

(2013) 10 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 17495 of 2011

Newage Fire Fighting Company Limited

APPELLANT

Vs

Newage Fire Protection Engineers Private Limited and 2
Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 1 GLH 629

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : S.N. Soparkar with Mr. Amar N. Bhatt, for the Appellant; Hriday Buch for the Respondent No. 2, Mr. Y.V. Vaghela for the Respondent No. 3 and Mrs. Sangeeta N. Pahwa for the Respondent No. 1, for the Respondent

Judgement

Rajesh H. Shukla, J.—The present petition has been filed by the petitioner under Articles 14, 19(1)(g), 226 and 227 of the Constitution of India as well as under Sections 20 and 22 of the Companies Act, 1956 on the grounds stated in the memo of petition for the following prayers:- (A) Issue an appropriate writ and quash and set aside the Order dated 30/08/2011 at Annexure "A" hereto passed by the respondent No. 2 Regional Director(North West Region) in the Application No. RD((NWR)/Sec. 22/7/2010-11/2580.

(B) During the pendency and final disposal of the this petition, stay the implementation, execution and operation of the Order dated 30/08/2011 at Annexure "A" hereto passed by the respondent No. 2 Regional Director(North-West Region) in the Application No. RD((NWR)/Sec. 22/7/2010-11/2580.

(C) Award cost of this petition.

(D) Grant such other and further reliefs as may be deemed just and expedient.

Heard learned senior counsel, Shri S.N. Soparkar appearing with learned advocate, Shri Amar N. Bhatt for the petitioner, learned counsel, Shri Navin Pahwa for the respondent No. 1 and learned counsel, Shri Hriday such for the

respondent No. 2. 2. Learned senior counsel, Shri Soparkar referred to the papers and pointedly referred to the provisions of Section 22 of the Companies Act. He emphasized the provisions of Section 22(1)(ii)(b) of the Act and submitted that such powers could be exercised within a period of twelve months only directing the change of name. He submitted the order passed is contrary to the provisions of Section 22 of the Companies Act. Further, learned senior counsel, Shri Soparkar submitted that the intention of the Legislature has to be considered and what has been provided cannot be added or substituted when there is no provision for entertaining the application beyond time limit prescribed by the statute like the Companies Act. He further submitted that law of limitation does not apply and, therefore, there is no question of any condonation of delay. Learned senior counsel, Shri Soparkar submitted that when the special statute has provided specific limit, same cannot be extended and the authority will not have any jurisdiction to exercise such power after the period prescribed in the statute is over. In support of his submissions, he referred to and relied upon the judgment of the Hon'ble Apex Court in case of Raj Kumar Dey and Others Vs. Tarapada Dey and Others, and submitted that it was with regard to the registration of arbitration award providing for a period of limitation and same contention has been considered. He has also referred to and relied upon the judgment of the Hon'ble Apex Court in case of Janani Sahoo Vs. Chandra Sekhar Mohanty, and submitted that in this judgment, the observation has been made referring to the provisions of the Criminal Procedure Code. He emphasized 1 that underlying object of providing time limit is that option or remedy has to be exercised within a stipulated period. He emphasized the observation, "But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at "any time" for "any crime" irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offences." Similarly learned senior counsel, Shri Soparkar referred to the judgment of the Full Bench of the High Court in case of Memon Ibrahim Haji Latif Sukhediwala Vs. Officer on Special Duty (Land Acquisition) and Another, and submitted that as observed that the Limitation Act will not have any application as Collector was not the authority within the meaning of the Act. Similarly, learned senior counsel, Shri Soparkar submitted that the respondent authority cannot be said to be a court under the Act and, therefore, the Limitation Act will not have any application as it could have an application only in respect of the proceeding before the Court. Learned senior counsel, Shri Soparkar also referred to the background of the facts and submitted that the respondent authorities have failed to consider the relevant aspects like the guidelines issued by the department of Company Affairs. He emphasized that the authority has failed to appreciate that there are existing companies with similar names. He emphasized that there are other companies with similar names. Learned senior counsel, Shri Soparkar therefore submitted that it ought to have been appreciated that the petitioner-company was originally incorporated in 1986 with the name "Neminath Trading Company Ltd." and in the year 2010, name was changed to "Neminath Softech Ltd." It was submitted that

it has also not been appreciated that the petitioner is owned, managed and control by the partners of the said "Newage Industries" which has incorporated much earlier and after some of the partners retired, the promoters of the petitioner have continued to be a partners and, therefore, the application made by the respondent No. 1 is without any substance. He further submitted that the reply dated 25.08.2010 has been filed pointing out this aspect, which has not been considered. Learned senior counsel, Shri Soparkar therefore submitted that the applications have been made by the petitioner to the Registrar of Trademark for registering the trademark "Newage", which has not been considered and, therefore, the present petition has been filed.

3. Learned senior counsel, Shri Soparkar has also referred to and relied upon the judgment of the Hon"ble Andhra Pradesh High Court in case of Sidhvi Constructions (India) (P.) Ltd. Vs. Registrar of Companies and Others, as well as the judgment of the Hon"ble Calcutta High Court in case of Sen and Pandit Electronics (P) Ltd. Vs. Union of India and Others, . He has also referred to and relied upon the judgment of the Hon"ble Apex Court in case of L.K. Verma Vs. H.M.T. Ltd. and Another, .

4. Learned counsel, Shri Pahwa appearing for the respondent No. 1 submitted that it is required to be considered whether the provision of Sections 22(1)(ii)(b) of the Act is mandatory or directory in nature. Learned counsel, Shri Pahwa submitted that the Court has to interpret the provision in harmonious way. He submitted that when there is no fault on the part of the litigant, the interpretation which is sought to be canvassed would be absurd. He submitted that therefore the respondent No. 2-Regional Director does not decide the application within the time stipulated in the statute and when there is no objection also raised by other side (petitioner), can it be now argued that the impugned order is beyond the prescribed period and, therefore, it is null and void. Learned counsel, Shri Pahwa submitted that if the objection regarding the limitation is not raised initially before the authority then, it cannot be raised in a subsequent proceeding before the High Court. In support of his submission, he has also referred to and relied upon the judgment delivered by the Hon"ble Division Bench of this High Court in Special Civil Application No. 5 751 of 2008 as well as judgment in case of Union of India (UOI) and Others Vs. Jayesh Dhakte and pointedly emphasized the observations made in para No. 9, "Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5 ." He has also referred to and relied upon the judgment of the Hon"ble Apex Court in case of Zolba Vs. Keshao and Others, and submitted that as observed in this judgment while interpreting the provisions of the Code of Civil Procedure, it has been observed that the provision of enactment may not be construed in a manner which would leave the court helpless to meet with the situations. He therefore submitted that the provisions were held to be directory and not the mandatory and, therefore, the submissions canvassed on behalf of the petitioner may not be accepted.

5. Learned counsel, Shri Pahwa referred to the papers of petition and affidavit-in-reply filed by the respondent No. 1 as well as the respondent No. 2. Learned counsel, Shri Pahwa submitted that as stated in the affidavit-in-reply on behalf of the respondent No. 1, when the application has been made even in prescribed period as laid down in Section 22(1)(ii) of the Act, any procedural delay on the part of the Regional Director/authority has to be excluded so as to give true meaning and intent to the provision of Section 22(1)(ii) of the Act. He further submitted that harmonious construction is required to be made while interpreting the provision, which would further the intention of the Legislature of remedying injustice caused to the aggrieved party. He emphasized that if the interpretation as canvased is accepted, it will frustrate the very purpose of providing any such remedy. Learned counsel, Shri Pahwa again reiterated and stated at the cost of repetition that the petitioner did not raise any defence during the pendency of the proceeding before the Regional Director and, therefore, it is too late now to raise any such objection by way of such petition. He further submitted that it is deemed to have been waived and, therefore, the present petition may not be entertained.

6. Learned counsel, Shri Pahwa also referred to Sections 29 as well as 5 of the Limitation Act and submitted that it would have an application.

7. Learned counsel, Shri Pahwa referred to the factual background as stated in the petition and the reply and submitted that the petitioner was originally registered as Neminath Trading Co. Ltd., which changed the name in the year 2010 as "Neminath Softech Ltd.". He submitted that name as "Neminath Trading Co. Ltd." was changed to "Neminath Softech Ltd." In the year 2010 by making an application, whereas the respondent-company had already applied immediately for the cancellation of such change of name and the Regional Director consumed some time in deciding and ultimately after issuing show cause notice and following procedure passed impugned order, which cannot be interpreted in the manner to the disadvantage of the respondent No. 1. He again submitted that the reply was filed in August, 2010 and, thereafter, rejoinder was also filed in June, 2011. Learned counsel, Shri Pahwa submitted that hearing of his objection took place in August, 2011 and no objection about this period of limitation of 12 months was raised and, therefore, it is deemed to have been waived and cannot be now permitted to be raised. Learned counsel, Shri Pahwa referred to and relied upon the judgment of the Hon"ble Apex Court in case of Mangu Ram Vs. Municipal Corporation of Delhi, and pointedly referred to the observations made in para No. 7 to support his submission on the aspect of Limitation Act and emphasized the observation, "The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-sec. (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court

would have the power to entertain it.

8. Learned counsel, Shri such appearing for the respondent Nos. 2 and 3 submitted that provisions of the Companies Act are required to be considered. He submitted that primary object of the Act is to see that no company with identical name is registered. He emphasized that keeping in mind primary object behind the provisions of the Company Act that if the application is made for removal of the name of the company which is identical, no grievance could be made on the grounds of limitation. He submitted that the judgment of the Hon"ble Division Bench of the High Court of Gujarat in case of Corporation Bank (supra) has in similar circumstances considered the applicability of Limitation Act to the proceeding before the court or the tribunal and has observed that it would have an application and, therefore, said judgment is binding. He has also referred to the affidavit filed on behalf of the respondent No. 2. He therefore submitted that the present petition may not be entertained.

9. In rejoinder, learned senior counsel, Shri Soparkar referred to and relied upon the judgment of this High Court in case of Corporation Bank Vs. Jayshreeben and Others, and submitted that it was qua the interim orders and would not have any application. Learned senior counsel, Shri Soparkar also referred to and relied upon the judgment of the Hon"ble Apex Court in case of Atma Ram Mittal Vs. Ishwar Singh Punia, and referred to the observations made in para No. 8 and submitted that if the contention that the delay by the authority in deciding the application may not cause any prejudice is considered on the principle that no man should be suffer because of the fault of the court or delay in procedure. He emphasized that what has to be considered is the intention and meaning of words used by the Parliament has to be considered. He also submitted that it has to be read in context with the provisions of Law. Similarly, learned senior counsel, Shri Soparkar referred to and relied upon the judgment of the Hon"ble Apex Court in case of Raj Kumar Dev (supra). He has also referred to and relied upon the judgment in case of Corporation Bank (supra) and submitted that as observed, it will be applicable to the proceeding before the court and not to the proceeding before the authority. Learned senior counsel, Shri Soparkar strenuously submitted that there is an inherent defect in the order inasmuch as when the special statute provides for the outer limit or time limit, the authority or jurisdiction will come to an end on expiry of the period. He submitted that any exercise of power beyond such time limit prescribed would be nullity and the period of limitation cannot be extended for exercise of such powers. He has also referred to and relied upon the judgment of the Full Bench of the High Court of Gujarat reported in case of Memon Ibrahim Haji Latif Sukhediwala Vs. Officer on Special Duty (Land Acquisition) and Another, . Similarly, he referred to and relied upon the judgment of the High Court of Gujarat in case of Sushilaben Rameschandra Doshi and Others Vs. Competent Officer and Addl. Collector, Urban Land Ceiling, Rajkot, and pointedly emphasized the observations made in para No. 6 to support his submission about the limitation. He emphasized that though the statute may have vested the Court with certain powers or discretion,

such power or discretion may not be available to the authority as it is not a court. He again emphasized the judgment of the Full Bench of the High Court of Gujarat in case of Menon Ibrahim Haji Latif Sukhediwala (supra) and submitted that as observed, the procedure before the Collector were held as not before the Court and, therefore, the provisions of Limitation Act were not applicable. He emphasized that it has been specifically observed that Limitation Act, 1963 is applied only to the proceeding in the court and not to the appeals or application before the bodies other than courts. Learned senior counsel, Shri Soparkar referred to and relied upon the judgment of the Hon''ble Apex Court in case of Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, and emphasized the observations made in para No. 11. He has also referred to and relied upon the judgment of the Hon''ble Apex Court in case of Union of India Vs. M/s Popular Construction Co., and submitted that assuming that Limitation Act is applicable even then, it would not make any difference inasmuch as word "Newage" is generic name and nothing special about word "Newage". He emphasized that there are about 115 other companies with similar wording and, therefore, there is no justification for the impugned order preventing the use of word "Newage" and, therefore, the impugned order may be quashed and set aside.

10. In view of the rival submissions, it is required to be considered whether the present petition can be entertained or not.

11. Before considering and appreciating the rival submissions, which have been made at length, few relevant facts and aspects are required to be mentioned. Admittedly, the application has been made by the petitioner with regard to change of name to "Newage" and the objection has been raised within a period prescribed in Section 22 of the Companies Act and it was kept for hearing as stated in detail by learned counsel, Shri Pahwa. Further it is not in dispute that the proceeding before the respondent No. 2-authority consumed some time and no objection has been raised referring to the aspect of limitation referred to in Section 22(1)(ii)(b) of the Act. Therefore main submissions which have been emphasized by learned senior counsel, Shri Soparkar have two separate aspects such as

(1) that the proceeding before the respondent No. 2 cannot be said to be a proceeding before the "court" and, therefore, Limitation Act will not be applicable; and

(2) when the statute provides for the period of limitation, it will not get extended, particularly, the Limitation Act is not applicable.

Therefore moot question is whether in a proceeding before the respondent No. 2 where the Limitation Act would be attracted has to be considered. There is no doubt that the proceeding before the respondent No. 2 cannot be said to be a proceeding before the court. At the same time, these proceedings were in the nature of quasi-judicial proceeding and even assuming that it was an

administrative function, still the respondent No. 2 was required to consider the objections raised and the proceeding consumed time. Therefore the respondent No. 1 having exercised and pursued the remedy prescribed in the statute within a period of limitation as stated in the statute itself, can be made to suffer because there was a time consumed in the proceeding before the respondent no. 2-authority. It is in this background, now the provisions have to be considered and the doctrine of *actus curiae neminem gravabit* will have a full application which makes it clear that no man should suffer because of the delay by the courts. A useful reference can also be made to the judgment of the judgment of the Hon''ble Apex Court in case of *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, wherein the Hon''ble Apex Court referring to the doctrine of *actus curiae neminem gravabit* and act of court shall prejudice no man has observed in para No. 6 as under:--

We have to bear in mind two maxims of equity which are" well settled, namely, "*ACTUS CURIAE NEMINEM GRAVABIT*"-An act of the Court shall prejudice no man. In *Broom's Legal Maxims*. 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is "*LEX NON COGIT AD IMPOSSIBILIA*" (*Broom's Legal Maxims*-P. 162)-The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

1. Therefore, this doctrine seems to have been evolved with underlying purpose of fairness and equity. Therefore when the special statute like Companies Act in the facts of the case provides for a specific period, it has to be read in context and the interpretation has to be made which advances the cause in a meaningful way. The purpose of providing such outer limit or limitation is to protect other side from unnecessary hardship. However at the same time, it cannot be interpreted in such way that it takes away right like in the present case. In the facts of the present case, the respondent No. 1 had made an application within a period prescribed by the statute i.e. u/s 22 of the Companies Act. However, as there was some delay in the proceedings, it cannot be interpreted to frustrate the cause or grievance made by the respondent No. 1 though he had exercised his option to avail the remedy well within the time. It is in this background, doctrine of *actus curiae neminem gravabit* is required to be considered and such doctrine has been evolved to take care of such situation which does not cause prejudice to the party. The Hon''ble Apex Court in a judgment in case of *Mangu Ram Vs. Municipal Corporation of Delhi*, has occasion to consider similar circumstances and whether time limit prescribed by the statute should be adhere

to or it could be extended as per the Limitation Act. It is in this background, whether the Limitation Act would be attracted or the Hon''ble Apex Court has clearly made observation as under:--

It is true that the language of subsection (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in subsection (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it.

2. Therefore, it is evident that even if the statutory provision is made in a statute or special law prescribing the period of limitation for any procedure or a step to be taken, it is required to be considered or interpreted in the manner which subserve the ultimate underlying purpose of the statute. In other words, while interpreting such provision, well accepted Rule of meaningful and purpose interpretation has to be applied. A useful reference can also be made to the judgment of the Hon''ble Apex Court in case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , wherein it has been observed referring to the provisions of the Code of Civil Procedure, 1908, particularly, Order 8 that the use of word "shall" though is ordinarily indicative of mandatory nature but having regard to the intention of the legislation, the same can be construed as directory. Therefore while interpreting the provisions, the interpretation should be one which gives effect to the legislative intent or the advances cause.

3. Again a useful reference can be made to the judgment of the Hon''ble Apex Court in case of Japani Sahoo Vs. Chandra Sekhar Mohanty, regarding the interpretation of the statute, wherein it has been observed that the court should interpret, which would help sustaining the validity of law applying the doctrine of reasonable construction rather than adopted rule of "letera legis".

4. Further, a useful reference can also be made to the judgment of the Hon''ble Division Bench of the High Court in a case Union of India & Ors. v. Jayesh Dhakte (supra), where in similar circumstances, while considering the provisions of the Central Administrative Tribunal (Procedure) Rules, 1987 and the applicability of Limitation Act, 1963, the Hon''ble Division Bench relying upon the observation

made by the Hon''ble Apex Court Mangu Ram (supra) has again reiterated and clearly observed that even if the provision of law or Rule like Central Administrative Tribunal (Procedure) Rules, which is a special law, would not exclude the applicability of the Limitation Act.

5. Again that lead to another facet of submission with much emphasize that the Limitation Act would have application in the proceeding before the court and proceeding before the authority relying upon the judgment of the Full Bench of the High Court in case of Memon Ibrahim Haji Latif Sukhediwala (supra). However, this submission is also devoid of any merits in view of the specific judgment and observation of the Hon''ble Division Bench of this High Court in case of Union of India & Ors. v. Jayesh Dhakte (supra), wherein it was a proceeding before the Central Administrative Tribunal established under the special statute. Further the Hon''ble Division Bench of this High Court in a judgment in case of Corporation Bank v. Jayshreeben D/o. P.F. Damodar Killakar W/o. Rajeshkumar J & Ors. (supra) has specifically referring to the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 had occasion to consider this very issue and it has been clearly observed that Section 5 of the Limitation Act will be applicable to the proceedings under the Securitisation Act. It has been clearly observed,

outer limit provided for conclusion of any judicial proceedings or proceedings at par with the judicial proceedings cannot be termed as mandatory to oust the jurisdiction of the Tribunal, but such outer limit provided by the statute is to be normally termed as directory. It can all be gainsaid that merely because an application is not decided by the Tribunal within outer limit, the Tribunal would not become functus officio after expiry of the period. If such interpretation is made, it would frustrate very purpose of providing separate inbuilt mechanism and may also result into further complication which may be irreversible.

6. Again this clear observation by both Bench make it very clear that the proceeding before the Tribunal established under the special statute would not become functus officio and the Limitation Act would be attracted in the proceeding before the tribunal under the Act. Therefore, the submission made by learned senior counsel, Shri Soparkar that the Limitation Act will have application only in the proceeding before the court and as the proceeding before the respondent No. 2 is not before the court, Limitation Act will not be attracted, cannot be accepted. Against it is required to be mentioned that the respondent No. 1 had availed of the remedy well within the stipulated time as laid down by Section 22 of the Companies Act, which is a special law. However, merely because the proceedings have not been concluded within time framed and the order is made thereafter, it cannot be termed as illegal, otherwise, it would frustrate the very purpose of providing separate inbuilt mechanism in the statute itself. A judicial notice is required to be taken that as per the provision of Section 39, Rule 2 or 3 of the Civil Procedure Code, an application for injunction which is required to be decided within stipulated time, is not decided will follow

consequences. The orders made under Article 226 of the Constitution of India and the provision under Article 226(3) of the Constitution of India that if it is not heard within stipulated time, it will get affect also, cannot be construed in narrow sense and if the interpretation as sought to be canvased by learned senior counsel, Shri Soparkar is to be accepted, it will lead to a situation which frustrate the very purpose underlying such provision to provide a remedy under the concept of fair play and Rule of Law. Therefore, the submissions made by learned senior counsel, Shri Soparkar on both counts cannot be accepted.

7. Further as could be seen from the details, which have been referred to with regard to the change in the name by the petitioner subsequently to "Newage", it is again resemble with the name of the respondent No. 1 for the same line of business. The submissions which have been made that the Companies with similar name have been incorporated for which examples are given may not be relevant as the business or nature of activity by both may be different. In the facts of the case, the nature of the activity or business of both, petitioner and the respondent No. 1 are same with regard to the fire fighting equipment. Therefore, as rightly submitted, it will have the some bearing and the impugned order which has been passed by the respondent No. 2 after considering these relevant aspects cannot be said to be erroneous, which would call for any interference. Therefore, the present petition deserves to be dismissed and accordingly stands dismissed. Rule is discharged. Interim relief stands vacated.

FURTHER ORDER

After the order was pronounced, learned counsel, Shri Amar Bhatt for the petitioner requests for stay of the operation of the order and continuation of the interim relief to enable his client to have further recourse. Learned counsel, Shri Pahwa, however, has some reservation and objection.

In the facts and circumstances, the request is granted. The operation of the order is stayed upto 30.11.2013 and the interim relief is extended till 30.11.2013.