
(1993) 07 AP CK 0046

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4206 of 1992

The India Fruits Ltd. and Others

APPELLANT

Vs

Mantrad Private Ltd. and Others

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Companies Act, 1956 — Section 10, 155
Constitution of India, 1950 — Article 227

Citation : (1993) 2 ALT 726

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : K. Srinivasa Murthy, for the Appellant; P. Ramachandra Reddy, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Rao, J.—All the above C.R.Ps. are filed under Article 227 of the Constitution of India. The common point that arises for consideration in all the C.R.Ps. is whether the pendency of a company petition is a bar for the institution of civil suit.

2. The learned counsel for the petitioners contends that the order passed by the High Court in Company petition No. 22 of 1991 amounts to the matter kept pending in the High Court under the Companies Act and that any other matter touching the affairs of the very same matter cannot be allowed to be filed or tried by the Civil Court. On the other hand, the learned counsel for the respondents contends that matters which are not touching Section 10 of the Companies Act can be filed in the Civil Court to get the appropriate relief as the Civil Court's jurisdiction is not barred.

3. C.R.P. No. 4206 of 1992 arises out of the suit O.S.No. 709 of 1991 filed by the respondent herein against the petitioners, with the prayer for a declaration that in view of the validly held annual general meeting of the 1st defendant on 2-11-1991, the attempt of defendants 2 and 3 to hold yet another such meeting

ignoring the same is illegal, ultravires, mala fide and therefore, such an attempt is void; for a consequential injunction restraining the defendants from holding any general meeting on 31-12-1991 or on any future date naming the same as annual general meeting of the 1st defendant for the year 1990-91. Similarly C.R.P. No. 4207 of 1992 arises out of O.S.729 of 1991 the prayer of which being for a declaration that the alleged resolutions of the alleged Board of Directors meeting dated 28-11-1991 and the adjourned Board meeting on 6-12-1991 since are against the resolutions of the annual general meeting dated 2-11-1991 are void, illegal and therefore liable to be held as void and illegal and for a consequential injunction restraining the 2nd and 3rd defendants from doing anything pursuant to such resolutions. C.R.P. No. 4208 of 1992 arises out of O.P.521 of 1991. The prayer in this O.P. is for a direction to the 1st respondent to make over all the fruits of the Trusts to the petitioner including the shares, moneys, F.D.Rs., the Trust is holding in the 3rd respondent or in the alternative for removal of the 2nd respondent as trustee of the 1st respondent-Trust and for appointment of 4th respondent as a trustee of the 1st respondent or any other suitable competent person as Trustee of the 1st respondent till the petitioner attains the age of 25 years. Like wise, C.R.P. No. 4209 of 1992 is a consequence of the suit O.S.No. 3219 of 1992 and the prayer in this suit is to issue permanent injunction restraining defendants 2 and 3 from holding, conducting and passing any resolutions in pursuance of the notice dated 27-8-1992 or any similar notice to be issued by defendants 2 and 3 in future, and further to declare that the notice dated 27-8-1992 is null and void and is in contravention of the provisions of the Companies Act. Similarly C.R.P. No. 4211 of 1992 arises out of O.S.125 of 1992 which is filed for a declaration that the purported Extra-ordinary General meeting dated 27-2-1991 of the 1st defendant is a fiction and therefore the said resolutions are void and are liable to be set aside and for a consequential injunction restraining defendants 1 to 3 from doing anything pursuant to such resolutions. Basing on the above prayers, it is contended by the learned counsel for the petitioners that the Civil Court has no jurisdiction as the matter is pending in the High Court on the company side. On the other hand, as already stated above, the learned counsel for the respondents contends that the Civil Court is competent to entertain the suits as the prayers or the reliefs sought for in those suits are not touching any of the provisions of Section 10 of the Companies Act. Another contention raised by the learned counsel for the respondents is that Article 227 of the Constitution of India cannot be invoked when a competent Civil Court entertained a suit as there is no bar for filing a civil suit and therefore the C.R.Ps. filed under Article 227 of the Constitution of India cannot be entertained and have to be dismissed.

4. Before going into the relevant controversy we have to consider whether Article 227 can be invoked when civil suits are pending.

5. In Chintapalli Atchaiah Vs. P. Gopala Krishna Reddy and Another, a Division Bench of this Court considered the question regarding the issue of a writ of prohibition restraining the Additional Chief Judge, City Civil Court, Hyderabad

from proceeding with an interlocutory application filed in a Original Suit. A learned single Judge of this Court dismissed the interlocutory application. Challenging the same writ appeal was filed by the petitioner. It was held by the Division Bench in the above said case that the Additional Chief Judge has all the power under CPC to decide the questions arising in I.A.No. 203 of 1988 including its jurisdiction to decide such matters. It was held that the scope of a writ of prohibition is, by the very nature of things, a limited one, that the law is well-settled on the point that if the court or an adjudicating authority is embarking upon a decision in a matter in which apparently it lacks jurisdiction or when such a court or authority, as the case may be, is exercising jurisdiction vested in it in a manifestly improper manner, then a writ of prohibition can be issued to prevent such judicial forums to decide the matters pending before them. Ultimately the Division Bench dismissing the appeal upholding the judgment of the single Judge.

6. In *Nibaran Chandra Bag Etc. v. Mahendra Nath Ghughu* (1963) Su 2 SCR 570 it was observed as follows:-

"The High Court was not justified in interfering with the findings of the Revenue authorities that the appellant was a temporary lessee. In a petition under Article 227 the High Court was not sitting as a court of appeal; it could only consider whether the tribunals had overstepped the limits of their jurisdiction and whether the findings were based on no material or were otherwise perverse. The orders of the revenue authorities did not suffer from any of these defects."

7. In *Nutan Vidya Samithi v. Mir Nasir Ali Khan*, 1984 (2) ALT 373 it was observed by a learned single Judge of this Court (Sri Ramulu, J. as he then was) as follows:-

"The power under Article 227 can be invoked in cases of grave dereliction of duty for which no other remedy is available and which results in serious consequences if not remedied. In case where grave injustice results by ignoring the provisions of law, it becomes the duty of the High Court to interfere and to issue a proper direction to the Court or Tribunal to exercise its jurisdiction in accordance with the provisions of law. The object is not to enable the High Court to correct every error but merely to see that the Subordinate Tribunals are kept within the four corners of law and that they do not act outside the jurisdiction given to them by law. The remedy provided under this article should be resorted to in cases where there is grave failure of justice. Only jurisdiction errors but not mere errors of law can be corrected under this article. If an error whether of fact or law is such that the erroneous decision resulted in the tribunal exercising jurisdiction, not vested in it by law, or in its having failed to exercise jurisdiction vested in it by law, that will come within the scope of this article. It is well settled that in the absence of very exceptional circumstances, the High Court will not interfere under Article 227 if the order of a tribunal is revisable by a superior tribunal constituted by the statute under which those tribunals function where the aggrieved party seeking redress had not first approached the superior tribunals in revision against the order. Without determining the question whether or not it

is permissible, as a general law, for the High Court to interfere under Article 227 with orders of tribunals or courts whose orders are under the law constituting them, appealable or revisable by a superior departmental tribunal, it is clear that it is highly undesirable for the court to exercise this power in such circumstances, in the absence of very exceptional circumstances."

8. In *Union of India (UOI) Vs. P.M. Paul and Another*, it was observed by the High Court of Kerala as follows:-

"Even though there are limitations inherent and inbuilt, and most of them self-imposed, in the matter of exercise of certiorari or supervisory jurisdictions, in a case where it is brought to the notice of the Court, that the Subordinate Court, or Tribunal proceeded to confer jurisdiction on itself on an erroneous understanding of the law, or wrong assumption of jurisdictional facts, the Court cannot be denied jurisdiction to exercise its power of judicial review. In such cases it is not only permissible but it becomes obligatory that the court exercises its certiorate or supervisory jurisdiction under Article 226 or 227."

In *Waryam Singh and Another Vs. Amarnath and Another*, the Supreme Court observed as follows:-

"The power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

In AIR 1975 1297 (SC) it was observed by the Supreme Court as follows:-

"The jurisdiction of High Court under Article 227 is limited only to seeing that the subordinate Court functions within the limits of its authority and does not extend to correction of mere error of fact by examining the evidence and reappreciating it. An error of fact, even though apparent on the face of the record, is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. An error of fact can be corrected only by a superior Court in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts."

9. On a reading of the above judgments of various courts, it is clear that where there is an alternative remedy available, generally the party should not be allowed to resort to or take shelter under the provisions of Article 227 but where under exceptional circumstances where it is found that the entertaining of cases by the subordinate courts or the tribunal, as the case may be, ex facie found to be not correct, then under Article 227 the High Court is competent to entertain the application under Article 227 and prevent the abuse of the process of law or prevent further continuance of the proceedings which were found to be prima facie contrary to the directions already given by the High Court.

10. In *Avanthi Explosives v. Principal Subordinate Judge, (1987) 62 Company*

Cases 301 it was observed as follows:-

"Section 10 of the Companies Act, 1956 only proceeds to enumerate or specify "the Court having jurisdiction under this Act", wherever such jurisdiction is conferred on "the Court" by the other provisions of the Act. Powers are conferred by the Act not only on courts but also on other authorities like the Central Government, the Company Law Board and the Registrar; and where a power is vested in a Court, that Court has to be specified. Beyond so specifying the court competent to deal with a matter arising under the Act, Section 10 does not purport to invest the company Court with jurisdiction over every matter arising under the Act. It may be that, in view of the elaborate provisions contained in the 1956 Act in regard to the management and the conduct of a company's affairs including important internal matters of administration, interference by the Civil Court has become more limited, but the power has not at all been taken away. Every suit for redress of individual wrongs cannot be considered as merely concerned with matters of internal management."

In the above case, the learned Judge having extracted the principles, ultimately held that the suit filed by the 2nd respondent in that matter is maintainable.

11. In Nizamabad Corn Product v. Vasudev Dalia it was held by this Court as follows:-

"The view that merely because Section 10 of the Act confers jurisdiction on the High Court, the jurisdiction of the Civil Court has not been taken away, cannot be correct in view of the specific direction contained in Section 10(1)(a), viz., "except to the extent to which jurisdiction has been conferred on any District Court in pursuance of Sub-section (2)".

Sub-section (2) reveals that Section 283 is not one of the Sections in respect of which jurisdiction has been conferred on Civil Courts."

12. Keeping in view the above case law, we have to decide whether filing of a suit in a Civil Court is a bar when the matter is pending in one form or other in the High Court.

13. Having regard to the legal position which has been enunciated above, it is clear that in rare and exceptional circumstances alone Article 227 can be resorted to. Company Petition No. 22 of 1991 was filed by Anam Prem Kumar Reddy and six others against the petitioners in this batch of revisions u/s 155 of the Companies Act seeking the relief of rectification of register of the first respondent-company in respect of 4436 shares which were originally held by the family trust which is impleaded as respondent No. 5 in the said Company Petition. During the pendency of the said company petition, Company Application No. 126 of 1991 was filed by the petitioners therein under Order 39 Rule 1 C.P.C. for an injunction restraining respondents 3 and 4 (petitioners 2 and 3 herein) from exercising the voting power on the 4436 shares. My learned Brother, Upendralal Waghray, J. (as he then was), by his order dated 29th October 1991,

observed that having regard to the language of Section 155 particularly Sub-section (3) of the Act, and the provision of appeal under Sub-section (4), the jurisdiction of this Court is not excluded in respect of examining the title to the shares in so far as it is relevant to decide the question of the rectification of the register. The learned Judge ultimately passed the following order:-

"1. The meetings of the Board of Directors of respondent No. 1-Company will be held in the business suite of Krishna Oberoi Hotel at Hyderabad, in place of its registered office, till the disposal of the company petition or until the disposal of the Company petition or until further orders of this Court.

2. One of the two petitioners, namely petitioner No. 5 or petitioner No. 6 will be co-opted as a member of the Board of Directors, thus taking the membership of the Board of Directors to four. Respondent No. 3 as Chairman, will have casting vote. The co-option shall be done immediately.

3. There shall be no issue of fresh capital nor even acceptance of any unsubscribed capital by or on behalf of respondent No. 1-Company. The existing Board of Directors including petitioner No. 1, respondents 3 and 4 and a co-opted director as well as their status - including petitioner No. 3 being its Chairman shall not be disturbed.

4. The disputed 4 shares shall not be alienated by respondent Nos. 3 and 4 till the disposal of the Company Petition.

5. The voting power in respect of the shares in dispute shall be exercised by the 3rd respondent subject to the aforesaid conditions and also only for the purpose of business of the company, and;

6. The replenishment licences of the company which are to lapse by the end of March, 1992 will be sold for the best available price within a period of three weeks from to-day and the sale proceeds deposited in the account of the company. The petitioners as well as respondents 3 and 4 are free to bring in offers for the said licences within a period of ten days and the sale transaction shall be finalised within one week thereafter. The offers must be indicated in writing. Since petitioner No. 1 and respondent No. 3 have agreed to open a bank locker, in their joint names the replenishment licences which are to expire after April, 1992 or any exim scripts to which R-1 company may become entitled, shall be listed out and kept in the joint locker, each party retaining a list signed by both."

While disposing of Company Application No. 186 of 1992, my learned Brother V. Neeladri Rao, J. (as he then was) after hearing the parties and also finding that the company has to work and meeting had to be held, passed the following order:-

"1. It is open to any of the Board of Directors to call for the meeting of Board of Directors as per the existing rules; but 15 clear days notice has to be given to the other Directors for convening such a meeting.

2. Sri K. Raja Reddy is appointed as observer. He has to be informed about the time, date and place of meeting so as to enable him to be present at the said meeting. That observer has to watch the decorum of the proceedings and submit a report in regard to the same. It is needless to say that the observer has to keep this meeting of the Board of Directors confidential.

3. The fee of the observer is fixed at Rs. 3,000/- for each meeting. It is payable by the Indian Fruits Ltd.

4. No resolution passed by the Board of Directors should be implemented during the Sankranti vacation.

5. Even after Sankranti vacation till the disposal of this Company Application, resolution/resolutions that may be passed by this Board of Directors, should not be implemented, if any of the Director is going to give a notice to the Chairman, that if they are detrimental to the interests of the Directors or shareholders. In such a case, if the notice is not given within three of the earlier notice about the SR No. of the company application, the same can be implemented. It is open to the Chairman to move this court, if according to him that resolution/s in regard to which notices are given are not detrimental."

Subsequently, another learned brother of mine, Bhaskar Rao, J. by his order dated 19-4-1993 directed the continuance of the aforesaid order. The relevant portion is as follows:-

"The order passed by V. Neeladri Rao, J., in Company Application No. 186 of 92 in Company Application No. 126 of 91 in Company Petition No. 22 of 91 dated 30-12-1992 will continue until further orders in C.A. No. 186 of 92. Conditions laid down in that order will abide by the meeting of Board of Directors."

Subsequent to passing of those orders, when the other side wanted stopping of holding of meetings and moved the Vacation Court, Ramakrishnam Raju, J., by his order dated 3-6-1993 directed that the meeting of the Board of Directors would go on but the resolution will not be given effect till 30-6-1993. By another order dated 5th December, 1991 in C.A. Nos. 264 and 271 of 1991, S. Parvatha Rao, J. passed the following order:-

"In view of the Company Petition being u/s 155 of the Companies Act, 1956 and as what is sought in these company applications may go beyond the scope of the company petition, the learned counsel for the applicants desires to withdraw these company applications without in any way prejudicing the rights and claims of the petitioners. In view of the said submission of the learned counsel, the company applications are allowed to be withdrawn without in any way prejudging the rights and claims of the applicants. It is made clear that it is open for the applicants to approach the appropriate forums if they so desire in respect of the reliefs sought for in these applications."

Thus it is clear that whenever the parties are approaching the Company Court, applications are being entertained and appropriate orders also have been passed

and certain applications also have been withdrawn. When a Company Petition is pending with regard to the transfer of the main shares, can we say that the parties can agitate the same reliefs in a different forum circumventing the orders of the Company Court? The answer must be in the negative. If no matter is pending in the High Court, the parties are at liberty to choose the forum of their choice duly taking into account the jurisdictional aspect and Section 10 of the Companies Act. Admittedly, Company Petition filed u/s 155 is pending and orders are being passed on the interlocutory applications filed therein now and then. Filing of the suits for injunction restraining the defendants from holding any general meeting or for the reliefs ancillary thereto while the Company Petition is pending in the High Court cannot be allowed. All this indicates that the parties want to approach the courts of their choice as and when they want to convene a meeting. In this connection a reference to the decision reported in *Oriental Machinery & Civil Construction v. Vikrant Tyres*, (1985) 57 Company Cases 639 is necessary. In this case a petition for winding up of the respondent-company was filed on the ground that it had failed to pay over Rs. 5 lakhs due under a contract. The respondent-company stated that the amount due was in respect of machinery supplied by the petitioner and that it was defective and that the petitioner was liable to pay damages to it. Having regard to the submission made in regard to the admitted liability of the respondent-company the Court permitted it to deposit the amount to demonstrate its solvency. On July 4, 1983 the respondent made an application praying that the Court should not allow the petitioner to withdraw the amount until its counter-claim was duly adjudicated and on July 27, 1983, the petitioner filed an application for withdrawing the same. Before these two applications could be disposed of by the Court, the respondent-company approached the court of the Civil Judge, Mysore under the provisions of the Arbitration Act and obtained an ad interim ex parte injunction against the petitioner company restraining it from withdrawing the deposit made earlier pursuant to the directions of the court and the Additional Civil Judge passed an order restraining the petitioner from withdrawing the sum. In the above set of circumstances, the Karnataka High Court held as follows:-

"The effect of the passing of the order of injunction was a dear interference with the process of the court in discharging its duties and functions under the Companies Act even though the injunction was directed against the petitioner company. In these circumstances, the Court being a superior Court would disregard the injunction issued against the petitioner-company, (ii) That the stand taken by the respondent-company was more an attempt at avoidance of payment of dues and not with any serious intention of claiming damages. Normally, a company like the respondent company with competent legal advice available at all times would have enforced its claim for damages for the faulty goods supplied as soon as the goods were found to be faulty. It could not on the one hand admit its liability and on the other hand claim that it would not meet its liability because it proposes to make a counter-claim for damages. When the debt had been admitted, and the defence put forward was not accepted by the

Court, it would be inappropriate to put the petitioner on such restraint as prayed by the respondent. The petitioner could, therefore, withdraw the amount deposited in a court unconditionally. If that was allowed, there was no cause of action subsisting which necessitated the Court from proceeding further in the matter of winding up of the company. No inferior court may pass an order of any kind that will have the effect of interfering with matters which are already in issue before a superior Court. It is alien and unknown to our country's legal system. Such an order, apart from being an order without jurisdiction, amounts to contempt of the superior court, more so when the inferior court is apprised of the issues before the superior Court."

14. In the matters before me also the pleadings show that a company petition was pending even by the date of the institution of the suits. The District Court alone can try the matters which arose under the Trusts Act or the Civil Court alone has got a right to entertain suits wherein they were not specifically barred, has no relevancy, if it has been found that those petitions were drafted in such a manner either to circumvent the jurisdiction of the company court or to circumvent the orders passed by the company court in a petition that is pending before it. An intelligent advocate or the party with the able assistance of an intelligent advocate can draft the plaint which may prima facie appear to be not connected with any dispute that was pending in the High Court in a company petition. The art of drafting and the manoeuvring of pleadings to get over the jurisdiction of the company court cannot be allowed to stand as it is the duty of the Court to see that the party should not misuse the forum which is not at normal times available. What is the relief that has been claimed and what is the effect of the order that has been obtained under the guise of that relief claimed have to be considered by the trial Court and should not be swayed away by the language or clever drafting of the relief which may appear that it may not affect the orders passed by the High Court or which may affect the jurisdiction of the High Court in a company petition. Since the view expressed by M. Jagannadha Rao, J. (as he then was) in *Avanthi Explosives v. Principal Subordinate Judge* (7 supra), referred to supra, that such a suit is also maintainable and many decisions were also cited by him in that decision, the possibility of drafting a plaint or petition to forestall the order that may be passed by the High Court in a Company Petition cannot be ruled out. With this background and the situation in mind, if analysed, the reliefs claimed either in the O.Ps. or in the suits filed by both the parties in this case are the result of clever drafting made by the parties to circumvent the orders passed by Upendralal Waghray, J. (as he then was) in Company Application No. 126 of 1991 and the subsequent orders passed in the Company Petition. When the parties are agitating with regard to the shares or with regard to the rights or with regard to the continuance of a trust or with regard to the misuse or abuse of the persons that were in management, certainly they are at liberty to approach the company court to protect their interest. Leaving the jurisdiction of the court inspite of knowing that one matter is pending, filing of suits and obtaining interim injunctions is a clear indication that

both the parties are abusing the process of court. The petitioners also filed some suits and the respondents also filed some suits and the lower court entertained the suits. The reliefs claimed in the suits, on a close examination, it is evident, are only made with a view to circumvent the orders passed or that may be passed by the High Court in a company petition. If they really want such reliefs, they can obtain them from the High Court either by filing a company application or by filing independent company petition. The orders passed by the lower court is a clear interference with the process of this Court in discharging its duties and functions under the Companies Act. When, on a close scrutiny, it has been found that a situation has been created to circumvent the orders of the High Court, this Court, under Article 227 can correct the same in exceptional circumstances as are brought out in these matters. It is the duty of the High Court in such cases to prevent abuse of the process of Court by any tribunal or lower Court. Sri P. Ramachandra Reddy's contention that they have got a right to file the suits on the basis of the judgment of M. Jagannadha Rao, J. reported in *Avanthi Explosives v. Principal Subordinate Judge* (7 supra) cannot be accepted as this Court found that the suits in question have been filed only to circumvent the orders of the High Court passed on the company petition and are only used to abuse the process of the Court. As already found, to prevent abuse of the process of the Court this Court is competent to entertain applications under Article 227 of the Constitution of India even though against the orders passed by the lower Court regular appeals or revisions have been provided. Taking into account the effect of the orders passed and the nature of the reliefs claimed and the acts committed by the parties in approaching different courts at different stages as and when required to forestall the smooth running of the business or to forestall the implementation of the orders passed by the company Court, I feel that it is a fit case where this Court can exercise the discretion under Article 227 to prevent the abuse of the process of Court. As it is a family dispute and as both parties are at logger heads, this Court feels that it is a fit case that the parties may go on arbitration or enter into a compromise in one form or other in the best interests of both the parties.

15. In view of my above discussion, I hold that the lower Court has no jurisdiction to entertain the suits in question as the matter is pending in the High Court under the Companies Act. I direct in the circumstances of the case that status quo existing as on to-day shall continue for a period of three months. Within this period of three months the affected parties may approach the High Court under the Companies Act or to take steps for settling the matter by means of a compromise or arbitration. The C.R.Ps. are accordingly allowed. No costs.