

(1976) 03 SC CK 0045

In the Supreme Court Of India

Case No : Civil Miscellaneous Petition No. 1953 of 1976

S. Balasamy Nadar

APPELLANT

Vs

Sun Paper Mill Ltd. and Others

RESPONDENT

Date of Decision : 18-03-1976

Acts Referred:

COMPANIES ACT, 1956 — Section 284

Citation : AIR 1976 SC 2542

Hon'ble Judges : R. S. Sarkaria, J;P. N. Shingal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The facts leading to this order are that the 14th Annual General Meeting of the shareholders of the respondent-Company, which is a public limited concern, was scheduled to be held on December 29, 1975 at 4.00 p.m. Due notice of this meeting had been issued to all the shareholders. Mr. B. R. Adityan, respondent 5 herein and a shareholder of the company, served a notice on the Company u/s 284 of the Companies Act for removal of the Managing Director, Shri K. P. Kandasamy, from the office of the Director in the Board. S. Balsamy Nadar filed a suit in the City Civil Court Madras against the Company for an injunction restraining it from holding the Annual General Meeting on December 29, 1975. The City Civil Court granted an ex parte interim injunction restraining the Company from holding the Meeting. The Managing Director, Mr. K. P. Kandasamy did not take any step to get the injunction vacated. After this order of the City Civil Court, the Secretary of the Company is alleged to have issued notice to the shareholders that owing to the interim injunction issued by the Court the meeting would not to be held on December 29, 1975. At the instance of respondents 2 and 3 in the appeal a learned Judge of the High Court, sitting as Vacation Judge, passed an order on December 29, 1975 in Civil Misc. Petition No. 14608 of 1975 in C.M.A. (unnumbered) and SR No. 100108 of 1975 suspending the order of the interim injunction passed by the City Civil Court. Against that

order, Shri S. Balasamy Nadar preferred a SLP in this Court. He also prayed for:

(a) an ad interim ex parte order staying the operation of the order of the Madras High Court, dated 29-12-1975, passed in C.M.P. No. 14608 of 1975 in C.M.A. (unnumbered) and S. R. No. 100108 of 1975 and all further proceedings thereto.

(b) an ad interim ex parte order restraining the respondents from carrying out the resolutions passed in the said 14th Annual General Meeting held on 29-12-1975 including the management of the Company by the Directors elected to office at the said meeting on 29-12-75.

2. This Court on January 14, 1976 granted an ex parte stay of the operation of the order impugned pending disposal of notice of motion. Thereupon on February 9, 1976, Special Leave was granted and it was directed that the appeal be listed for hearing in the 1st week of April, 1976. The earlier stay order was confirmed with this modification:

Status quo as on today shall be maintained pending the disposal of the appeal in this Court.

3. On the same day at about 2.00 p.m. Mr. K. Jayaram, Advocate mentioned this matter. As a result, the matter again came up before us on February 10, 1976. We made an order reiterating that "the ex parte stay is confirmed and status quo as on today shall be maintained pending the disposal of the appeal in this Court". On March 12, 1976, Mrs. S. Bhandare Counsel for respondent No. 1 moved contempt petition No. 1953 of 1976 before us. In this petition no less than six serious allegations were made against the respondents who were in management of the Company. It was alleged:

(a) that they dismissed, suspended or sent on compulsory leave several old and loyal employees of the Company and were preventing certain other employees from attending to their duties.

(b) that the Company was facing a critical situation in its functioning. It has defaulted in its installments scheduled to be paid to its bankers according to the deferred payments scheme entered into between the Company and the financial institutions.

(c) The Company was not in a position to execute all the pending orders placed by its regular customers against advance deposits and it was feared that legal proceedings might be taken against it for not complying with the orders and if this situation continued the Company would suffer heavy losses.

(d) The purchase of raw materials has so much slackened that the mill will shortly face scarcity of raw materials which is bound to bring down the production capacity and cause heavy financial losses to the Company.

(e) The company was facing labour and industrial problems.

4. This matter was mentioned on the 10th and was listed on the 12th of March,

1976, Mr. Jayaram, Advocate for respondents 2 and 3 was present. He was unable to deny these allegations as he said that he had no notice that the matter was coming up for consideration or clarification of the stay order. Anyway, from the allegations made it appeared to us that immediate modification of this Court's order was necessary to save the Company from the extraordinary critical situation which was then said to be developing. We, therefore passed this order:

Mr. K. Jayaram, Advocate says that he did not have sufficient notice for fixation of this matter for today. In any way, an extraordinary situation has arisen and the entire function of the company stands stultified. We therefore, modify our stay order ...of the applicant.

5. Respondents 2 and 3 have now come up for seeking clarification of this Court's order dated March 12, 1976 and an affidavit has been filed in which they have refuted the aforesaid allegations leveled in the contempt petition.

6. Mr. Daphtary appearing for respondent 3 contends that on the 12th there was no petition before this Court, for seeking clarification of this Court's order of the 9th/ 10th February, 1976. Our attention has been drawn to the relief prayed for in the contempt petition. On merits, it is submitted, this Court's order of the 9th/10th February 1976 has instead of resolving created more complications. It is stressed that the stay order could operate only prospectively and not retrospectively undoing something already done. We have also heard Mr. Tarkunde, appearing for the other side. To meet the situation that has arisen, in the interests of maintaining the normal functioning of the Company, we would in supersession of our earlier stay order direct that the old Directors M/s. Kejriwal and K. Pasupathi whose terms are said to have expired on the 29th December, 1975 shall not participate in the management, meetings or in controlling the affairs of the Company in that capacity. Further, the two Directors, namely Mr. T. R. Beem Singh and Uthira Pandian who are said to have been elected in place of the retiring Directors in the meeting held by the respondents and some other shareholders on the 29-12-1975-the validity of which is in question-shall also refrain from taking any part in the meetings, management, control or direction of the Company during the pendency of this appeal. The management control and direction of the Company and its affairs shall, during the pendency of this appeal, be carried on by the Managing-Director-Chairman. Shri K. P. Kandasamy, and the other four Directors, namely, Shri S. T. Adityan, Shri B. S. Adityan, Shri K. Maheshwaran and Shri T. R. Dharanidharan (Nominee Director of Tamilnadu Industrial Investment Corporation). Nothing in this order shall affect anything done, commitments made or liabilities incurred or obligation undertaken, prior to this date and during the pendency of this petition. Further implementation as from today of the resolutions passed in the Annual General Meeting on the 29th December, 1975 shall remain stayed. It is further directed that the Committees constituted under the resolutions dated 29th December, 1975 and subsequently, if any, shall not function hereafter.