

(2014) 02 MAD CK 0207
In the Madras High Court
Case No : Company Appeal No. 1 of 2014

P.S. Venkatachalam

APPELLANT

Vs

M/s. Samuthralakshmi Spinners (P) Ltd., P.S. Kathiresan, V.
Vignesh and V.K. Saravanan

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 8 Rule 8, Order 8 Rule 9
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Citation : (2014) 121 CLA 271 : (2014) 184 CompCas 454 : (2014) 2 MLJ 421

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : P.J. Rishikesh, for the Appellant; P.H. Arvind Pandian, for Respondent-4, Mr. Cibi Vishnu and Mr. R. Shankar Narayanan for Respondent-5, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—This Company Appeal arises out of an order passed by the Company Law Board, rejecting an application filed by the appellant seeking leave to file a rejoinder to the counter filed by the fifth respondent before the Company Law Board. Heard Mr. P.J. Rishikesh, learned counsel for the appellant, Mr. P.H. Arvind Pandian, learned Senior Counsel for the fourth respondent and Mr. R. Shankar Narayanan, learned counsel appearing for the fifth respondent. Notice to respondents 1 to 3 is dispensed with for the following reasons:-

- (i) The second respondent already remained ex parte even before the Company Law Board, after having sold his shares to the fourth respondent; and
- (ii) Respondents 1 and 3 have no conflict of interest with the appellant, and they are represented by the same counsel.

2. Without getting into any factual details, the short question of law that arises for consideration in this appeal is as to whether one of the respondents in a

petition before the Company Law Board under Sections 397 and 398 is entitled to file a reply to the counter filed by a co-respondent or not.

3. In so far as the procedure to be adopted by the Company Law Board for hearing and deciding petitions under the Companies Act, are concerned, it is governed by the Company Law Board Regulations 1991. Regulation 11 indicates that all petitions filed before the Company Law Board are to be in writing. Regulation 13 states that the general heading in all proceedings are to be in Form-1 in Annexure-II. Regulation 14 prescribes the procedure for filing the petition. Regulation 15 indicates the method of presentation and scrutiny of petitions. Regulation 16 deals with the contents of the main petition and Regulation 17 deals with the contents of interlocutory applications. Regulation 22 enables each respondent in a petition before the Company Law Board to file a reply along with the documents on which he relies upon. Regulation 23 enables the petitioner before the Company Law Board to file a counter reply to the reply filed by any respondent. Regulations 22 and 23 deserve to be noted and hence they are extracted as follows:-

22. Filing of reply and other documents by the respondents-(1) Each respondent intending to contest the petition shall file, in triplicate, the reply to the petition and the documents relied upon with the office of the Bench within such period as may be fixed by the Bench but not exceeding fifteen days of service of petition upon him.

(2) In the reply filed under sub-regulation (1), the respondent shall specifically admit, deny or explain the facts stated by the petitioner in his petition and may also state such additional facts as may be found necessary for the just decision of the case. The reply so filed shall be signed and verified in the manner as provided in regulation 14.

(3) The documents referred to in sub-regulation (1) shall also be filed along with the reply and the same shall be marked as Annexures R1, R2, R3 and so on.

(4) The respondents shall also serve a copy of the reply along with the document mentioned in sub-regulation (1) duly attested to be true copies on the petitioner or his authorised representative, if any, and file proof of such service with the Office of the Bench.

(5) The Bench may, if so satisfied, allow filing of the reply after the expiry of the prescribed period, on sufficient cause being shown.

23. Filing of counter-reply by the petitioner-Where the respondent states such additional facts as may be necessary for the just decision of the case under sub-regulation (2) of regulation 22, the Bench may allow the petitioner to file a counter-reply to the reply filed by the respondent. The procedure laid down in regulation 22 shall apply, mutatis mutandis, to the filing of such counter-reply.

4. Apart from the above Regulations, there is also one more Regulation viz., Regulation 44 which confers inherent powers upon the Company Law Board, to

make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Bench.

5. From the Scheme of Regulations 22, 23 and 44, it is clear that the Company Law Board Regulations 1991 entitle only the main petitioner to file a counter reply to a reply filed by one or more of the respondents. Regulation 23 does not enable a co-respondent to file a counter reply to a reply filed by the respondent.

6. In so far as the procedure prescribed by the CPC is concerned, every written statement is filed under Order VIII. After a written statement is filed in terms of Order VIII, there can be no subsequent pleadings as seen from Rule 9, except under limited circumstances. Order VIII, Rule 9 of the Code, reads as follows:-

9. Subsequent pleadings.--No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

7. Therefore, it is clear that if a Court is a Civil Court or if a Forum is one to which the provisions of the CPC would apply, then a party can fall back upon Order VIII, Rule 9, to make subsequent pleadings. Order VIII, Rule 9, is worded in a peculiar fashion. It speaks only about subsequent pleadings. It does not indicate as to who are the parties who are entitled to file subsequent pleadings. Subsequent pleadings are automatically permitted by way of defence to a set off or counter claim. But subsequent pleadings otherwise than by way of defence to set off or counter claim, can be made only with the leave of the Court. The persons who are entitled to file subsequent pleadings with the leave of the Court, are not indicated in Order VIII, Rule 9. On the contrary, the word "pleading" is defined in Order VI, Rule 1 of CPC to include both a plaint and a written statement. Therefore, there is a possibility, in so far as Civil Courts are concerned, for the co-defendant to file a reply or rejoinder to a written statement of one of the co-defendants.

8. But, unfortunately, for the appellant, Regulation 23 of the Company Law Board Regulations 1991 stands in contrast to Order VIII, Rule 9 of the Code and it speaks specifically of a counter reply by the petitioner. In view of the express language of Regulation 23, it appears that no subsequent pleadings is permissible from any of the respondents before the Company Law Board, to the counter filed by one of the co-respondents.

9. Once it is clear that the appellant cannot invoke Regulation 23, the only possibility for the appellant is to try to fall back upon Regulation 44. But Regulation 44 which deals with the inherent power and which is similar to, though not exactly identical to Section 151 of the Code, can be invoked only in cases where a situation is not covered by express provisions. Once the question on hand is covered by the express provisions of the Regulation 23, the area

becomes an occupied territory into which the inherent powers cannot encroach. Even in respect of proceedings before Civil Courts, it is well settled that the remedy u/s 151 of the Code, cannot be invoked in cases where there are specific provisions to cover a particular area. Therefore, the appellant cannot fall back upon Regulation 44 to file a counter reply to the reply of one of the co-respondents.

10. Mr. P.J. Rishikesh, learned counsel for the appellant contended that the counter filed by the fourth respondent in this appeal, contains various allegations against the appellant and that they have been made as a result of collusion between the main petitioner and the respondents 3 and 5 in the main company petition. Therefore, the learned counsel contended that unless he brings on record these facts, the allegations made against him would go uncontroverted, resulting in an adverse inference against the appellant.

11. But I do not think that such a contingency will arise. The co-respondent before the Company Law Board is not seeking any relief as against the appellant herein. Though the co-respondent is supporting the case of the main company petitioner, the main company petition cannot be decided by the Company Law Board on the strength of the averments made by the co-respondent in support of the main petitioner's case. In other words, the Company Law Board cannot today draw any adverse inference against the appellant, on the basis of the averments made by the co-respondent against the appellant. Once it is clear that the appellant, as a respondent, cannot file a counter reply to the reply of one of the respondents, I do not think that the appellant can be made to suffer by the Court drawing any adverse inference against the appellant and holding him guilty. This safeguard is available to him even under common law.

12. Therefore, holding that the refusal of the Company Law Board to entertain a counter reply from the appellant who is only a co-respondent, to the reply filed by another respondent, is perfectly justified in terms of Regulation 23, this appeal is dismissed. However, I make it clear that the Company Law Board cannot hold the allegations made against the appellant by the co-respondent to have gone uncontroverted.

13. The learned counsel for the appellant drew my attention to the powers conferred upon the Company Law Board u/s 10-E(5). He contended, that though the provisions of Civil Procedure Code, do not apply to the proceedings before the Company Law Board, the Company Law Board is obliged to follow the principles of natural justice. In other words, it is his contention that the appellant could be given an opportunity to refute the allegations against him, at least by invoking the power conferred u/s 10-E(5).

14. But it should be pointed out that the fundamental principle of natural justice is that a man shall not be condemned unheard. Once I have ensured that the allegations made against the appellant cannot be held against him without permitting him to file a counter reply, the question of condemning the appellant

unheard may not arise. Therefore, Section 10-E(5) will have no application to the case on hand. In the result, the company appeal is dismissed. No costs.