds.

2. Learned senior counsel Sri G. Sarangan on behalf of the appellants submits that the order is not a speaking order and the appellants have not passed an order of rejection of the claim of the respondent for transfer of shares from the name of his deceased father to his name as his claim is not in conformity with Section 108 of the Companies Act read with Regulation 26 of the Regulations. Therefore, he has urged that the order of the Company Law Board is not sustainable in law. Further, learned senior counsel submits that the Will executed by the deceased K. C. Thomas, dated May 21, 1988, is the last Will of him and testament does not speak of transfer of his shares in the first appellant-company in favour of his legal representatives including the respondent herein. Therefore,

he contends that the respondents are required to get the succession certificate by initiating appropriate legal proceedings before the jurisdictional civil court and produce the same before the first appellant to register him as shareholder of the shares of his deceased father in the relevant register. In the absence of the same direction issued by the Company Law Board to the appellants is not legal and valid. Therefore, the order impugned is unsustainable in law and is liable to be set aside.

3. Learned Counsel for the respondent has sought to justify the impugned order passed by the Company Law Board placing strong reliance upon the provisions of Section 111(5) of the Act after examining the claim of the respondent as the same is in conformity with Section 108 of the Act read with Regulation 26 of the Regulations. The first appellant is a company to which the second appellant is the managing director, who is none other than the brother of the deceased K. C. Thomas and therefore he is aware of the fact that the respondent is the son of the deceased K. C. Thomas. Further, the company has not disputed or rejected the claim of the petitioner on the ground that the respondent claimant is not the son of the deceased Thomas whose shares in the company has sought transfer to his name and therefore he is not entitled for transfer of the shares in the first appellant''s-company, in his name. Therefore, the same does not call for our interference in exercise of our appellate jurisdiction and power.

4. The Company Law Board has taken care of the interest of the company and third parties who may prefer claim in respect of the shares in question by giving a direction to it to transfer the shares of the deceased Thomas to the name of the respondent after publishing notice in the daily local newspaper, where the first appellant-company is situated for the reason that the share certificate is not available and produced by the respondent before the company and Board. In the absence of the same, the respondent was willing to execute an indemnity bond that has been directed by the Company Law Board. Therefore, neither the company nor any person will be affected by the order impugned in the appeal.

5. We have carefully examined the relevant provisions of the Act, viz., Sections 111(5) and 108 read with Regulation 26 of the Regulations with reference to the reasons assigned by the Company Law Board in the impugned order. No doubt, the order is a cryptic one, the claim is examined by the Company Law Board and considered the same and passed the order. The said order is in conformity with the provisions of Section 108 of the Act read with Regulation 26 particularly having regard to the undisputed fact that the respondent is the son of the deceased K. C. Thomas, further the copy of the Will produced before the Company Law Board clearly states that the properties of the deceased K. C. Thomas could be partitioned into three parts between the wife, son and daughter. The shares of Thomas are the property of the deceased K. C. Thomas. Therefore, the Will certainly refers to the shares also. There is no specific mention of the same. Apart from that, the mother and the sister of the respondent have given affidavit to the company categorically stating that they

have relinquished their rights in respect of the shares and expressed their willingness to transfer the shares of the deceased Thomas in the company in the name of the respondent and also executed indemnity bond in favour of the company. Therefore, the interest of the mother and the sister are taken care of by the Company Law Board and direction issued to the company to transfer the shares of the deceased Thomas in the name of the respondent is legal for the reasons that the interest of the company and also any other person is taken care of by directing the respondent to see that public notice is published in the local newspaper where the first appellate company is situated inviting either objections or claim from interested persons in respect of the shares sought to be transferred in his name. The same has been published inviting the objections, if any, to the claims in respect of transfer of shares in question by the company. It is stated by the respondent''s counsel that the public notice was published on December 11, 2007 and so far, neither objections nor counter claim is received from any interested person. In the absence of the same, direction was issued to the respondent by the Board to execute the indemnity bond in the company''s favour to transfer the shares in his name. We are in respectful agreement with the order passed by the Company Law Board and the appeal filed by the appellants does not call for our interference. Hence, the appeal is devoid of merits and is accordingly dismissed.

