
(2004) 09 AP CK 0107

In the Andhra Pradesh High Court

Case No : Company Appeal No. 2 of 2004

Rdf Projects Limited and Others

APPELLANT

Vs

Mr. M. Murali Krishna, Shareholder and Others

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 10, 151
Companies (Court) Rules, 1959 — Rule 2(4), 47, 6
Companies Act, 1956 — Section 10, 10E, 10E(1), 10E(2), 10E(4B)
Criminal Procedure Code, 1973 (CrPC) — Section 195
Limitation Act, 1963 — Section 14
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2004) 5 ALD 701 : (2005) 124 CompCas 184 : (2005) 4 CompLJ 104 : (2005) 59 SCL 311

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : T.L.N. Chari and L.V.V. Iyer, for the Appellant; T. Surya Sathish, for the Respondent

Judgement

N.V. Ramana, J.—This appeal u/s 10-F of the Companies Act, 1956 (for short "the Companies Act") is directed against the order dated 20-4-2004 passed by the Company Law Board, Additional Principal Bench, Chennai, in C.A. No. 37 of 2004, refusing to stay the proceedings in C.P. No. 25 of 2003, pending before it, until the conclusion of the suit proceedings in O.S. No. 61 of 2002, pending on the file of the XIII Junior Civil Judge, City Civil Court, Hyderabad.

2. The facts necessary for disposing of this appeal, may briefly be stated, and they run thus:

Appellant No. 1, namely M/s. RDF Power Projects Limited (hereinafter referred to as "the company"), incorporated by appellant No. 2 and the respondents, for establishment of power generation plant by using municipal solid waste. Appellant No. 2, it appears, was appointed as Managing Director of the company vide resolution dated 27-12-1998 for a period of five years. While functioning as

such, he states that the respondents who made abortive attempts to divert the funds of the company, were removed as Directors from the Board of the Directors of the company. While so, on the basis of a resolution allegedly passed on 3-1-2002, in the meeting convened by the respondents, appellant No.2 was removed as Managing Director of the company. In pursuance of the alleged resolution, when the respondents tried to interfere with the management of the company and made attempts to seize the records and books of accounts of the company, appellant No. 2 on his behalf and on behalf of the company, lodged reports before the police against the respondents, and also a suit in O.S. No. 61 of 2002 accompanied with applications in I.A. Nos. 24 and 25 of 2002, on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad, to restrain the respondents from interfering with the management and functioning of appellant No.2 as Managing Director of the company and also with its management, except in accordance with law.

3. While so, the trial Court by common order dated 30-10-2002, dismissed the interim applications. Against the said common order, appellant Nos. 1 and 2 filed appeals in C.M.A. Nos. 366 and 369 of 2002 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad. The appellate Court, vide common order dated 11-3-2003, while setting aside the orders passed by the trial Court, allowed the appeals, granting interim injunction as prayed for in the interim applications. When the respondents against the order dated 11-3-2003 passed in C.M.A. No. 369 of 2002, filed revision in C.R.P. No. 2364 of 2003 u/s 115 of the Code of Civil Procedure, 1908 (for short "the Code") before this Court, the same by order dated 17-7-2003 was dismissed, giving liberty to file fresh revision under Article 227 of the Constitution of India. Thereafter, the respondents filed two revisions before this Court under Article 227 of the Constitution of India in C.R.P. Nos. 3504 and 3460 of 2003 against the common order dated 11-3-2003 passed by the appellate Court in C.M.A. Nos. 366 and 369 of 2002, which by common order dated 19-2-2004, were dismissed.

4. While the suit proceedings before the civil Court were pending, the respondents filed petition in C.P. No. 25 of 2003 before the Company Law Board under Sections 111A, 397, 398, 402 and 408 of the Companies Act, alleging acts of oppression and mismanagement in the affairs of the company by the appellants, and sought rectification of the register of members of the company. As the suit proceedings were pending, the appellants, having regard to the provisions of Section 10 of the Code, filed an application in C.A. No. 37 of 2004 before the Company Law Board, to stay the proceedings in C.P. No. 25 of 2003, initiated by the respondents, until the conclusion of the suit proceedings before the civil Court. The Company Law Board, by order dated 20-4-2004, while refusing to grant stay of the proceedings before it, dismissed the said application, inter alia holding that the provisions of Section 10 of the Code are not attracted, for there is no substantial identity of the subject-matter before the civil Court and the subject-matter before it. It is this order of the Company Law Board, which the appellants have assailed in this Company Appeal, filed u/s 10-F

of the Companies Act.

5. Heard the learned counsel for the appellants and the learned counsel for the respondents.

6. The learned counsel for the appellants submits that inasmuch as the field of controversy between the matter in issue in the suit previously instituted before the civil Court by the appellants and the company petition subsequently filed before the Company Law Board, is substantially the same, the Company Law Board, having regard to the provisions of Section 10 of the Code, ought to have stayed the proceedings pending before it until the conclusion of the suit, and in support of this submission, he placed strong reliance on the judgement of the apex Court in *Manohar Lal v. Seth Hiralal* High Court of Bombay in *Jain Hind Iron Mart v. Tulsiram Bhagwandas* and also the judgement of the Punjab and Haryana High Court in *M/s. Sehgal Knitwears v. M/s. Shresth International*. He submits that since Rule 6 of the Companies (Court) Rules, 1959 makes applicable the provisions of the Code even to the proceedings under the Companies Act, having regard to Rule 2(4) of the Rules, which defines "Code" to mean the Code of Civil Procedure, 1908, the provisions of Section 10 of the Code should also be made applicable to the proceedings even before the Company Law Board. In support of his submission that the provisions of the Code should be interpreted in a manner facilitating justice and its ends and not as an enactment for imposing punishments and penalties, he placed reliance on the judgement of the apex Court in *Sangram Singh v. Election Tribunal*. He further submitted that the term "suit" is generic in nature, and it should embrace all the proceedings before any authority or court or forum, including the proceedings before the Company Law Board, and as such, during the pendency of the previously instituted suit before the civil Court, the Company Law Board, ought to have stayed the proceedings subsequently initiated before it. In support of this submission, he placed reliance on the judgements of the apex Court in *Pandurang Ramachandra Mandlik v. Shantibai Ramachandra Ghatge* and *Patel Roadways Ltd. V. Birla Yamaha Ltd.*, and judgment of this Court in *Subramanyya v. Narasimha*.

7. In the context of the provisions of Section 10 of the Code, the learned counsel for the appellants submitted that the Company Law Board should be treated as a "Court" and it need not be a "civil Court", for it has all the trappings of a Court, and in support of this submission, he placed strong reliance on the judgement of the apex Court in *P. Sarathy v. State Bank of India*. Since in relation to the very subject-matter in the Company Petition filed by the respondents subsequently before the Company Law Board, there is already a previously instituted suit filed by the appellants before the civil Court, the learned counsel for the appellants submitted that the Company Law Board has no jurisdiction to proceed with the Company Petition, and in support of his submission that a decree passed by a Court in whom jurisdiction is not conferred would be a nullity, and such plea can be raised at any point of time, even before and after passing of the decree, he placed reliance on the judgement of the apex Court in *Kiran Singh v. Chaman*

Paswan. At any rate, he submits that in view of the dismissal of C.R.P. Nos. 3504 and 3460 of 2003, filed by the respondents against the common order dated 11-3-2003 passed by the appellate Court in C.M.A. Nos. 366 and 369 of 2002 granting interim injunction restraining the respondents from interfering with the management of the appellants, by common order dated 19-2-2004, the proceedings before the Company Law Board, are required to be stayed.

8. On the other hand, the learned counsel appearing on behalf of the respondents resisted the appeal and contended that there is no question of law to be decided in the appeal. He contended that the suit previously filed by the appellants before the civil Court and the Company Petition filed by the respondents before the Company Law Board, are for different reliefs, which are distinct and independent of each other, and the matter in issue in the Company Petition, filed by the respondents before the Company Law Board not being directly and substantially in issue in the suit previously filed by the appellants before the civil Court, the provisions of Section 10 of the Code are not attracted, and the Company Law Board, was right in not staying the proceedings in the Company Petition before it. In support of this contention, he placed reliance on the judgements of the Gujarat, Calcutta and this Court in *S.E. Works v. R.J.V. Mills*, *Piyush Kanti Guha v. West Bengal Pharmaceutical & Phytochemical Development Corporation Ltd.* and *G. Bhavani Sankar v. B. Rajeswara Rao*. He contended that the proceedings in the Company Petition filed by the respondents before the Company Law Board cannot be equated with that of the suit previously instituted by the appellants before the civil Court, and more so when the proceedings before the Company Law Board, are summary in nature. In support of this contention, he placed reliance on the judgements of the apex Court in *Indian Bank v. M.S. Co-op Marketing Fedn. Ltd.* and of this Court in *Kona Kanthamma v. Guntamukkala Srinivasa Rao*. He thus prayed for dismissal of the appeal.

9. In the background of the arguments advanced, the questions of law that arise for consideration in this appeal, are -

(1) Whether the Company Law Board, constituted u/s 10E of the Companies Act, for the purposes of Section 10 of the Code, should be equated and treated as a Court?

(2) Whether the Company Petition, filed by the respondents before the Company Law Board, should be equated and treated as that of a suit before the civil Court?

(3) Whether the matter in issue in the Company Petition, filed by the respondents before the Company Law Board is directly and substantially in issue in the suit previously filed by the appellants before the civil Court, or is identical, attracting the provisions of Section 10 of the Code, thereby warranting stay of the proceedings in the Company Petition before the Company Law Board, until the conclusion of the proceedings in the suit before the civil Court?

In re Point Nos.1 and 2:

10. Point Nos. 1 and 2 are inter-related, and therefore, are dealt with together. Before proceeding to consider whether the Company Law Board, constituted u/s 10E of the Companies Act, by the Central Government, is a Court for the purposes of Section 10 of the Code, to wit, what are the essential ingredients that constitute a Court may be noted. To constitute "Court", the authority or tribunal, so constituted, should have the trappings of a judicial tribunal, power to give a decision or a definitive judgement, which has finality and authoritativeness, and its mere following of the procedure, which is of a legal character, namely to administer on oath, would not make it a "Court", even if the authority or tribunal is deemed to be "Court" for limited and specific purposes. Part 1-A of the Companies Act deals with Board of Company Law Administration. Section 10E of the Companies Act deals with the Constitution of Board of Company Law Administration. In terms of sub-section (1) of Section 10E of the Companies Act, the Central Government by Official Gazette, may constitute the Board of Company Law Administration, known as "Company Law Board" to exercise and discharge such powers and functions conferred on the Central Government by or under the Act or any other law as may be delegated to it by the Central Government, by notification in the Official Gazette under the provisions of the Act or any other law. Sub-section (2) of Section 10E of the Companies Act empowers the Central Government to appoint members to the Company Law Board, by notification in the Official Gazette, not exceeding nine. The tenure of the members and one of the members to be appointed as Chairman of the Company Law Board does not exceed three years. For the purpose of sub-section (4-B) of Section 10E of the Companies Act, the powers exercised and functions discharged and the orders passed by the Benches authorized by the Company Law Board thereunder, shall be deemed to be an order. Under sub-section (4-C) of Section 10E of the Companies Act, every Bench referred to in sub-section (4-B) shall have powers which are vested in a Court under the Code of Civil Procedure, while trying a suit, in respect of the matters mentioned thereunder, which are contained in Orders XI, XVI, XIII, XVIII, XVII and XIX of the Code, and under sub-section (4-D) of the Companies Act, every Bench shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and for the purpose of Section 196 of that Code. Without prejudice to the provisions of sub-sections (4-C) and (4-D) of the Companies Act, the Company Law Board under sub-section (5) of Section 10E of the Companies Act shall in the exercise of its powers and discharge of its functions under the Act or any other law be guided by the principles of natural justice and shall act in its discretion, and under sub-section (6) of Section 10E apart from the provisions of sub-sections (1) to (5) thereof, the Company Law Board shall have power to regulate its own procedure.

11. The Company Law Board, it may be noted was established by the Central Government vide G.S.R. No. 866, dated 1-2-1964 in pursuance of the Companies

(Amendment) Act, 1963. The Central Government established the Company Law Board mainly to entrust most of its powers and functions under the Companies Act or other laws. The Company Law Board is to function subject to the control of the Central Government in all matters. Though the Bench created by the Board and exercising powers under sub-section (2) of Section 10E of the Companies Act, is deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, which deal with prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence and the provisions as to offences affecting the administration of justice, and every proceeding before it is deemed to be a judicial proceeding within the meaning of Sections 193 (punishment for false evidence) and 228 (intentional insult or interruption to public servant sitting in judicial proceeding) of the Indian Penal Code and for the purpose of Section 196 of that Code, which deals with using evidence knowing to be false, yet given the fixed tenure of the Chairman and members of the Company Law Board, the authority who appoints them, the powers and functions of the Central Government which the Company Law Board exercises being quasi-judicial in nature, the limited powers (namely those mentioned in sub-section (4-C) relating to discovery and inspection of documents or other material objects producible as evidence; enforcing the attendance of witnesses and requiring the deposit of their expenses; compelling the production of documents or other material objects producible as evidence and impounding the same; examining witnesses on oath granting adjournments and reception of evidence on affidavits), which the Company Law Board exercises, which are vested in the Civil Court, and the control which the Central Government has over its functioning, the Company Law Board, can by no means be regarded as a "Court", and more so when the proceedings before the Company Law Board are summary in nature, and without prejudice to the provisions of sub-sections (4-C) and (4-D), under sub-section (5-C) of Section 10E of the Companies Act, the Company Law Board is to exercise its powers and discretion guided by the principles of natural justice and is empowered to regulate its own procedure under sub-section (6) of Section 10E of the Companies Act. This apart, Rule 47 of the Companies (Court) Rules, 1959 clearly states that the Bench created by the Board shall be deemed to be a Court for certain purposes, namely for the purpose of prosecution or punishment of a person who disobeys any direction or order of such Bench.

12. In this regard, a reference be made to *Shell Company of Australia v. Federal Commissioner of Taxation*, wherein it was observed that a body or Tribunal may be constituted entrusting them work of judicial character, but they are not Courts in the accepted sense though they may possess some of the trappings of the Court. The Allahabad High Court, in *Prakash Timbers v. Sushma Shingla*, quoting the above passage, observed the status of the Company Law Board as follows:

""Broadly speaking, the Company Law Board has trappings of a Court in the sense that it has to determine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, to accept

the evidence and also to order for inspection and discovery of documents compel the attendance of the witnesses and in the last, to pass a reasoned order which gives finality to its decision subject to the right of appeal to a party u/s 10-F of the Act or such other legal remedy which is available under law to a party".

13. Observing so, the Allahabad High Court, upon considering the scope, functions and special jurisdiction conferred on the Company Law Board, concluded that the Company Law Board can only be regarded as a tribunal and not a Court. In that view of the matter, it has to be held that though the Company Law Board has some of the trappings of a "Court", yet given the scope, functions, the special jurisdiction conferred upon it, and the control of the Central Government over it, it cannot be regarded as a "Court", and reliance placed by the appellants on the judgement of the apex Court in *P. Sarathy v. State Bank of India*, which has been made in the context of Section 14 of the Limitation Act, 1963 holding that Court within the meaning of the word "Court" occurring in Section 14 of the Limitation Act, need not be a civil Court, will be of no avail to him. As a consequence thereof, the proceedings before the Company Law Board, though judicial in nature, they being only for limited purposes, cannot be treated as a suit, within the generic meaning of the term "suit", and as such, reliance placed by the learned counsel for the appellants on the judgements of the various Courts in *Pandurang Ramachandra Mandlik v. Shantibai Ramachandra Ghatge*, *Patel Roadways Ltd. v. Birla Yamaha Ltd.*, and *Subramanyya v. Narasimha*, are of no help to him. There can be no quarrel on the argument advanced by the learned counsel for the appellants that the provisions of the Code have been designed to facilitate justice and its ends and that it is not a penal enactment providing for punishments and penalties. Reliance, in support of such an argument, was placed on the judgement of the apex Court in *Sangram Singh v. Election Tribunal*, wherein the apex Court held as follows:

A code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

14. The aforementioned observations, it is required to be noticed, were made by the apex Court in the context of a complaint and argument advanced that the principles of natural justice were violated in the passing of the order assailed therein, in that no opportunity of hearing was given before the order impugned therein was passed, and not in the context of giving liberal meaning to the words "Court" and "suit". Therefore, the decision of the apex Court in *Sangram Singh v. Election Tribunal* will not be of any assistance to the appellants.

In re Point No. 3:

15. Even otherwise, it may be noticed whether the matter in issue in the Company Petition, filed by the respondents before the Company Law Board, is directly and substantially in issue in the previously instituted suit by the appellants before the civil Court, requiring stay of the proceedings before the Company Law Tribunal in view of the provisions of Section 10 of the Code. Before proceeding to consider this point, it would be appropriate if a reference is made to the provisions of Section 10 of the Code dealing with stay and the provisions of Section 10 of the Companies Act, dealing with jurisdiction of Courts.

Section 10 of the Code, reads thus:

10. Stay of suit. - No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation. - The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action. Section 10 of the Companies Act, reads thus:

Jurisdiction of Courts.

10. (1) The Court having jurisdiction under this Act shall be -

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred -

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 - 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 425 - 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression

"registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up.

16. From a reading of the provisions of Section 10 of the Code, it would become amply clear that if the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, then no Court shall proceed with the trial of the subsequent suit filed before it. And insofar as the provisions of Section 10 of the Companies Act, is concerned, under sub-section (1)(a) thereof, the Court having jurisdiction shall be the High Court in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on the District Court in terms of sub-section (2) by the Central Government, by notification in the Official Gazette, and subject to such restrictions, limitations and conditions as it thinks fit, the Central Government may empower any District Court to exercise all or any of the jurisdiction conferred by the Act upon the Court, not being the jurisdiction conferred (a) in respect of companies generally by Sections 237, 391, 394, 395 and 397 - 407, both inclusive, and in respect of those companies mentioned in clause (b) of sub-section (2). It is thus clear that the Central Government, in respect of matters covered by clauses (a) and (b) of sub-section (2) of Section 10 of the Companies Act, is precluded from conferring jurisdiction on the civil Court. The jurisdiction in respect of the matters covered by Sections 391, 394 and 395 in clause (a) and those relating to winding up of the companies under clause (b) is vested exclusively in the High Court, while the jurisdiction in respect of the matters covered by Sections 237 and 397 - 407, both inclusive, is exclusively vested in the Company Law Board. There being a statutory bar on the Central Government to confer jurisdiction on the civil Court to entertain the disputes enumerated in clauses (a) and (b) of sub-section (2) of Section 10 of the Companies Act, the civil Court has no jurisdiction to try the matters referred to thereunder.

17. This being the position, it may be noticed whether the matter in issue in the Company Petition before the Company Law Board, is directly and substantially in issue in the previously instituted suit in before the civil Court, filed by appellants, and to wit, it would be expedient, if the reliefs claimed by the respondents and the appellants before the Company Law Board and the civil Court, is set out in a comparative tabular forum.

18. Relief sought by the appellants before the City Civil Court, Hyderabad, in O.S. No. 61 of 2002, under Order XXXIX , Rules 1 and 2 read with Section 151 of the Code.

19. Relief sought by the respondents before the Company Law Board, Additional Principal Bench, Chennai, in C.P. No. 25 of 2003, filed under Sections 111A, 397, 398, 402 & 408 of the Companies Act.