(2015) 02 MAD CK 0471

In the Madras High Court

Case No : Company Appeal Nos. 11, 12 of 2014 and M.P. Nos. 1, 2 of 2014

S.G. Rajamanickam APPELLANT

Vs

S. Kanagavalli and Others RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:
Companies Act, 1956 — Section 235

Citation : (2015) 02 MAD CK 0471

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : P.L. Narayanan for D. Gopal, for the Appellant; T.K. Bhaskar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

R. Mahadevan, J—Challenging the orders, dated 22.8.2014 and 21.10.2014 and made in C.A. Nos. 2 & 3 of 2014 in C.P. No. 70 of 2013 respectively on the file of the Company Law Board, Chennai Bench, the above appeals have been filed.

2. Originally, the first respondent herein had filed a company petition in C.P. No. 70 of 2013 for the following reliefs:-

a. Declare the acts of the respondent No. 2 as fraud, deceit and oppressive to the share holders of the company in general and the petitioner in particular and constant act of mismanagement.

b. Direct the respondent No. 2 to compensate the company for the loss caused to the company due to this oppressive acts by assessing the quantum of damages through a committee of independent officers appointed by the court.

c. Declare that the default committed to statutory authorities in the name of the first respondent company such as EPF, ESI, Sales Tax, Income Tax etc. would not in any manner bind the petitioner.

d. Permit the petitioner to introduce a new share-holder-cum-Director in the place of the second respondent for the benefit of the company.

e. Rectify and approve the reconstitution of the share capital pattern and share holdings as that of 75:25 between the petitioner and the second respondent respectively.

f. Declare that the respondent No. 2 is unfit to act as directors of the first respondent company be reason of his conduct, disabled from acting as directors of the company and he is unfit to continue as director in the best interest of the company and to remove them from the office of the director and appoint such other person or persons as this Hon''ble Board may deem fit.

g. Direct the respondent No. 2 to compensate the company for the loss caused to the company due to his oppressive acts and mismanagement of the company''s assets.

h. Declare that the acts of the respondent 2 quay the first respondent does not bind the petitioner in his capacity as a director of the first respondent.

i. Order and direct Respondent No. 2 to bear the cost of these proceedings.

Interim Relief:-

a. In view of the above circumstances it is prayed that the Board may be pleased to appoint a committee of auditors under Section 235 of the Companies Act to conduct an investigation into the affairs of the company.

b. Appoint a committee of directors to manage the affairs of the company till the disposal of the present petition and for such further and other orders and directions as the nature and circumstances of the case may require.

c. Forbear the respondent No. 2 from operating any bank accounts on behalf of the first respondent company in the capacity as Director/Managing Director or in whatever capacity with the 3rd and 4th respondents.

d. Direct the 3rd and 4th respondents to defreeze the accounts of the company namely current account No. 31191302867 with the 3rd respondent and cash credit account No. 31229343619 with the 4th respondent with immediate effect.

e. Permit the petitioner to induct a new Director to form a quorum for the Board meeting for statutory compliance and other day to day operation of the company.

3. On 3.10.2013, after hearing both the sides, the Board has passed the following order:-

"Without going into the allegations and counter allegations of the parties at this point of time, the interest of the Company is paramount and the affairs of the Company should not come to a standstill in view of the disputes between the Directors. For the aforesaid reasons, I hereby direct the petitioner and the second respondent to operate the Bank accounts of the Company jointly and pay the salaries to the employees from August, 2013 onwards which were due and continue to pay the salaries to the employees. The directors, i.e. petitioner and the second respondent shall also pay the statutory liabilities and for the suppliers and any other dues which the Company need to meet in its day-to-day business. The petitioner shall allow the second respondent in the office and the second respondent is free to inspect the books of accounts and the records of the Company. The second respondent apart from other days shall visit the office of the Company in the first week of every month during the office hours and working hours to sign the cheques for payment of salaries and other payments. The second respondent shall write a letter to the Bank to defreeze the accounts. Both the directors shall cooperate with each other in smooth functioning and development of the Company. The respondent may file their counter to the petition within a period of four weeks and serve copies on the other side. Thereafter, the petitioners may file rejoinder within a period of four weeks and serve copies on the other side. The matter is posted on 3.12.2013 at 2.30. P.M."

4. Thereafter, the first respondent herein had filed an application in C.A. No. 1 of 2013 seeking certain directions.

5. On 29.4.2014 the Board has advised the first respondent and the appellant herein to sign the cheques for payment of salaries and statutory dues in the presence of the Bench Officer of the Board on any working days during working hours with the prior permission of the Bench Officer.

6. While so, the first respondent has filed an application in C.A. No. 2 of 2014 seeking directions from the Board inter alia to appoint an independent Auditor to authenticate the bills, invoices and all expenses incurred by or on behalf of the first respondent company for the purpose of payment to the vendors and suppliers dealing with the first respondent Company.

7. After hearing both sides, the Board has passed the following order on 22.8.2014:-

"Keeping in view of the paramount interest of the Company, I hereby appoint Mr. M.R. Narain and Company, Chartered Accountant, 2nd Floor, New No. 48, Madhavan Nair Road, Mahalingapuram, Chennai-34, Ph. No. 04432571108 as Independent Auditor to authenticate the bills, invoices and all expenses incurred by or on behalf of the R1 Company for the purpose of payment of the same to the vendors, suppliers dealing with the R1 Company. After authentication of bills, invoices and expenses, the independent auditor shall submit to the applicant and 2nd respondent being the directors of the company. After authentication of the same the directors i.e., the applicant and the second respondent shall sign the cheques for payment to the vendors, suppliers etc. as authenticated by the independent auditor. Further the independent auditor to verify and certify the proof of payment submitted by the applicant to a tune of Rs. 38,20,503/- with her personal funds on behalf of the company. After the authentication by the independent auditor such amount as certified by the independent auditor shall be reimbursed by the company to the applicant within a period of two weeks. The

Board shall fix the remuneration of the independent auditor. The independent auditor shall take up the assignment and submit monthly report to the Bench. With the above directions, the C.A. No. 2 of 2014 in C.P. No. 70 of 2014 is disposed of. No order as to costs."

8. Thereafter, again the first respondent herein filed another application in C.A. No. 3 of 2014 to modify the order of the Bench, dated 22.8.2014 for allowing any one of the Directors to sign the cheques in respect of the amounts authenticated by the independent auditor, instead of both the directors as directed in the order, dated 22.8.2014.

9. Though the matter was called on 21.10.2014 at 10.30 a.m. the appellant did not appear before the Board and again at 11.00 a.m. when the matter was called, none appeared on behalf of the appellant.

10. Therefore, after hearing the learned counsel for the first respondent herein and having perused the report of the independent auditor, the Board has passed the order on 21.10.2014, which is as under:-

"In view of the aforesaid reasons and keeping in view of the paramount interest of the Company I hereby modify the order of this Bench dated 22.8.2014 as follows:

1. Any one of the directors of the R1 Company is authorised to sign the cheques in respect of the amounts authenticated by the said independent auditor until disposal of this application. Accordingly, the order of this Bench dated 22.8.2014 is modified.

2. The respondents are hereby directed to file their counter to CA 3/2014 within a period of 4 weeks and serve copes on other side."

11. Aggrieved by the orders, the appellant has filed the above appeals as afore stated.

12. Heard both sides.

13. The contentions of the learned counsel for the appellant are as under:-

a. When the company appeal was filed as against the order passed in C.A. No. 2 of 2014 before this Court, the Tribunal ought not to have heard C.A. No. 3 of 2014.

b. The Tribunal had rejected the claim of the appellant to appoint a receiver to run the company on the ground that since the company is running, the receiver cannot be appointed and therefore, the order of the Tribunal is illegal and liable to be set aside.

c. The Tribunal had failed to appreciate the fact the first respondent''s son T.S.R. Ramalingam and her son-in-law Chitravel have been accused of misappropriation of the second respondent company''s funds and in that regard they have been arrested and released on bail even prior to the above company petition and in these circumstances, the appointing of an auditor as suggested by the first respondent was not in the interest of the company and no reason has been given by the Tribunal for overlooking the names for being appointed as auditor suggested by the appellant.

d. The first respondent and her group habitually manipulating the accounts and the period between 1.7.2010 and 31.3.2011, the manipulation of the accounts were not considered by the Tribunal.

On the aforesaid submissions, the learned counsel sought for allowing of the appeals.

14. Countering the submissions made by the learned counsel for the appellant, the learned counsel for the first respondent has argued as under:-

a. There was an understanding between the appellant the first respondent that the management of the company be taken care by the first respondent along with Mr. V.K.P. Chitravel with the condition that the appellant would not interfere in the day-to-day affairs of the second respondent company, however, such an understanding was flouted.

b. The appellant never attended the office citing various reasons and lodged various frivolous police complaints against the first respondent and her son and son-in-law and even went to the extent of freezing the bank account of the second respondent company.

c. Due to the non cooperation of the second respondent in signing the cheques for amounts authenticated by the independent auditor appointed by the Board the smooth functioning of the Company is affected and on account of this reason, the company is on the verge of loosing its valuable customers.

d. The delay due to the non cooperation and refusal to sign the cheques by the appellant herein would affect the interest of the company and if the same trend continues, the Company would face huge debts and also the risk of proceedings to be filed against it.

15. I have considered the afore said submissions and perused the materials available on record and also the orders passed by the Board.

16. The appellant has filed the above appeals against the orders, dated 22.8.2014 and 21.10.2014 as stated supra. The learned counsel for the appellant has submitted that though many grounds have been raised in the grounds of appeals, in the interest of the company and its shareholders, the appellant may be permitted to agitate the matter in the company petition, which is pending before the Board with all the contentions whatever is raised here and also any other contentions available to it and the Board may be directed to dispose of the company petition after hearing both sides on merits and in accordance with law as the ultimate remedy lies in the disposal of the company petition.

17. On the other hand, the learned counsel for the first respondent has agreed

with the submission put forth by the learned counsel for the appellant. Further, he has submitted that since the first respondent had filed the company petition for the afore said reliefs, it is better to dispose of that petition at the earliest to safeguard the interest of the company.

18. At the risk of repetition, the modified order, dated 21.10.2014 is reproduced hereunder:-

"1. Any one of the directors of the R1 Company is authorised to sign the cheques in respect of the amounts authenticated by the said independent auditor until disposal of this application. Accordingly, the order of this Bench dated 22.8.2014 is modified."

19. Since both the parties have agreed for the early disposal of the company petition, as requested by the learned counsel for the appellant and the same was accepted by the learned counsel for the first respondent, this Court is of view that without going into the merits of these appeals, it would be better to dispose of the appeals with a direction to the Board to dispose of the company petition in C.P. No. 70 of 2013 within a stipulated period.

20. Accordingly, the Board is directed to dispose of the company petition in C.P. No. 70 of 2013 after affording an adequate opportunity to both the sides to raise whatever be the contentions and consider the same and dispose of the company petition on merits and in accordance with law within four months form the date of receipt of a copy of this order. Both the parties are at liberty to agitate the matter before the Board with the contentions whatever available to them. However, this order is passed without any prejudice to the orders, dated 22.8.2014 and 21.10.2014 and the same shall be abide by both the parties. Further, both the parties are also at liberty to file any application, if any circumstances warrant the same and the same shall be disposed of then and there without any prejudice to the disposal of the company petition as stated supra.

With the above directions, the appeals are disposed of. No costs. Connected M.Ps. are closed.

