

(2013) 10 DEL CK 0133

In the Delhi High Court

Case No : Writ Petition (C) 5889 of 2013 and C.M. 12981, 12982, 12983, 12984, 12985, 13484, 13485 and 13486 of 2013

R.P. Khosla and Another

APPELLANT

Vs

Hon"ble Company Law Board and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

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

Citation : (2014) 118 CLA 39 : (2014) 183 CompCas 220 : (2013) 205 DLT 530 : (2013) 122 SCL 263

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

Bench : Division Bench

Advocate : Deepak Khosla, for the Appellant; Rajshekhar Rao, Advocate for DHC/Resp. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In this writ petition, directions have been 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 148A of the CPC (CPC). More specifically, a direction that some orders of the CLB are a nullity, and therefore, require to be quashed is also sought. Briefly, the petitioners claim to have filed a caveat before the CLB on 10.09.13 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 for impleadment as an intervenor.

2. It is argued 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 11.09.13 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). The petitioners argue 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 9.9.2013, the Bench Officer indicated acceptance; the Chairman could not have then assigned the matter to a CLB member. 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. In its absence, stated the petitioners, the consequences flowing from the caveat and the right inhering from its being lodged could not have been nullified by a single judicial member, who lacked any authority in this regard. Thus, stated the petitioners, all orders having any adverse impact or consequence to them issued without furnishing copies to them, or without hearing them, were a nullity. They require to be quashed.

3. The limited question requiring consideration of this Court for the purposes of this Petition is whether a failure by the CLB to provide notice to the petitioners as caveators u/s 148A of the CPC renders those proceedings, and the orders passed therein, a nullity.

4. The Company Law Board Regulations, 1991 were framed in exercise of powers u/s 10E of the Companies Act, 1956. 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 148A 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 a specific class of proceedings; there is no indication of the 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:

44. Saving of inherent power of the Bench. 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.

5. The phraseology employed in Section 148A CPC is wide enough to enable the

lodging of a caveat, on behalf of a third party litigant, who may not be impleaded in a particular proceeding. However, the lodging of that caveat itself would only entitle the caveator under such circumstances to bring to the notice of the court that such caveat is lodged. As to whether he is entitled to be heard, especially when the parties to the litigation do not admit or recognize his right to be heard, is a matter to be determined by the concerned court. Analogically, therefore, even if it is assumed that the petitioner's caveat was indeed lodged with the CLB, as is contended here, it would not automatically follow that the caveators would have a right to be heard, when they are not shown as parties.

6. 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:

5...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 lodgment 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 lodgment 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 Sangathan Vs. M.L. Mudgal,

7. 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 disclosed any special damage or prejudice caused to them by the proceedings 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.

8. 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.

9. This Court observes with some concern that the petitioner appears to deliberately have implicated not only the CLB but also its Judicial Member and two Bench officers. Even if there was some justification in impleading the CLB, in furtherance of the relief of a direction to frame rules, this Court perceives no such rationale for impleading a Judicial Member and other officials of the CLB. This Court is conscious of the decisions of the Supreme Court reported as *Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others*, and *Savitri Devi Vs. District Judge, Gorakhpur and Others*, where such action has been deprecated. In an order in the related matter, concerning the very same facts which engaged the attention of this Bench-where the order of the CLB dated 16.09.2013 in C.P. 110(ND)13 was questioned, learned Single Judge, by the decision dated 30.09.2013 (in W.P. 6002/2013) deprecated an identical conduct by the very same petitioners. He also directed strict compliance with the law declared by the Supreme Court in *Savitri Devi (supra)* and *Fakeerappa (supra)*. It goes without saying that the petitioners may, in accordance with law, pursue their caveat application, or another application to intervene in the matter, before the CLB itself which is free to pass appropriate orders. Nothing stated in this order would be construed as an expression of the merits as to whether the petitioners had lodged the caveat, as they allege, and whether they had caveatable rights, which can be recognized and whether they can be heard in the matter in which they claim to be interested. The petition is, for the above reasons, dismissed along with pending applications.