

(1987) 07 MAD CK 0021
In the Madras High Court

Thiruvaluvar Velanmai Kazhagam (P) Ltd.

Date of Decision : 02-07-1987

Acts Referred:

Companies Act, 1956 — Section 10

Citation : (1988) 64 CompCas 304 : (1987) 2 MLJ 363

Hon'ble Judges : S.K. Kader, J;M.K. Seethai Achi, J

Bench : Division Bench

Advocate : A.R. Lakshmanan, for the Appellant; None, for the Respondent

Judgement

S.A. Kader, J.—The appeal is against the judgment and decree of the Court of the Subordinate Judge of Devakottai in O.S. No. 74 of

1978. The unsuccessful plaintiff is the appellant.

2. The plaintiff is a private limited company represented by its managing director and the suit was laid for rendition of accounts against the

defendant who was the former managing director and was in management of the company till may 5, 1976, when the present managing director

assumed office. The defendant was assisted in the management by her brother-in-law, Thirunavukkarasu Chettiar. The plaintiff company owns

extensive lands cultivated on pannai basis and on lease and the income from the lands is considerable. The company also owns topes. The

defendant, during her management, has collected paddy from the lands and realised income from the tope. negotiated agreements for sale and

received advances without the sanction of the board and secreted these amount. She has failed to convene annual meetings of directors and to

submit accounts, balance-sheets and other relevant records. During her period of management, the properties of the company were attached for

agricultural Income Tax and land tax and also in execution of a decree of favour

of one Parvathi Achi, a depositor in the company. The present managing director and other directors have discharged a substantial portion of these outstanding. The present managing director has been requesting the defendant to hand over the accounts and vouchers of the company, but she has not done so. She has left for Trichy and is attempting to fabricate the accounts of the company. Hence, the suit for directing the defendant to produce in court all accounts, vouchers, receipts, minute books and the other documents of the company in her custody together with cash and other properties of the company in her hands and render true and proper accounts of her management as managing director of the company till May 5, 1976.

3. The suit, was resisted by the Defendants contended that the suit as framed did not lie in the court below and was not maintainable for want of jurisdiction. According to her, the court below, not being a court as defined in section 10 of the Companies in the Plaint and on this one ground alone, the suit was liable to be dismissed in limine. The defendant denied all the other allegations of misfeasances, malfeasance and non-feasance leveled against her and characterised them as reckless and malicious falsehood. She had absolutely no objection to; producing the accounts and vouchers in court within such time as the court may be pleased to grant and may be audited by the company's auditor through court. She, therefore, prayed for the dismissal of the suit.

4. On the above pleadings, the following issues were framed for trial:

- (1) Whether the court has no jurisdiction to try the suit?
- (2) Whether the suit is liable to be dismissed in view of the undertaking given by the defendant to produce the accounts?
- (3) To what relief is the plaintiff entitled?

5. The learned Subordinate Judge took up for consideration issue: No. 1 as a preliminary issue on the question of jurisdiction and held that the civil court had no jurisdiction to entertain the suit and, consequently, he dismissed the suit without going into the other issues. It is against this decree of dismissal that the plaintiff has come in appeal.

6. The only point that arises for consideration is whether the civil court has jurisdiction to entertain this action for accounts:

Point: The plaintiff is a private limited company and the defendant was its former managing director. The plaintiff, represented by its present

managing directors, has filed this suit against the defendant for rendition of true and proper accounts of the defendant's management as managing

director of the company till May 5, 1976. Various allegations of malfeasance, misfeasances and non-feasance are levelled against the defendant but

they are denied by her, and it is needless to go into that question at this stage. The contention of the defendant is that the suit is barred u/s 10 of the

Companies Act of 1956. Section 10 runs thus :

10(1) The court having jurisdiction under this Act shall be -

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent

to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2);

and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect

of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit,

empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the court, not being the jurisdiction conferred-

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees by Part VII (sections 425 to 560) and the other

provisions of this Act relating to the winding-up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered

office of the company during the six months immediately preceding the presentation of the petition for wind up.

7. The argument that has been advanced before the court below, and which found favour with it, is the court having jurisdiction under the

Companies Act shall be the High Court having jurisdiction over the place at which the registered office of the company concerned is situate, except

to the extent which jurisdiction has been conferred on any District Court or District Courts subordinate to the High Court in pursuance of sub-

section (2) and hence the Subordinate Judge did not have any jurisdiction to entertain the suit. This contention is clearly untenable.

8. It is well-settled that every presumption should be made in favour of the jurisdiction of the civil court. In other words, the exclusion of

jurisdiction of the civil is not to be readily inferred. Such exclusion must be either explicitly expressed or clearly implied. A provision of law ousting

the jurisdiction of the civil court must be strictly construed and the onus lies on the party, seeking to oust the jurisdiction, to establish his right to do

so.

9. Section 10 of the Companies Act defines the court having jurisdiction under that Act as the High Court having jurisdiction in relation to the place

at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District

Court or District Courts subordinate to that High Court in pursuance of sub-section (2), which enables the Central Government by notification in

the Official Gazette to empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the court. The court having

jurisdiction under the Act, as defined u/s 10 of the Act, shall have power to deal with all matters for which provision has been made in the said Act.

Hence, in respect of all matters dealt with under the Companies Act, the court having jurisdiction is the court as defined u/s 10 of the Act. But, in

respect of matters not dealt with by the Companies Act, or for which the Companies Act does not provide remedies, the ordinary civil court alone

will have jurisdiction. In other words, the civil court will have no jurisdiction of the court having jurisdiction under the Companies Act. We have

now to see whether the subject-matter of the suit is a matter falling within the ambit of the Companies Act.

10. The suit, as already pointed out, is by the company against its former managing director for rendition of accounts. I am not able to lay my

hands on any provision of the Act providing for the determination of the question of rendition of accounts by a person who have ceased to be the

managing director, finding out the amounts due from him and passing a decree against him therefor. Chapter IV-A of the Act introduced by the

Amendment Act of 1963 confers powers on the Central Government to remove managerial personnel from office on the recommendation of the

High Court. Section 388B(1)(a) in Chapter IV-A deals with any person concerned in the conduct and management of the affairs of a company,

who is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions

under the law, or breach of trust. This section applies only in respect of a person who is or breach of trust. This section applies only in respect of a

person who is or has been in the management and not with one whose concern with the management has ceased. The defendant has ceased to be

the managing director and hence this provision does not apply. Further, u/s 388B, there is no provision for taking accounts, or for passing a decree

against a person who has committed acts of malfeasance, misfeasance and non-feasance. Hence, I find that there is no provision in the Companies

Act to deal with the subject-matter of this suit for accounts. The case on hand, does not. therefore, fall within the exclusive jurisdiction of the court

which has jurisdiction in the matter. The learned Subordinate Judge is, therefore, in error in holding that the suit is barred u/s 10 of the Act and in

dismissing the same. The point is answered in favour of the appellant.

11. In the result, the appeal is allowed, the judgment and decree of the court below is set aside and the suit is remitted to the court below for trial

on merits. The court fee paid on the memorandum of appeal shall be refunded. The parties are directed to appear before the court below on

August 27, 1987. The costs of this appeal will abide the result of the suit.