
(1967) 07 KL CK 0011

In the High Court Of Kerala

Case No : Second Appeal No. 364 of 1963

Suburban Bank Private Ltd., Trichur

APPELLANT

Vs

Thariath and Another

RESPONDENT

Date of Decision : 03-07-1967

Acts Referred:

Companies Act, 1956 — Section 284, 291

Citation : (1968) KLJ 19

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer and R.C. Plappilly, for the Appellant; M.V. Joseph, for the Respondent

Final Decision : Allowed

Judgement

V. Balakrishna Eradi, J.—The appellant Bank had instituted a suit for recovery of amounts due from the defendants respondents herein under a promissory-note executed by them jointly along with their father deceased Lonan on 21-3-49 for an amount of Rs. 6563-3-0. Ext. P-I is the promissory-note. The defence contention was that the promissory-note had been executed not for any cash consideration but to secure a liability of the second defendant to indemnify the Bank against the loss caused to it by reason of the dishonour of a cheque which the second defendant discounted while he was the Agent of the Bank at its Pazhayannur Branch. The defendants further averred that several payments had been made by the second defendant in respect of this liability and that till 10-3-58 an amount of Rs. 6690/- had been remitted by him to the Bank. According to the defendants, in consideration of these payments and of the faithful and meritorious service rendered by the second defendant to the Bank, the General Body of the shareholders of the Bank had passed a resolution on 14th May 1960 resolving to writeoff the balance amount due from the defendant under the promissory-note and that in view of the said resolution the debt had become wiped off and no further amount was due by the defendants to the Bank.

They, therefore, pleaded that the suit claim based on the promissory note was not sustainable.

2. The trial court rejected the defence contention and held that the resolution of the General Body relied on by the defendants was a mere recommendation which was not binding on the Board of Directors of the Bank and that since the Board had decided to realise the full amount due by the defendants on the suit promissory-note the defendants were liable to pay balance amount due on the promissory-note. In this view, the suit was decreed by the trial court as prayed for in the plaint.

3. On appeal by the second defendant, the lower appellate court held that even though Ext. P-10 resolution passed in the General Body meeting held on 14-5-60 was couched in the form of a recommendation, it was really a final decision taken on the matter by the General Body of shareholders and that the Board of Directors had no right to over-ride the said decision of the General Body. It, therefore, held that in the light of Ext. P-10 resolution the liability of the defendants under the promissory-note should be deemed to have been fully remitted and that the Bank was not entitled to realise any further amounts from the defendants. In the result, the decree of the trial court was set aside and the suit was dismissed. The plaintiff-Bank has preferred this Second Appeal challenging the aforesaid decision of the lower appellate court.

4. Ext. D-1 is the Articles of Association of the plaintiff-Bank. It will be seen from Article 14 of Ext. D-1 that the business of the company is to be managed by the directors who may exercise all such powers as are not required to be exercised by the company in general meeting. There is no provision in any of the articles enabling the General Body of shareholders to interfere in the day-to-day management of the business of the Bank and the conduct of such business is left by the articles entirely to the Board of Directors. Ext. D-7 is a copy of the Rules and Regulations of the plaintiff-Bank, and Rule 1 states that subject to the provisions contained in the Memorandum and Articles of Association, the Board of Directors shall be in full control of all the business, finance and affairs of the Bank.

5. It is now well-established that unless anything contained in the Companies Act or in the Articles of Association of the company otherwise require the Directors to conform to directions given by the company in general meeting, the latter cannot, except by special resolution, take the conduct of the business out of the Directors or compel them to adopt a particular line of action. The legal position is stated thus in Halsbury's Laws of England, Third Edition. Volume 6 at page 298 (Para 602):

"If, as is usual, the management of the company's affairs is entrusted to the Directors by the articles of association, a numerical majority of the shareholders insufficient to alter the articles cannot, in the absence of any provision in the articles reserving appropriate power, impose its will on the directors as regards

matters so entrusted to them. If the articles provide that regulations may be made by extraordinary resolution, an ordinary resolution is not sufficient to make a regulation which will control the Directors. If no power is reserved to the company to control the Directors when acting within the powers conferred on them by the articles, the articles must be altered by special resolution, if it is desired to give the company the power. Where, under the articles, the business of the company is to be managed by the directors and the articles confer on them the full powers of the company subject to such regulations, not inconsistent with the articles, as may be prescribed by the company in general meeting, the share-holders are not enabled by resolution passed at a general meeting without altering the articles, to give effective directions to the directors, how the company's affairs are to be managed, nor to overrule any decision come to by the directors in the conduct of its business. An agreement made by the company which is inconsistent with the powers of management of the directors under the articles, as, for example, an agreement purporting to confer authority upon the manager of a department to act without interference by the directors, is ultra vires."

To the same effect are the observations of Ray J. in *Murarka Paint and Varnish Works Ltd. Vs. Mohanlal Murarka and Others*, at p. 255 where he has held:

"The directors and the shareholders in general meeting are primary organs of the company between whom the company's powers are divided. The general meeting retains ultimate control, but only through its powers to amend the Articles, to take away powers from the directors and to remove the directors and to substitute others to the taste of the shareholders"

In *Jagdish Prasad and Another Vs. Pt. Paras Ram and Others*, Braund J. has observed at page 363:

"It is a first and elementary principle of company law that, when powers are vested in a board of directors by the articles of association of a company, they cannot be interfered with by the shareholders as such. If the shareholders are dissatisfied with what directors do, their remedy is to remove them in the manner provided by the articles. But so long as a board of directors exists and particular powers are vested in it by the articles, then they are entitled to exercise those powers without interference by the shareholders and it is, I think, irrelevant whether the shareholders approve of what the directors have done or not."

6. Applying the aforesaid principles to the present case, it is seen from Exts. D-1 and D-7 that the management of the affairs of the company was vested in the Board of Directors and they were not subject to any control in that respect by the company in general meeting. It is true that if the company in general meeting disapproved the management by the Directors, they could remove the directors, but the general meeting could not, as the articles stood, directly interfere with the management of the business by the directors. There is no case for the

respondents that any special resolution had been passed by the company in general meeting so as to constitute a valid modification of the Articles of Association. It has, therefore, to be held that the directors had acted fully within their powers in deciding to enforce the liability under the promissory-note, notwithstanding the recommendation contained in the resolution Ext. P-10 passed by the shareholders at their general meeting. The view taken by the lower appellate court that the Board of Directors had no authority to over-ride (he decision of the General Body is, therefore, incorrect.

7. In the result, the decree of the lower appellate court is set aside and that of the trial court restored with costs here and in the court below. No leave.