

(2014) 01 DEL CK 0208

In the Delhi High Court

Case No : Review Petition 526 of 2013 and CM No's. 14330, 14331 and 14332 of 2013 in WP (C) No. 5889 of 2013

R.P. Khosla and Another

APPELLANT

Vs

Hon"ble Company Law Board and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148A 148-A
Companies Act, 1956 — Section 10-E 10F 32(2)
Constitution of India, 1950 — Article 136 226

Citation : (2014) 2 AD 551 : (2014) 120 CLA 268 : (2014) 183 CompCas 227

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Deepak Khosla, for the Appellant; Nishant Datta and Ms. Garima Hooda, Advocates for Resp. No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This a review petition filed against the order and judgment of this Court in WP(C) No. 5889/2013, dated 1.10.2013. In this writ petition, directions were sought, inter alia, to the Company Law Board to frame regulations in respect of lodging caveats before that body (hereafter "the CLB") as well as to this Court, to regulate filing of caveats, u/s 148-A of the CPC (CPC). More specifically, a direction was sought that some orders of the CLB made are a nullity, and therefore, liable to be quashed. Briefly, the petitioners had filed the above writ petition, praying, inter alia, for declaring that the impugned order of the Bench Officer "reviewing" his decision to register a caveat (leading thus to an order dated 12.9.2013) is a nullity in law. The petitioners claimed to have filed a caveat before the CLB on 10.9.13 in Vikram Bakshi v. Connaught Plaza Restaurants for notice of any hearings scheduled to take place in the matter, and for the provision of all documents tendered by the parties to the CLB. In the caveat application u/s 148A, CPC, at paragraphs 4-14, the caveat petitioners also sought to establish their interest in the matter, as also indicating an intention to

request from impleadment as an intervener. In addition, the petitioners also requested the Court to issue guidelines for the issuance of caveats generally, as it was argued that the practice was largely incoherent and inconsistent. With regard to the matter in *Vikram Bakshi*, the writ petition had claimed that the CLB heard the matter and made orders without the requisite papers being served or made available to the caveators. It is argued that on 11.9.2013, one of the parties before the CLB indicated refusal to serve a copy of the petition to caveators on saying that they were not respondents. Subsequent to this, it is argued that a judicial member of the CLB, who is also arrayed as a respondent in his personal capacity in the present writ petition, noted in open court that the petition would not be served upon the caveators. This, contend the caveator petitioners, amounted to an impermissible review of the earlier decision of the Bench Officer to register the caveat, which carried with it the requirement that the petition be served (upon the caveator).

2. The petitioners argued that this amounted to the orders of the CLB being a nullity and consequently without force of law. It was specifically urged that upon the caveat being filed on 09.09.2013, the Bench Officer indicated acceptance, and thus, the Chairman could not have then assigned the matter to a CLB member, and neither could the Bench Officer have reviewed this decision subsequently. Rather, in the writ petition, as again in the present review petition, reference was made to Regulation 32 of the Company Law Board regulations to say that in such circumstances, if anyone had a grievance, an appeal under Regulation 32 (2) had to be preferred by the other party.

3. After considering the arguments advanced by the petitioner, this Court dismissed the writ petition *inter alia*, holding:

7. The question as to whether an order of stay made without hearing the caveator is unenforceable or is a nullity was considered by the Andhra Pradesh High Court in *Reserve Bank of India Employees Association and Another Vs. The Reserve Bank of India and Others*, where the court held as follows:

It follows, therefore, that the order passed by a Court without giving a notice to the caveator cannot be treated as a nullity. If a statute intends to demolish the ordinary powers of a Civil Court, it is well settled proposition of law that it can only be done by a direct piece of legislation enacted for that purpose and not by the effect of an indirect legislation as if it were by a side wind. The powers of a Civil Court are too sacrosanct to be allowed to be diluted or to be curtailed by a mere remote implication. I, therefore, hold that as there is no specific provision declaring any action taken by the Court contrary to its mandatory duty under Sub-section (3) to give a notice would be void, the order passed by the Court below on 30-10-1980 is not a nullity. In other words, it appears to me that the mere lodgement of a caveat would not deprive the Court of its power to pass an order even if the caveator was not informed of the date of hearing of the matter. As the lodgement of a caveat is merely a right to be informed of the hearing date and it has no effect by way of curtailing the powers of a Civil Court to pass an

appropriate order on the merits of the case, I hold that the order passed in this case on 30th October, 1980 is not without jurisdiction and is, therefore, operative till it is set aside in appropriate proceedings.

A similar view was taken in *K. Rajasekaran Vs. K. Sakunthala and Others and Kendriya Vidyalaya Sangthan Vs. M.L. Mudgal*,

8. This Court agrees with the above view as a general proposition of law, that the failure to provide notice u/s 148A does not, ipso facto, render the order a nullity. Here, one must also see whether any special prejudice has been caused to the caveator apart from the mere fact of not being served, which is in itself insufficient to vitiate the entire proceedings. In the present case, quite apart from the fact that no order has been made against the caveators, they have not disclose any special damage or prejudice caused to them by the proceedings that undertaken by the CLB that warrant interference by this Court under Article 226 of the Constitution of India. In such a case, holding that the entire proceedings before the CLB in which the litigating parties themselves have been represented are a nullity would be inapposite.

9. It is important to recognize that the writ jurisdiction of this court is limited, and questions of whether the present writ petitioner has an interest in the matter before the CLB or not is primarily a determination to be made by CLB itself, though paragraphs 4-14 of the present petition attempt to make this case out before this court. As a specialized body, the CLB is seized of, and accordingly, exercising jurisdiction over, the Vikram Bakshi matter. In such case, it would be inappropriate for this court to consider the Petitioners' interest, if any, in the matter that would justify a caveat or a right to be heard. Indeed, the writ petitioners in this case also have an alternate remedy available u/s 10F of the Companies Act, 1956 for any grievances that may arise from the orders of the CLB. In such a case, to bypass the relevant statutory framework and engage this Court's writ jurisdiction would be incorrect.

4. Impugning this judgment, Mr. Deepak Khosla, the second petitioner, and counsel for the first petitioner, Mr. RP Khosla, has filed the present review petition, indicating a total of 21 grounds of review. First, it was argued that certain facts were not placed before the Court during the hearing of the writ petition, as they could not have been produced before the Court despite the petitioners' due diligence. It is argued that although the petitioners did produce a copy of the order passed on 12.9.2013, they were unable to produce a copy of the Bench Officer's order which earlier acknowledged the registration of the caveat. Accordingly, reliance is sought to be placed on note-sheet of the proceedings, which have been obtained under the Right to Information Act, 2005, received by the petitioners on 30.9.2013. Mr. Khosla relies on the note-sheet for the following observations, which he claims clearly demonstrate that there indeed was a review of the decision by the Bench Officer, which is impermissible under law given the absence of authority:

It is observed from the petition that Sh. Deepak Khosla, advocate, is not a party to the petition, however, he is claiming himself as a Prospective Respondent through his intervening application. Since Sh. Deepak Khosla, advocate is not party to the petition and the petitioner as per the statement of Petitioners Counsels M/s. Amar Chand & Mangaldas & Suresh A. & Co. have not sought any relief against him, a copy of the Petition not required to be served on him at this stage. Submitted for Orders Please.

Previously, it is argued that the Bench Officer had issued directions to serve papers under the caveat, and that this change in stand calls for the interference of this Court. For this, Mr. Khosla relies on the following observations made by the Bench Officer on 10.9.2013: "After scrutinizing the petition, I vide letter dated 10.9.2013, requested M/s. Amar Chand & Mangaldas & Suresh A. & Co. to serve a copy of the petition/Notice on the Caveators, i.e. Sh. Dua Associates and Sh. Deepak Khosla." Secondly, Mr. Khosla argues that the Bench Officer, by registering the caveat without demur, has also now reviewed his earlier grant of prayer (b) of the caveat petition also, which read as follows: "(b) To grant hearing before refusal to register the caveat." Furthermore, Mr. Deepak Khosla submits that the judgment sought to be reviewed does not deal with various issues raised in the writ petition, such as the prayer to issue a mandamus to the Delhi High Court and the Company Law Board to frame rules for dealing with caveats in the future, so that such "incidents" do not arise in the future. Further, it is argued that the judgment, after stating in paragraph 6 that the phraseology employed in Section 148A of the CPC ("CPC") is wide enough to enable the lodging of a caveat on behalf of a third party litigant who may not be impleaded in the particular proceeding, could not have stated subsequently that the caveator did not have a right to be served the papers.

5. These findings, Mr. Khosla argues, are contradictory. Rather, it is argued that the lodging of a caveat creates a right to receive the petition/application, receive notice prior to hearing and a right to be heard (if arrayed as a party), if the caveat is registered, and moreover, instantly creates a right to be heard on the caveat itself. It is argued that the judgment also omitted to duly appreciate the argument that if lodging of a caveat was, in the opinion of the opposite party, erroneous, being a "judicial" order, that party had every right to challenge it in the manner provided in law, before complying with the same and providing the petition. Further, it has been further argued that the right to prefer an appeal against lodgement of the caveat in the instant case was on the petitioners in the Company Petition, who had 15 days to take recourse to file an appeal under Company Regulation No. 32(2). On these grounds, it is argued that the judgment must be reviewed and recalled, as these various arguments were not appreciated. It was also argued that this was not a case where a caveat was inadvertently not served, but rather, was blatantly reviewed by a Bench Officer who did not have the duty to do so. Thus, it was submitted that the order reviewing the order registering the caveat is a nullity in law - an argument which, Mr. Khosla submits, was not appreciated in the impugned judgment. On

this ground, too, it was argued that the judgment is liable to be recalled and reviewed.

6. The petitioners fault the judgment on the ground that this Court truncated the hearing at various points, and that a fair hearing was not given to him on the issues that are claimed to have arisen in the proceedings. Next, it is argued that this Court erred in appreciating what is a "nullity" in law, and how it is to be challenged. The refusal of a Court to allow a writ petition on the grounds of availability of an alternative remedy cannot - and does not ever - extend to petitions which challenge (so-called) orders which are a "nullity" in law. For this, learned counsel relied on various decisions of the Supreme Court, including *Kiran Singh and Others Vs. Chaman Paswan and Others*, , *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others*, , *Nivedita Sharma Vs. Cellular Operators Assn. of India and Others*, , to argue that orders which ignore binding precedent, and are per incuriam, are nullities from the very day they were passed. It was argued that such orders do not have the force of law, and are thus, to be ignored. Further, as regards the observations of this Court in paragraph 10 of the judgment sought to be reviewed (concerning the fact that the Judicial Member of the CLB was impleaded, apart from the CLB itself), and reliance placed on the decisions in *Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others*, and *Savitri Devi Vs. District Judge, Gorakhpur and Others*, Mr. Khosla argues the reliance on these judgments, which were not placed before him by the Court, makes, in itself, the impugned judgment a nullity as the principle of *audi alteram partem* was ignored. Further, Mr. Khosla argues that the observations in *Savitri Devi* were merely obiter and in any case, those observations were incorrectly applied by this Court in the impugned judgment, since *Savitri Devi* did not bar judicial officers from being impleaded in all cases but only in cases where it was "unnecessary". Mr. Khosla submits that the reading of the decision in *Savitri Devi* is incorrect, and is selective; on this ground, the judgment is liable to be reviewed. Finally, Mr. Khosla submits that the alternate remedy in Section 10F of the Companies Act, 1956 is not equally effective and thus, he cannot be relegated to that remedy. It is claimed that the process u/s 10F involves various steps, and is a longer route than a writ petition under Article 226 of the Constitution. Further, it is argued that even if the reasoning of an alternate remedy is considered correct, i.e. an appeal ought to have been filed u/s 10F, the Court could very well have directed that the writ petition would be "treated" as an "appeal" by it u/s 10F, and then proceeded to deal with the (converted) appeal itself, or at the highest, remanded it to the Company Court for an urgent hearing. On these various grounds, it is submitted that the judgment and order of 01.10.2013 are liable to be set aside.

7. The present review petition and arguments advanced by Mr. Khosla canvass a rather broad set of alleged inconsistencies with the judgment of 1.10.2013 in question. First, as regards Mr. Khosla's argument that no finding was recorded by the Court as regards the prayer that directions to frame rules must be made, the Court notes that paragraph 5 of the impugned judgment deals with that

argument, and given the broad provisions of Rule 44 of the Company Law Board Regulations, 1991, which are adequate, and grant Benches of the CLB discretion to deal with matters such as that complained of in the writ petition, no order was made to frame rules. The findings of the Court were as follows:

5. The Company Law Board Regulations, 1991 were framed in exercise of powers u/s 10-E of the Companies Act. These regulations provide for various situations with respect to filing or presentation of petitions and matters before the CLB, their listing, orders to be made, etc. Regulation 32 empowers the Bench officer-subject to general or special directions- to decide upon routine matters pertaining to scrutiny and processing of the petitions and applications filed before the CLB. Some of these determinations are appealable to the Bench, u/s 32(2). Now, there is no specific provision with regard to applicability of Section 148-A of the CPC. Therefore, the petitioners contend that the CLB should be directed to frame regulations in that regard. A look at the 1991 Regulations would clarify that they cater to specific class of proceedings; there is no indication regarding applicability of provisions pertaining to caveats. Yet, Regulation 44 entitles the Bench of the CLB, in the given facts of any particular case to make such orders as it may deem expedient to secure the ends of justice: "Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

8. Before addressing the other grounds of review, however, the Court notes that issues actually addressed by the judgment of 1.10.2013 were three-fold. First, whether the failure to provide a notice under a registered caveat u/s 148A, CPC, would vitiate that order; secondly, whether the writ petition is maintainable given the presence of an equally efficacious alternate remedy in terms of Section 10F of the Companies Act, 1956, and finally, the judgment records an observation regarding the fact that the judicial member of the CLB was impleaded.

9. On the first question, the impugned judgment relied on the decision of the Andhra Pradesh High Court in Reserve Bank of India Employees Association and Another Vs. The Reserve Bank of India and Others, (and similar decisions in K. Rajasekaran Vs. K. Sakunthala and Others and Kendriya Vidyalaya Sangathan Vs. M.L. Mudgal, where the Court held as follows:

It follows, therefore, that the order passed by a Court without giving a notice to the caveator cannot be treated as a nullity. If a statute intends to demolish the ordinary powers of a Civil Court, it is well settled proposition of law that it can only be done by a direct piece of legislation enacted for that purpose and not by the effect of an indirect legislation as if it were by a side wind. The powers of a Civil Court are too sacrosanct to be allowed to be diluted or to be curtailed by a mere remote implication. I, therefore, hold that as there is no specific provision declaring any action taken by the Court contrary to its mandatory duty under Sub-section (3) to give a notice would be void, the order passed by the Court below on 30-10-1980 is not a nullity. In other words, it appears to me that the

mere lodgement of a caveat would not deprive the Court of its power to pass an order even if the caveator was not informed of the date of hearing of the matter. As the lodgement of a caveat is merely a right to be informed of the hearing date and it has no effect by way of curtailing the powers of a Civil Court to pass an appropriate order on the merits of the case, I hold that the order passed in this case on 30th October, 1980 is not without jurisdiction and is, therefore, operative till it is set aside in appropriate proceedings.

The argument that this proposition is incorrect, and that the rulings in the above cases can be differentiated on the ground that there is a distinction between cases where notice to the caveator is not given inadvertently and where the caveat is removed by an order (as is allegedly the case here, on the basis of the note-sheets produced along with the present review petition) is unpersuasive. Neither the dictum in the Reserve Bank of India Employees Association (supra) ("The powers of a Civil Court are too sacrosanct to be allowed to be diluted or to be curtailed by a mere remote implication. I, therefore, hold that as there is no specific provision declaring any action taken by the Court contrary to its mandatory duty under Sub-section (3) to give a notice would be void, the order passed by the Court below on 30-10-1980 is not a nullity. In other words, it appears to me that the mere lodgement of a caveat would not deprive the Court of its power to pass an order even if the caveator was not informed of the date of hearing of the matter.), nor any other authority supports such a proposition. Quite to the contrary, it stands to reason that if the absence of a notice in an admitted caveat is not fatal to those proceedings, then an order in a merely lodged, and not registered, caveat or a caveat that has been removed must be susceptible to the same reasoning. Further, as was indicated in the impugned judgment, it is important to remember that no adverse order was made against the caveators, and further, they have not disclosed any special damage or prejudice caused to them by the order. Thus, independent of the registration of the caveat, or whether the petitioners have a caveatable interest, (issues which were left open by the impugned judgment, to be decided by the CLB itself), the order made in the proceedings in Vikram Bakshi is not a nullity on this ground.

10. As regards the argument that the "order" of the officer indicating that papers need not be served on the petitioners, thus allegedly reversing or reviewing an earlier decision to register the caveat, the Court, in the impugned judgment, held that an alternate and equally efficacious remedy lay u/s 10F of the Companies Act to appeal that order. The revisioner's argument that Section 10F involves a longer route than that under Article 226, and thus should not be insisted upon is not persuasive. The revisioner does not contest that an alternate remedy does lie, as a matter of law, u/s 10F. Rather, it is contended that such a remedy is not equally effective. However, no reasons have been provided by the petitioner as to why an appeal u/s 10F is not effective, apart from the mere fact that it involves certain additional steps as compared to a petition under Article 226. The mere fact that a statutory remedy involves additional steps to be taken (in this case, under the Companies Act, 1956) cannot and should not lead to the conclusion

that the remedy is not effective, or unduly burdensome in any way. Indeed, if such a conclusion were to be reached, then a writ petition under Article 226 could be preferred for all cases where an order of the CLB is impugned as opposed to the statutory remedy u/s 10F. Such reasoning would render Section 10F defunct, and indeed, open the floodgates under Article 226. In fact, the holding of the Supreme Court in *Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal*, that such situations must not be allowed to arise in the following words is particularly apt in this case:

19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case, *Titagarh Paper Mills* case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

Indeed, just as the petitioners argue that the remedy for a party aggrieved by the registration of a caveat is an appeal under Regulation 32(2) of the Company Law Board Rules, the remedy for the petitioners themselves against the failure to serve notice under a caveat, or indeed, any other issues arising from orders of the CLB, is to proceed under the statutory mechanism.

11. Similarly the argument that the Court ought to have transformed the writ petition into an appeal u/s 10F is not tenable, as the Court bears no authority to transform the nature of proceedings from the nature of a writ petition requesting the exercise of constitutional authority vested in the High Court under Article 226 to a wholly different and distinct statutory remedy u/s 10F. It was also argued here that the question of alternate remedies cannot arise for orders that nullities in law - however, any and every order that a party believes to be incorrect, or not in accordance with applicable law (legislations, rules or other sources), does not transform into a nullity. Rather, if a party is aggrieved by an order on the ground that it violates or wrongly interprets a statutory provision or a previously binding judicial precedent, the correct remedy is to appeal that order under the available mechanisms, rather than label the order a nullity which, without any further judicial intervention, has no force of law.

12. Finally, on the question of impleading a judicial member of the CLB, the Court notes that the revisioner's argument that Savitri Devi (*supra*) does not bar impleadment of judicial officers in any and every case is correct. However, cases such as the present one, are precisely the set of circumstances that the dictum in

Savitri Devi (supra) applies to. The petitioners questioned a judicial act/order of the CLB (passed by the CLB member) on the ground of its legality and consonance with the CPC and other legal provisions. The impugned order, thus, was an order of the CLB, and not a private act of the judicial officer, who was, independent of the rightness or wrongness of the decision, acting in his judicial capacity. There arose no occasion to array the judicial member as a party. In fact, the holding of the Court in Savitri Devi (supra) is apt in such cases:

14. Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the SLP filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the SLP they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the SLP and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.

Accordingly, for the above reasons, the Court finds no reason to review or recall its judgment dated 01.10.2013, and thus, this review petition and all pending applications are dismissed.