

(2009) 06 KAR CK 0094
In the Karnataka High Court
Case No : Company Appeal No. 8 of 2009

R. Kapinipathi Rao

APPELLANT

Vs

Mysore Stoneware Pipes and Potteries Ltd. and Others

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Companies Act, 1956 — Section 172 (3), 53, 53 (2)

Citation : (2009) 152 CompCas 632 : (2010) 98 SCL 437

Hon'ble Judges : V. Gopala Gowda, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Geetanjali Swamy, for Poovayya and Co, for the Appellant;
Naganand, for Just Law, for the Respondent

Judgement

V. Gopala Gowda, J.—In this appeal, Misc. Civil No. 10109 of 2009 is filed seeking condonation of delay of 342 days. Though the explanation offered in the affidavit in support of the application is not satisfactory, in the interest of justice, we are vacating the interim order granted in favour of the appellant in the Company Petition No. 3 of 2008 before the Company Law Board, Chennai Bench. It is strongly opposed by learned Counsel for the respondents regarding the delay and the explanation offered by the appellant regarding inordinate delay challenging the impugned order passed by the Company Law Board, we have condoned the delay and accordingly the Misc. Civil No. 10109 of 2009 is allowed.

2. We have heard learned Counsel Ms. Geetanjali Swarhy on behalf of the appellant and Sri. Naganand, learned senior counsel on behalf of the respondents on merits.

3. Though the matter is listed for hearing on the interim application, by consent of learned Counsel for both the parties, the matter is heard on merits.

4. The impugned order passed by the Company Law Board is challenged urging various grounds contending that the ex parte interim order was passed by the Company Law Board on April 4, 2008 and the said order came to be vacated by

passing the impugned order dated May 2, 2008. The correctness of the same is challenged in this appeal urging various grounds, but no question of law was framed as required in law for our consideration to answer the question in favour of the appellant. The ground of attack of the impugned order is that on December 19, 2007, the annual general body meeting of the first respondent-company came to be passed excluding respondents Nos. 2 and 5 removing the appellant herein from the board of directors of the first respondent-company. The company petition was filed by him before the Company Law Board on March 31, 2008, seeking various reliefs and the consequential relief under Clause VIII Part b, reads thus:

Declare that the change in composition of the board of directors brought about at the AGM held on December 19, 2007, at the instance of the second respondent is illegal, oppressive, biased and against the interests of the first respondent-company and direct restoration of status quo dated July 23, 2007.

5. It is the case of the appellant that notice in terms of Section 53 of the Companies Act, 1956, for the AGM was not duly served upon him. Therefore, the resolution passed by the AGM in removing the appellant from the directorship of the board of the company is a nullity in the eye of law. Therefore, the resolution passed by the AGM is being the subject-matter of relief sought for before the Company Law Board on April 4, 2008, on satisfying the prima facie case granted interim relief as stated supra. The same came to be vacated without considering the legal grounds urged on behalf of the appellant. The plea urged is that no notice is served upon him since there was an interim order granted by the civil court on December 18, 2007, which order was operating against respondents Nos. 2 and 5. This important aspect of the matter should have been taken into consideration by the AGM before passing the resolution for removing the appellant from the directorship of the board, the aforesaid legal contentions are rebutted by learned senior counsel regarding the notice u/s 53 of the AGM. There is proper compliance of the provision u/s 53 of the Act as the notice of the AGM was sent by RPAD to the registered address of the appellant available in the company records treating there is statutory compliance of notice as it is not disputed that the address mentioned in the notice sent to him is not the registered address furnished to the company. Further, the interim order granted by the civil court is only against restraining respondents Nos. 2 and 5 from entering the office of the first respondent-company as managing director and chairman respectively in pursuance of the resolution dated October 29, 2007, There is no interim order passed against the company in favour of the appellant regarding not to remove him from the directorship of the board by the AGM of the company and further it is also contended that the special notice served upon the appellant is received by him which fact is admitted in the company petition by producing the same as annexure R. Therefore, the contention that he had no notice prima facie is not tenable in law, as the notice of the AGM was sent to the appellant by RPAD as provided u/s 53 of the Companies Act. Therefore, the appellant and respondents Nos. 2 and 5 should not convene the AGM of the

company is not legally correct and it has passed the resolution against the appellant by removing him from the directorship of the board of the company. Further, learned senior counsel submits that there was no impediment for the AGM to pass the resolution against the appellant by removing him from the directorship of the board of directors of the company for which it has got the power.

6. With reference to the above said rival legal contentions urged by learned Counsel and senior counsel for the parties, we have carefully examined the points that would arise for our consideration:

(a) Whether exercise of discretionary power by the Company Law Board in vacating the interim order which was operating against the respondents on April 4, 2008, in permitting the appellant to exercise his rights as director of company during the pendency of the petition before it, which was an ex parte order granted in his favour, is legal and valid?

(b) What order?

7. Our answer to the above said question is in the "affirmative" and against the appellant for the following reasons. The contention urged on behalf of the appellant is that there was no notice by RPAD of the AGM held on December 19, 2007, by the first respondent, is factually incorrect for the reason that the special notice served upon him is produced in the company petition before the Company Law Board. Apart from the said fact it is an undisputed fact that the address to which the notice was sent by the first respondent-company notifying him that "the AGM will be held on December 19, 2007, is the registered office as per the company records. The proviso to Section 53(2) of the Companies Act, reads thus:

53(2). Where a document is sent by post,-

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member.

8. In this view of the matter, sending of notice to the registered address of the shareholder of the company is sufficient notice. Apart from this fact in the written statement filed by respondents Nos. 2 and 5 they have taken a specific plea in the Original Suit No. 8513 of 2007, stating that the annual general body meeting of the first respondent is fixed on December 19, 2007, indicating to pass the resolution of removing the appellant herein from the directorship of the board of directors. Apart from the said fact Section 172(3) of the Companies Act clearly states:

172(3). The accidental omission to giving notice to, or the non-receipt of notice

by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

9. In view of the factual and legal positions the contention urged on behalf of the appellant that the resolution passed in the AGM of the company removing the appellant from the board of directors of the company is invalid, *prima facie* cannot be accepted by us and therefore, this contention urged in this regard must fail.

10. The AGM held on December 19, 2007, has passed the resolution removing the appellant from his directorship of the company. There was no impediment for the first respondent to pass the resolution against the appellant on December 19, 2007, for the reason that the interim order of temporary injunction granted by the civil court in the original suit was operating against respondents Nos. 2 and 5. The said interim order restraining respondents Nos. 2 and 5 not to interfere with the functioning of the appellant as managing director and chairman of the first respondent-company in relation to not to remove him from the board of directors of the company. For this reason also we do not think that it is a case for our interference with the interim order wherein the earlier interim order is vacated in which an opportunity was given to the appellant to exercise his rights as a director of the company. The Company Law Board having examined the pleadings, on examination of the *prima facie* material placed before it by respondent, it thought fit to give opportunity to the appellant to exercise his right as the director of the company need not be continued, such order cannot be found fault with by this Court in exercise of its appellate jurisdiction and power. We do not find any question of law that would arise for our consideration. Therefore, we feel that is not a fit case for our interference in vacating the *ex parte* interim order passed in favour of the appellant by the Company Law Board.

11. However, we make it clear by vacating the interim order and not permitting the appellant to exercise his rights as the board of director of the company will be subject to the decision on the main matter and the resolution of removal is also subject to the decision that would be rendered on the main petition. Appeal is accordingly dismissed but with the above observations.