

(2002) 04 MAD CK 0181
In the Madras High Court
Case No : S.A. No. 1575 of 1990

Thirunageswaram Handloom Textile Manufacturers Association	APPELLANT
Vs	
T.P. Kuppusamy Mudaliar and Sons, T.K. Mohan and T.K. Umapathy	RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2002) 112 CompCas 341

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The unsuccessful defendant before the courts below has come forward with this second appeal. The Plaintiffs have filed a suit for declaration to declare that they are entitled to have three separate membership in the defendant's association and for an injunction restraining the defendants from preventing the plaintiffs from participating in the proceedings of the association, which was allowed by the trial court and the appeal preferred by the defendant before the Subordinate Judge, Poonamallee was dismissed, hence this second appeal.

2. The facts of the case are that originally the plaintiffs was member of the defendant's association. The defendant's association by resolution decided to enrol individuals/Partners from the respective firms which were already members of the defendant's association instead of the firms. The plaintiffs have sent representations, Ex.A3 dated 29-05-1982, calling upon the defendant's association to give membership to all the three partners. The amount sent by money order, Ex.A5 towards subscription was also returned. The plaintiffs have issued a legal notice dated 19-07-1982, Ex.A6 and another letter dated 14-12-1982, Ex.A10 to the defendant seeking to furnish the copy of the bye-law, but their request was rejected, hence the suit.

3. The defendant contested the suit on the ground that the plaintiffs have no locus standi to maintain the suit by the firm, when the right involved in the suit relate to individual partners. The defendant's association has resolved in its general body meeting held on 05-02-1982, Ex.B1 to do away with the membership of firms in the association and that only the senior persons of such firm should be permitted to become members in the place of the firms. In terms of the said resolution, one of the senior partners of the plaintiff's concern namely Ganesan was admitted as a member, who was later suspended from the association under Bye-law 23 by the general body on 17-10-1982. It is also contended by the defendant that the right of admission of the members are purely discretionary and it cannot be interfered with.

4. Before the trial court, the 2nd plaintiff examined himself as PW1 and marked Exs. A1 to A10 and the defendant has examined the President of the Association namely Kumarasamy as DW1 and marked Ex. B1 and B2 dated 05-02-1982 and 02-01-1982, resolutions passed by the association. After consideration of the oral and documentary evidence, the trial court held that suspension of the said Ganesan was not valid as no evidence was let in to justify the same, that the association removed the membership of the firms and admitted partners of each and every firm as members of the association as such it ought to have admitted all the three partners of the plaintiffs as individual members, which right was denied by the defendant's association without assigning any valid reason; that the suit filed by the plaintiffs under Order 30 of C.P.C. is valid; that arraying the plaintiffs firm as a party to the suit is valid and that the contention of the defendant that senior members of each and every firm alone be admitted as a partner was contrary to Ex.B1. Ultimately, the trial court decreed the suit as prayed for. Aggrieved by the decree and judgment passed by the trial court, the defendant has preferred an appeal before the Sub-court, Poonamallee. The first appellate court has confirmed the decree and judgment passed by the trial court, hence this second appeal.

5. At the time of admission of this second appeal, the following substantial questions of law have been framed as arisen for consideration:-

- i) Whether the suit is maintainable with reference to the internal matters of the association?
- ii) Whether the decision of the learned appellate judge that partners of a firm can jointly file a suit under Order 30 of C.P.C. is maintainable in law?

6. Mr. Desappan, learned counsel appearing for the appellant argued that both the courts below have failed to note that the suit was not maintainable by virtue of Section 69 of the Indian Partnership Act, that the courts below erred in law in entertaining the suit relating to internal affairs of the defendant's association, that all matters relating to admission, removal or expulsion of members in any association is within the jurisdiction of general body, which has decided not to admit the said three persons as member; that the suspension of Ganesan from

the membership was also proper and that the suit filed by virtue of Order 30 of C.P.C. is not maintainable.

7. Mr. Rosi Naidu, learned counsel appearing for the respondents argued that the suit is maintainable u/s 30 of C.P.C. As per the resolution, Ex.B1, the defendant's association has offered membership to all the partners of each and every firms as such the suit filed by the plaintiffs firm is maintainable in law; that Ex. B2 also supports the case of the plaintiffs; that no valid documents was produced by the defendant's association to show that the membership is restricted to one each from a partnership firm; that the partnership firm was removed consequent to the resolution, Ex.B1 and hence the partners are entitled to be admitted as members of the defendant's association; that no documents was placed by the defendant's association to show that the plaintiffs are ineligible to get membership.

8. The learned counsel for the appellant relied on the following decisions in support of his case:-

I) AIR (33) 1946 Bom 516 (Satyavart Sidhantalankar and Others Vs. Arya Samaj, Bombay) wherein in Para Nos. 43, 44 and 46, it was held thus:-

"43. The position of a society registered under the Societies Registration Act (XXI (21) of 1960) is like that of a club or a joint stock company.... In my opinion the position of the Members of this society is similar to that of shareholders of the company.

44. In that case, the learned Judge applied the principles of the company law to the case of a society registered under the Societies Registration Act, the type of which I have before me. I am therefore of opinion that the principles governing the relations of members of joint stock companies i.e., companies incorporated under the Indian Companies Act, are the principles which are applicable in the case of a society registered under the Societies Registration Act.

46. Two principles emerge clearly from the authorities and they are (1) that the court will not interfere with the internal management of the companies acting within their powers and in fact has no jurisdiction to do so, and (2) that in order to redress a wrong done to a company or to recover money or damages alleged to be due to a company the action should prima facie be brought by the company itself. The leading cases on this subject are (1843) 2 Har 461 (1847) 1 PH 790 and (1848) 2 PH 740. In (1843) 2 Hare 461 two members of an incorporated company filed a bill against the directors and others praying that the defendants might be compelled to make good the loss sustained by the company by reason of fraudulent acts of such directors. The defendants demurred. The court held that upon the facts stated the continued existence of the Board of Directors de facto must be intended, that the possibility of convening a general meeting of proprietors capable of controlling the acts of the existing Board was not excluded by the allegations of the bill, that in such circumstances there was nothing to prevent the company from obtaining redress in its corporate character in respect

of the matters complained of, that therefore the plaintiffs could not sue in a form of pleading which assumed the practical dissolution of the corporation and that the demurrers must be allowed. The Court was further of opinion that the acts of the directors complained of were capable of confirmation by the majority of the members of the company and declined to interfere."

In this case, it was held that the court shall not interfere with the internal management of the companies acting within their rights and in fact has no jurisdiction to do so is based on the supremacy of the majority. The internal affairs of the Management or the companies are managed by a vote of the majority; and Members join the corporation or the companies with full knowledge that majority of the members are entitled to exercise the powers and control the operations generally. This power, which has been confirmed on the majority has however got to be exercised bonafide and the court interferes only to prevent unfairness or oppression. This Judgment is not applicable to the facts and circumstance of the case on hand.

II) N.V.R. Nagappa Chettiar and Another Vs. The Madras Race Club and Others, wherein in Para-8 and 9 it was held thus:-

"8. At the outset it is necessary to consider the question whether the suit as framed is maintainable. The action was brought by two plaintiffs, who also on behalf of the other members obtaining the requisite leave under O.1, R8, Civil P.C. The learned Judge was of opinion that the suit was incompetent, as what is known as the rule in "Foss V.Horbottle", (1843) 2 Har 461; 67 ER 189 applied to the case. The rule in "Foss V.Horbottle" is that a Court will not interfere with the ordinary management of a company acting within its powers and has no jurisdiction to do so at the instance of the shareholders. A shareholder is entitled to institute a suit to enforce his individual rights against the Company such as his right to vote, or his right to stand as a Director of a Company at an election. If the shareholder however intends to obtain redress in respect of a wrong done to the company or to recover monies as damages alleged to be due to the company the action should ordinarily be brought by the company itself. In order therefore to enable a shareholder to institute a suit in the name of the company, in such a case, there must be the sanction of the majority for corporation action. In ordinary cases, therefore, this principle implies the supremacy of the will of the majority. It is open to a majority always to set right a thing which was done by a majority either illegally or irregularly, if the thing complained of was one which the majority of the company were entitled to do legally and was within the powers of the company by calling a fresh meeting. That is the reason why in such cases the Court refuses to interfere at the instance of a shareholder even if a representative action brought by him. If the majority however acts as in an oppressive manner, it is not as if the minority are without a remedy.

9.From this it follows that a shareholder or shareholders are entitled to bring an action (1) in respect of matters which are "ultra-vires the company & which the majority of shareholders were incapable of sanctioning (2) where the act

complained of constitutes a fraud on the minority & (3) where the action of the majority is illegal. The decisions in *Baillie V. Oriental Telephone & Electric Co. Ltd.*, - 1951-1 Ch 503 84 LJ Ch 409 & *Cotter Vs. National Union of Seamen*, 1929-2 Ch 58: 98 L J Ch 323 recognised a fourth exception where a special resolution was required by the Articles of the Co & Co obtained the assent of the majority to such special resolution by a trick, or even where a Co. authorised to do a particular thing only by a special resolution, does it without a special resolution duly passed as in such a case to deny a right of suit to the share holders without using the name of the Co. would in effect result the Co. doing the thing by an ordinary resolution."

The Division Bench of this Court held that the Court will not interfere with the ordinary management of a company acting within its powers and has no jurisdiction to do so at the instance of the share holders. A share holder is entitled to institute a suit to enforce his right against the company such as his right to vote or his right to stand as a Director of a company. If the shareholder, however, intends to obtain redress in respect of a wrong done to the company or to recover monies as damages alleged to be due to the company the action should ordinarily be brought by the company itself. In order, therefore, to enable a shareholder to institute a suit in the name of the company, in such a case, there must be the sanction of the majority for corporation action. It is also mentioned by the Division Bench that the said rule is subject to the exceptions namely a shareholder is entitled to bring an action in respect of matters which are ultra-vires the company and which majority of the shareholders are incapable of sanctioning; where the act complained of constitutes a fraud on the minority & where the action of the majority is illegal. This decision also no way support the case of the appellant/defendant.

III) The learned counsel for the appellant relies on a decision reported in *Indian Cases*, Volume XXXIV 1916 - Page 263 (*Abhoy Pado Bose Vs. The Managing Committee of the Queen's Anglo Sanskrit School, Lucknow*) wherein it was held thus:

"I know of no authority for the proposition which Mr. Bose puts forward here, that as a member of the public he is entitled to compel this society to accept his offer of a subscription and to admit him to whatever privileges attach to membership of the society. It is quite clear to me that, although the Committee is entitled to collect subscriptions for the purpose of maintaining the School, they are under no obligation whatever to the general public to accept any subscriptions which may be offered to them. I hold, therefore, that Mr. Bose had no cause of action for this case and I dismiss his appeal with costs."

This judgment is also not applicable to the case on hand for the reasons mentioned below.

9. The Plaintiffs firm admittedly registered with registrar of firms was a member of the defendant's association. By resolution, Ex.B1 all the firms including the

plaintiffs firm were removed and in that place the partners of the respective firm are resolved to be enrolled as members. Ex.B2 made it clear that the applications received from all the firms were processed and all the partners are enrolled as Members. It is seen from Ex.B2 that restricted offer of single member to each firm has not been followed. The Plaintiffs firm was already member of the defendant's association and in that place, as per the resolution, Ex.B1, the partners are entitled to get membership. The Plaintiffs sought for membership based on the resolution namely Ex.B1 passed by the defendant's association. While so, no option vested with the defendant's association to refuse admission. Hence, the judgment reported in Indian Case Volume XXXIV 1916 - Page 263 mentioned supra cannot be made applicable to the facts and circumstance of the case on hand.

10. The another reason for denial of membership to the partners of the plaintiffs firm by the defendant's association was that only one member from each firm is eligible to get membership. The said contention was also dismantled by their own document Ex.B2 wherein the defendant's association has offered more than one membership to similarly placed firms. Furthermore, no valid documents was produced by the defendant's association to prove that the firm is allowed to represent by only one member.

11. Admittedly, the defendant's association is a society registered under the Tamil Nadu Societies Registration Act, 1975. I am not satisfied with the proposition that the plaintiffs cannot claim membership with the defendant's association as a matter of right and the option to grant or refuse admission lies with the governing body of the society. In this particular case, the plaintiffs, as three of the members are entitled to certain rights to be admitted as members under Ex.B1 and their allegation was that similarly placed persons were admitted without confining to the formula of one member to one firm.

12. I have not been referred to any provisions in Tamil Nadu Societies Registration Act, 1975, which excludes the jurisdiction of the civil court where an expressed allegation of malafide in a matter affecting rights of the plaintiffs has been made and the proceedings of the defendant was attacked as in violation of bye-laws.

13. Hence, the Plaintiffs 1 to 3 are entitled to become members of the defendant's association on the strength that they are partners of the plaintiffs firm. It is made clear that the defendant award membership to the plaintiffs the ratio applied to the similarly placed firms. Hence, the suit filed by the plaintiffs firm is perfectly valid and maintainable under the provisions of Order 30 C.P.C. Hence, both the substantial questions of law are answered in favour of the plaintiffs/respondents.

14. In view of the above, the judgment and decree passed by the courts below are confirmed. Consequently, the second appeal is dismissed. However, in the circumstance of the case, there shall be no order as to costs.