

(1995) 03 MAD CK 0049

In the Madras High Court

Case No : Original Application No. 420 of 1995 in C.S. No. 561 of 1995

Naga Brahma Trust

APPELLANT

Vs

Translanka Air Travels P. Ltd.

RESPONDENT

Date of Decision : 13-03-1995

Acts Referred:

Companies Act, 1956 — Section 34

Citation : (1997) 88 CompCas 136 : (1996) 2 LW 628

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.—The respondent became a tenant in the petition-mentioned property on a rent of Rs. 2 lakhs per month. A lease deed was

entered into between the applicant and the respondent on May 2, 1994, and it was registered. Clause 1(f) of the lease deed prohibits the

respondent from subletting without the written consent of the applicant. The respondent who has a set-back in its business, negotiated with Bank of

Ceylon to take on lease the demised premises directly from the applicant. The respondent, to overcome clause 1(f) of the lease deed, wants to

clandestinely transfer its major shares retaining a negligible share to the said bank and also Dubai National Air Travels and Ajmer Travels. It would

amount to subletting. The cheques issued were dishonoured for want of funds. Hence, the applicant has filed the suit and the present application is

to restrain the respondent from entering into any transaction for subletting the premises for transferring its major shares for allowing the demised

premises to be occupied by any person in breach of covenants of the lease deed dated May 2, 1994.

2. The respondents in their counter contend briefly as follows : The allegation

that the respondent company negotiated with the Bank of Ceylon is not true. The respondent company is a private limited company incorporated under the Companies Act. In order to streamline the administration of the company, it is inviting more shares from various persons. Section 34 of the Companies Act, 1956, deals with the effect of registration of the memorandum of the company. According to section 34, the members shall be a body corporate having a perpetual succession and common seal. The respondent company continues to be in existence until it is wound up. It is a juristic person distinct from the shareholders. The change in the shareholding pattern will not affect the ownership of the leasehold right. The transferring or inviting shares from others cannot be treated as transferring of the leasehold right. So long as the respondent company is in existence, transfer of the shares or inviting shares would not amount to subletting. Injunction if granted would amount to preventing the defendant company from transferring its share which is not permissible. The mandatory provisions of Order 39, rules 1 and 2 of the Code of Civil Procedure, 1908, have not been satisfied and the application is, therefore, liable to be dismissed.

3. In the reply statement, the applicant contends as follows : Subletting would mean parting with possession by the existing shareholders and directors to a new set of shareholders or directors. Section 34 of the Companies Act cannot be brought as a defence when the courts have recognised lifting corporate veil and going to the true meaning of a particular transaction. The board of directors and shareholders cannot circumvent the agreement. The induction of new shareholders and the new management taking over would amount to dividing the contractual obligation arising under the lease deed. The application may, therefore, be ordered.

4. The suit has been filed by the plaintiff for permanent injunction restraining the defendant and their men from entering into any transaction for subletting the demised premises by transferring his major shares allowing the demised premises to be occupied by third parties in breach of covenant of the lease deed dated May 2, 1994, entered into between the plaintiff and the defendant in respect of the suit property. There was an agreement of lease dated May 2, 1995, between the plaintiff and the defendant

and clause 1(f) of the same prohibits the lessee from subletting wholly or in part, the demised premises apart from prohibiting the lessee from making any permanent additions or alterations without the written consent of the lessor. The applicant contends that there is a set-back in the business of the defendant and the defendant had negotiated with Bank of Ceylon to take the suit property on lease directly from the applicant in order to get over the set-back. The same is denied by the respondent. The applicant further contends that they came to know that the respondent has been negotiating with Dubai National Air Travels and Ajmer Travels to sublet the premises and in order to get over clause (1)(f) of the lease deed, wants to transfer his major shares clandestinely in favour of the above two companies detaining negligible share and it would amount to subletting.

5. Learned counsel appearing for the applicant would argue that the property having been leased in favour of the defendant, a private limited company, transferring major shares in favour of third parties by the defendant would amount to subletting and it has to be restrained since what the applicant attempts to do is under the corporate veil. Learned counsel appearing for the respondent would on the other hand argue that inviting others to purchase shares or selling the shares retained by the company, is a right of the company registered under the Companies Act and it cannot be stated that under the corporate veil, the respondent is trying to sublet the premises to Ajmer Travels and Dubai National Air Travels to get over the condition in the lease deed. Learned counsel appearing for the applicant has drawn the attention of this court to the provisions of section 34 of the Companies Act and would argue that where two persons who were the joint owners of leasehold rights in land attempted to circumvent an injunction against alienation of certain rights by transferring the leasehold rights to a private limited company (of which they alone were the shareholders and directors) which alienated the rights, the court held that the corporate veil was being used as a cloak to wilfully disobey the court's orders. He would also refer to a decision reported in *Jyoti Limited v. Kanwaljit Kaur Bhasin* [1987] 62 Comp Cas 626 wherein, the Delhi High Court has held that the corporate veil was being blatantly used as a cloak to wilfully disobey the orders of the court for an improper

purpose. In the above decision, two ladies, who have formed a private company in which one was the chairman and other was managing director

and transferred a property when there was an agreement of sale entered by them with the plaintiff in existence and when the plaintiff filed the suit

and obtained injunction, has chosen to contend that the company had entered into the agreement. It was in those circumstances, the Delhi High

Court has held that the corporate veil was being blatantly used as a cloak to wilfully disobey the orders of the court issued against the two ladies

from transferring the property. The facts of the above case cannot be said to have any bearing to the facts in the present case. There was no

transfer of shares involved in the reported case. Two individuals against whom injunction has been granted, have resisted the same by contending

that the act said to have been committed by them individually was the act of the company of which one was the chairman and the other was the

managing director. It was an attempt made by them clandestinely to escape. In the present case, there is no such clandestine act on behalf of the

defendant. Even assuming that they have called for subscription for the shares or sale of the shares held by them, it cannot be considered as an act

done by them under the veil of the corporate entity. As regards the true legal position of a company or corporate body and the circumstances

under which its entity as a corporate body will be ignored and the corporate veil lifted, so that the individual shareholder may be treated liable for

its acts, the Supreme Court (see *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar* [1964] 34 Comp Cas 458, 468) has expressed itself

as follows :

The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in

doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely

separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its

members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability

of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the

corporation.

6. In this connection, I wish to refer to the Guide to the Companies Act by Ramaiya, page 285, where the learned author, under the heading

Company distinct from its shareholders""', has observed as follows :

A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the

company decides to divide them... The company is a juristic person and is distinct from the shareholders. The dividend is a share in the profits

declared by the company as liable to be distributed among the shareholders... There is nothing in the Indian law to warrant the assumption that a

shareholder who buys shares, buys any interest in the property of the company which is juristic person entirely distinct from the shareholders. The

true position of a shareholder is that on buying shares he becomes entitled to participate in the profits of the company in which he holds the shares,

if and when the company declares, subject to the articles of association, that the profits or any portion thereof should be distributed by way of

dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after

winding up. *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, .

7. From the above, we can safely come to the conclusion that the property of a company cannot be considered to be the property of members.

We can even refer to the fact that when the majority of the shareholders of a company have migrated to India, it was held that it does not and

cannot change the nationality and domicile of the company as observed by the learned author Ramaiya in his book at page 287. When the majority

of the shareholders have migrated to India and yet it was held that the said fact does not change the nationality and domicile of the company,

bringing more shareholders to the defendant company or selling a portion of the shares retained/owned by it to third parties by the defendant

company cannot be considered as a change of the company itself. Therefore, simply because the applicant contends that the defendant is trying to

sell the shares owned by it to third parties particularly the two travel companies mentioned in the affidavit, it cannot be stated that under the

corporate veil, the respondent is subletting the premises to the two companies. In this connection, I also wish to refer to the decision reported in

Madras Bangalore Transport Co. (West) Vs. Inder Singh and Others, , wherein the Supreme Court has held that when a limited company formed with partners of existing tenant firm as directors, both the firm and the company operating from the same place, each acting as agent of the other, actually it was only an alter ego or corporate reflection of the tenant-firm and the two were one for all practical purposes having substantial identity and hence there was no subletting. In the present case, there is no question of forming a second company by the respondent even if the allegations of the applicant are true. The attempt of the respondent to invite applications and allot more shares or attempts of the respondent to sell a portion of the shares owned by it, cannot be considered as an act under the corporate veil committed by the respondent to sublet the premises. In that view, I am of opinion that the applicant cannot be considered to have shown either prima facie case or balance of convenience or relative hardship, in order to grant injunction.

8. In the result, the application is dismissed.