(2009) 04 KAR CK 0052

In the Karnataka High Court

Case No : Civil Revision Petition No. 32 of 2009

Smt. Korapalu S. Shetty APPELLANT

Vs

I.T.C. Limited and National Securities Depository Ltd. RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Securities Exchange Board of India Act, 1993 — Section 15 A, 15 B, 15 C, 15 F, 15 G

Citation : (2009) ILR (Kar) 2769 : (2009) 6 KarLJ 586 : (2009) 3 KCCR 1969 : (2011) 8 RCR(Civil) 2186

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Sanath Kumar Shetty K, for the Appellant; Vamsi Krishna C., for Dua Associates for R-1 and H. Jayakara Shetty, for R-2, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The civil revision petition arises out of an order patted by tile trial court on additional tone No. 2 framed by it and the trial court answered the mid issue concerning the jurisdiction of the Court in the negative and consequently held that the court has no jurisdiction to entertain the matter. Aggrieved by the said decision the plaintiff has come up before this Court.

2. Brief facts necessary for the purpose of this order are that, the suit was filed by the plaintiff seeking a declaration to the effect that the transfer of shares in favour of the 2nd defendant by the 1st respondent herein was illegal and also sought for an order of mandatory injunction against the defendants. The said prayer made in the context of the plaintiff a alleging in her pleading that her husband during his lifetime wanted some share certificates held by him in the 1st respondent-company to be transferred in favour of his daughter and her husband, but the snares were not transferred. On the other hand, the 2nd defendant before the trial court assured the plaintiff that he will get the shares transferred to her name and believing this the plaintiff handed over the share certificates to the 2nd defendant in good faith and following the death of the

plaintiff''s husband the 2nd defendant committed fraud, cheating end forgery and breach of trust end got all the shares transferred to his own name. It is on this pleading/the plaintiff sought for declaration that the transfer of shares in favour of the 2nd defendant it illegal and void and for mandatory injunction.

3. The defendants contested the said suit of the plaintiff and the learned Judge of the trial court after framing necessary issues took up additional issue No. 2 for consideration and the said issue related to the jurisdiction of the civil court to entertain the matter in the face of a prior bar u/s 15-Y of the Securities Exchange Board of India Act, 1993 (''SEBI Act'' for short).

4. Learned Judge of the trial court, after hearing both the parties in respect of the jurisdictional issue concluded that the court has no jurisdiction to entertain the matter and as such suit of the plaintiff was not maintainable. In the course of its order, the trial court considered the provisions of Sections 15-Y and 15-I of the SEBI Act and hold that in view of the bar contained in Section 15-Y, the suit itself is not maintainable before the civil court.

5. I have heard learned Counsel for the parties and perused the impugned order. Learned Counsel for the petitioner submitted that the trial court erred in answering additional issue No. 2 in favour of the defendants and in doing so, the trial court did not consider as to whether the relief sought for by the plaintiff was one such matter which could be brought within the purview of Section 15-I of the SEBI Act or without doing such an exercise, straight away the trial court dismissed the suit on a plain reading of Section 15-Y of the SEBI Act and therefore, the impugned order is liable to be set aside.

6. On the other hand, learned Counsel Sri Vamsi Krishna for the 1st respondent relied on Section 111-A of the Companies Act, 1996 to contend that the subject matter of the present suit is one that comes within the purview of the Company Law Board and referring to Section 111 of the Companies Act and to Sub-section (7) of Section 111-A, learned Counsel submitted that the provisions of Sub-sections (5), (7), (9), (10) and (12) of Section 111 will also be applicable as far at may be to the proceedings before the Company Law Board and a reading together of these provisions therefore, takes out the case from the purview of the civil court.

7. Having thus heard both sides and after going through the above Provisions referred to by the learned Counsel for the parties, the point for consideration is as to whether the impugned order passed by the trial court can be held to be sustainable in law.

8. Section 15-Y of the SBBI Act reads as under:

15-Y. Civil Court not to have jurisdictions- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

It is therefore clear from the above provision that in respect of any matter in regard to which the adjudicating officer appointed under the SEBI Act or a Securities Appellate Tribunal constituted under the SEBI Act in empowered to deal with such matters, the civil court will have no jurisdiction to entertain the suit As far as the matters which could be subject matters of adjudication are concerned, Section 15-I provides the answer and the said Section reads as under:

15-I Power to adjudicate - (1) For the purpose of adjudging under Sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-F, 15-G, 15-H, 15-HA and 15-HB the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has tailed to comply with the Sub-section (1), he may impose such penalty as ho thinks fit in accordance with the provisions of Any of those sections.

9. Learned trial Judge without examining as to whether the prayer sought for by the plaintiff is one such matter or not in view of Section 15-I of the SEBI Act, had gone on to hold that it had no jurisdiction by simply relying on Section 15-Y of the SEBI Act Section 15-I of the SEBI Act makes it clear that the adjudication mutt relate to matters which are specified in Sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-F, 15-G and 15-H and without drumming as to whether any of these Sections are covered in respect of the present matter, the trial court has gone on to hold that in view of Section 15-Y of the SEBI Act, it has no jurisdiction. The said reasoning given by the trial court therefore cannot be upheld in law, unless the trial court records a specific finding that the subject matter of the suit is one which can be adjudicated upon by the adjudicating officer appointed under the SEBI Act or a Securities Appellate Tribunal constituted under the SEBI Act and as such the trial court could not have recorded a finding against the plaintiff on a plain leading of Section 15-Y of the SEBI Act

10. In view of the above, I am of the view that the matter requires remand to the trial court to be considered afresh in the light of the above observations and only after considering the relevant provisions of the SEBI Act which have been referred to in Section 15-I. The trial court could thereafterward decide at to whether the subject matter of the suit is one that is covered of those Sections mentioned u/s 15-I of the SEBI Act.

11. In the result, the revision petition is allowed and the impugned ardor is set

aside. The matter stands remitted to the trial court for fresh consideration of the aforementioned provisions of law and after hearing both the parties, if necessary. The trial court shall proceed to put the order at the earliest.

