

(1955) 12 MAD CK 0008

In the Madras High Court

Case No : O.P. No. 218 of 1954 and Applns. No's. 2452, 2473 and 3110 of 1955

S. Ramaswami Chettiar and others

APPELLANT

Vs

Jai Hind Talkies (Paramakudi) Ltd. and others

RESPONDENT

Date of Decision : 01-12-1955

Acts Referred:

Companies Act, 1956 — Section 153C

Citation : (1955) 12 MAD CK 0008

Hon'ble Judges : Bala Krishna Ayyar, J

Bench : Single Bench

Advocate : R. Srinivasan and Vittal V. Some, for the Appellant; R. Kesava Iyengar, K. Parasaram, K. Krishnaswami Iyengar and R. Aravamudha Iyengar, for the Respondent

Judgement

Bala Krishna Ayyar, J.—In September 1946, Kesavaraman Chettiar along with some others as partners was running a talkie house in

Paramakudi called Jai Hind Talkies. On 11-6-1951 the business was converted into a limited liability company. The shares were each of the face

value of Rs. 2,000. 152 shares were issued of which 144 were subscribed. Kesavaraman Chettiar held eight shares.

Article 13 of the Articles of Association of the company provides that the qualification of a director shall be the holding of at least five shares in the

company registered in his name. Article 15 provides that Kesavaraman Chettiar shall be the managing director.

Under Article 16 the remuneration of the managing director is fixed at Rs. 200, per month with an option to the directors, subject to the approval

of the general body, to pay additional remuneration to the managing director. Art. 17 provides that the whole affairs of the company shall, subject

to the control and direction of the Board of Directors, be managed by the managing director. Art. 18 provides that Kesavaraman Chettiar shall be the ex-officio director of the company and he shall not be subject to retirement by rotation.

2. Dissensions, however, soon broke out inside the company. In 1952 Parvathammal and some others who held shares in the company filed O. P.

No. 101 of 1952 for its being wound up. They also filed another petition, O. P. No. 305 of 1952, in which they prayed for various relief's:

(a) for an order removing Kesavaraman Chettiar and three others from the management of the company and the directorate,

(b) for the appointment of an administrator to take charge of and conduct the affairs of the company,

(c) for calling a general body meeting,

(d) for the appointment of an auditor to scrutinise the accounts of the company and prepare a balance sheet, and

(e) for an amendment of the articles of the company and deletion of Art. 18.

On 2-3-1953 Ramaswami Gounder J. passed an order dismissing O. P. No. 101 of 1952. So far as O. P. No 305 of 1952 is concerned, he

appointed a commissioner to call for a general body meeting of the shareholders of the company for two purposes : (1) for the alteration of the

articles of association, if any, and (2) for elections to the board of directors. He further ordered that two of the existing directors should resign In

order to ensure that only three of the old directors would continue while fresh elections would be held for the place of four directors.

Mr. Seshan, an advocate of Mathurai was appointed commissioner for the purpose. The commissioner held a meeting on 10-5-1953 and at that

meeting four directors were elected, but no amendment of the Articles of Association could be passed for lack of the requisite majority.

3. On 28-7-1953 Ramaswami Gounder J. passed an order in which he declined to remove Kesavaraman Chettiar from the office of managing

director and confirmed the proceedings of the meeting held by the Commissioner on 10-5-1953. Dissensions, however, still continued. The

managing director called for a meeting of the directors on 31-10-1953. but the newly elected directors did not attend on the ground that the date

did not suit them.

On 2-1-1954 the newly elected directors called for a meeting of the directors on 6-1-1954, but Kesavaraman Chettiar and those who supported

him did not attend the meeting on the ground apparently that a meeting of the directors could be properly called only by the managing director.

4. On 19-8-1954 the newly elected directors and twelve other shareholders, making in all sixteen, filed a petition, O. P. No. 218 of 1954, under

S. 153-C, Companies Act.

(a) for the removal of Kesavaraman Chettiar, Ramachandran Chettiar and Kannuswami Chettiar from the management of the company.

(b) for the appointment of an administrator to take charge of the affairs of the company,

(c) for an amendment of the Articles of Association of the company by deleting Arts. 15, 18 and 18 and by amending Art. 13 by lowering the

share qualification of the directors from 5 to 4 shares and other relief's.

On that it was ordered that notice of the application be given by advertisement in the Port St. George Gazette and in one issue each- of the ""Hindu

and the ""Swadesamitran"".

The hearing was fixed for 20-9-1954. The advertisement appeared in the issue of the Port St. George Gazette dated 15-9-1954, in the issue of

the ""Hindu"" dated 6-9-1954 and in the issue of the ""Swadesamitran"" dated 8-9-1954. The material portion of the notice that appeared In the Port

St. George Gazette is in these terms:

Notice is hereby given that a petition under S. 153(c), Companies Act, 1913, for removal of respondents 2 to 4 and for other relief's was

presented by the petitioners on 24-3-1954 and that the said petition is directed to be heard before the Judge sitting in Chambers on 20-9-1954.

Any person desirous of supporting or opposing the making of an order as prayed in the petition should appear at the time of the hearing by himself

or by his advocate, and a copy of the petition will be furnished to any person requiring the same by the undersigned on payment of the regulated

charge for the same.

5. On 23-3-1955 Ramaswami Gounder J. passed an order by which Art. 13 was amended, reducing the share qualification of directors from five

to four; Arts. 15 and 16 were deleted and from Art. 18 the words ""the managing director"" were removed. Art. 17 was replaced by another article

in these terms:

The whole affairs of the company shall vest in, and be managed by, the board of directors.

The result of all this was that Kesavaramau Chettiar ceased to be an irremovable managing director and became merely an irremovable ordinary

director. Ramaswami Goundar J. also directed that the general body meeting be held in March 1956 in accordance with the articles and pending

that he directed that Kesavaraman Chettiar, Pandian Chettiar, Krishnan Chettiar, Minakshisundaram Chettiar and Shaik Dawooti should constitute

a board of administrators. The order ends with this note:

The entirety of this order is passed by consent after discussion with the learned counsel on both sides.

Appln. No. 2452 of 1955 was filed by two shareholders in the company and their prayer is,

(1) that they may be brought on record as parties to O. P. No. 216 of 1954,

(2) to set aside the order made by Ramaswami Goundar J. on 29-3-1955,

(3) to allow the applicants to contest the petition, and

(4) to restrain the board of administrators appointed under the order dated 29-3-1955 from continuing the management of the affairs of the

company.

6. Appln. No. 3110 of 1955 was filed by Kesavaraman Chettiar and two of the directors who support him for relief's which are more or less, the

same as those set out in Application No. 2452 of 1955.

7. The first contention of the petitioners in Appln. No. 2452 of 1955 is this. Rule 14 of the rules framed by this Court under the Indian Companies

Act requires that,

every petition shall be advertised not less than fourteen days before the date fixed for hearing in the Fort St. George Gazette and in one English and

one vernacular daily newspaper as may be fixed by the Judge or Registrar.

In the present case the advertisement appeared in the issue of the Fort St. George Gazette dated 15-9-1954, in the issue of the ""Hindu"" dated 6-

9-1954 and in the issue of the ""Swadesamitran"" dated 8-9-1954.

Ignoring for the moment the circumstance that the fourteen days referred to in this rule have been held to be fourteen clear days, the fact

incontrovertibly stands that the advertisement in the ""Swadesamitran"" was made only twelve days before the date of the hearing of the petition and in the Fort St. George Gazette only five days before such date.

8. To this objection Mr. Kesava Aiyangar answered that the point was not taken in the affidavit filed along with the petition. That is no doubt so, but, since this is a matter which appears on the face of the record, an omission to plead it in the affidavit does not appear to me to be of importance.

The language used in R. 14 in terms similar to the language used in S. 81, Companies Act, which requires not less than twenty one days' notice to be given of an intention to pass a special resolution. So far as is here material, the language of the rule and of the statute is the same. In K.A.S.

Mohammed Ibrahim Vs. Jaithoon Bivi Ammal, represented by her next friend and guardian, Shaik Dawood Rowther, a Bench of this Court observed,

The date of the meeting and the date of service of notice are therefore to be excluded, and in-between the dates there should be an interval of twenty one days. The notice issued to all the members therefore was inadequate and did not comply with the statutory requirement and is therefore illegal. The meeting therefore was not legally convened.

The omission to give fourteen days' notice prescribed by R. 14 cannot, in my opinion, be treated as an irregularity which may be ignored.

9. The second complaint of the applicants in Appln. No. 2452 of 1955 was this. Not merely did the period of the notice fall short of the prescribed minimum of fourteen days, but the notice omitted to furnish the requisite particulars. The notice has to go in Form No. 2 printed on page 35S of the Original Side rules. It begins,

Notice is hereby given that a petition under Section..... of the Indian Companies Act, 1913 for....was presented by.... on the....day of etc.

Now, the argument was that immediately after, the word ""for"" the relief's asked for in the petition should be enumerated. All that was said in the advertisement is ""for removal of respondents (2) to (4) and for other relief"s.

An examinations of the petition shows that far more enduring changes than the removal of the director were asked for. The omission to mention

these matters is fatal to the order that was subsequently passed.

10. To this the answer was that the substantial point was only the removal of Kesavaraman Chettiar and two of the directors who were supporting

him, and, that the other relief's were really only ancillary in their nature. No doubt for parties who are engrossed in the personal aspects of the

issues, that might have appeared to be the true picture; but a shareholder who is not interested in the personal fights between the directors would

not take this view.

Material alterations in the Articles of Association were asked for and if a shareholder were to complain that the advertisement actually issued did

not give him adequate notice of the relief's prayed for in the petition, no one can say that the complaint is illegitimate.

11. The third point made was that the order passed by Ramaswami Goundar J. on 29-3-1955 is a consent order. Now, the order involved also an

alteration of the Articles of Association. It was argued that if it was intended to alter the Articles of Association by any compromise between the

company and its members or any class of its members, the procedure laid down in S. 153 of the Act should have been followed.

I think the objection is sound. Neither the directors of a company nor the shareholders by merely coming to court and saying that they consent to a

particular order can by-pass the requirements of S. 153 of the Act.

To this Mr. Kesava Aiyangar replied that if the order which Ramaswami Goundar J. made on 29-3-1955 is read carefully it will be seen that It is

really a direction by the court and not a consent order. Now, I cannot go behind the order, and the last part of that order very explicitly states,

the entirety of this order is passed by consent after discussion with the learned counsel on both sides.

This statement in the order is conclusive. If it were erroneous the learned Judge should have been moved either at once or promptly after to correct

it. That was not done. In view of this statement in the order I cannot entertain the argument of Mr. Kesava Aiyangar that it was not a consent

order.

12. Mr. Kesava Aiyangar for the respondent finally said, Appln. No. 2452 of 1955 is not competent. The applicants in it were not parties to the

O. P. That O. P. has been finally disposed of and after it has been disposed of

they cannot possibly be heard to say that they ought to be impleaded in it, and allowed to contest it afresh.

Ordinarily of course the rule is that when a matter is closed a person cannot come subsequently and ask that he might be added to it in order to give him an opportunity of fighting out the proceedings afresh. But this rule cannot be extended without qualification to proceedings of this nature.

As I have already found, the notice given was insufficient as regards time and inadequate also as regards particulars, and the procedure finally

adopted is also not in accordance with the statute. How then is a shareholder who is affected by such an order to protect his rights? Mr. Kesava

Aiyangar suggested that he should file an appeal against the order after obtaining special leave.

Now, if he can obtain special leave and file an appeal I do not see why he should not in the first instance be allowed to come to court and say:

these notices are defective, the time given is insufficient; the particulars given are also inadequate; if particulars had been given, I would have come

earlier and within the time allowed in the advertisements. It seems to me that if a shareholder can be allowed to appeal there is no bar in principle

to allowing him to agitate the matter in the court of first instance.

13. At this stage, reference may be made to the form of the advertisement, and the latter part of Form No. 2 which runs:

Any person desirous of supporting or opposing the making of an order as prayed in the petition should appear at the time of hearing by himself or by his advocate-

A person who is invited to appear and who under the rules is entitled to specific clear notice of a particular direction cannot be shut out by giving

him inadequate notice and then telling him that the matter has been disposed of.

14. Mr. Krishnaswami Aiyangar who appeared for the applicants in Appln. No. 3110 of 1955 raised another point. Mr. Gopalaratnam and Mr.

G. N. Chart were appearing for Kesavaraman Chettiar in O. P. No. 218 of 1954. As already stated the order made by Ramaswami Gounder J.

was a consent order. Mr. Krishnaswami Ayyangar pointed out that the vakalat which has been filed by Mr. Gopalaratnam and Mr. G. N. Chart

did not confer on them, however, the authority to enter into a compromise.

On a reference to the vakalat, I find that this is so. It has been laid down in Jagapati Mudaliar v. Ekambara Mudaliar 21 Mad 274 (B) that it is not

competent to a pleader to enter into a compromise on behalf of his client without his express authority to do so. See also Thenal Ammal and

Another Vs. Sokkammal and forty-six Ors., and Sarath Kumari Dasi v. Amulyadhan; AIR 1923 PC 13 (V 10) (D).

As the vakalat did not give counsel authority to compromise, Kesavaraman Chettiar and the two other directors who sail with him would not be

bound by the compromise.

15. Mr. Kesava Aiyangar pointed out that even if it be that counsel had no authority to compromise still Kesavaraman Chettiar had ratified the

compromise by consenting to work and also working as an administrator on the basis of the order passed by Ramaswami Goundar J. Mr.

Krishnaswami Aiyangar explained that in acting as an administrator he was proceeding on the basis of a letter addressed to him by Mr. Chart

wherein it is not mentioned that the order passed on 29-3-1955 was passed by consent.

Regard being had to this letter, I do not think it right to say that there has been a ratification of the action of counsel by Kesavaraman Chettiar or

the others.

16. It seems to be clear to me that the applicants in Appln. No. 2452 of 1955 have a real and substantial interest in the proper management of the

affairs of the company. Prayers (i), (ii) and (iii) in that application are allowed. So far as prayer (iv) is concerned, I do not think that I should grant

that prayer now. To tie up the hands of the Board of Administrators would be to bring to a complete stop the working of the company, and that is

to nobody's advantage.

17. This takes me to Appln. No. 2473 of 1955. One of the administrators appointed is Sheik Dawood Sahib. With a view to leaving Ramnad, he

wanted to be relieved of his post of administrator. Appln. No. 2473 of 1955 is to appoint one Sangiah Chettiar in his place and to give suitable

directions to Kesavaraman Chettiar in respect of the management.

Now, from the discussions I have had with counsel it is clear that Sangiah Chettiar is not acceptable to the opposite side. I invited suggestions in

order to discover whether the parties would be able to agree on a common

name. One side suggested four names and the other side suggested four names, but there is no individual common to the two lists.

It is by no means easy to discover one among the shareholders who is generally acceptable at this stage. I then enquired for the name of a member

of the local bar and the name of Mr. K. Ramachandran Paramakudi, was suggested by one side. To that name the other side had no objection,

I therefore appoint him as an administrator in the place of Sheik Dawood Sahib, pending further orders. I also direct, since that seems to be the

best thing in the interest of the company and the shareholders, that he should be the chairman of the Board of Administrators. Mr. Ramachandran

can apply for his remuneration at a later stage, and he may also apply for directions should the need arise.

18. There will be no order as to costs.