

(1949) 03 MAD CK 0018
In the Madras High Court

T.S. Sivaprakasa Mudaliar and Another	APPELLANT
Vs	
K.M. Samarapuri and Others	RESPONDENT

Date of Decision : 31-03-1949

Acts Referred:

Citation : (1949) 2 MLJ 382

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—In February, 1948, two persons to whom we will refer as spon-dents 1 and 3, brought into existence two companies. One was the Thirnages-waram Weavers" Welfare and Benefit Company, the shareholders of when are weavers working in Thirunageswaram. The other was Ramaswami and Company, Ltd., a private company consisting of only two shareholders, the first an third respondents themselves. These two persons were presumably responsible or the drawing up of the constitution of the two companies; and it was agreed pon at the same time that a managing agency agreement should be executed, where by the powers of management in the Thirunageswaram Weavers" Welfare andBenefit Co., Ltd., should be exercised by Ramaswami and Co., Ltd., for a term of a years, with a further extension of 20 years upon the resolution of the company, at an ordinary general meeting. Unfortunately, these two respondents fell out ; and so made it difficult for them to conduct either their own business of Ramawami & Co., Ltd., or that of Thirunageswaram Weavers" Welfare and Benefit C., Ltd., of which these two respondents are the two leading directors. The Weavers" Welfare and Benefit Company became divided into two factions, the larger, controlling 240 to 305 shares

out of a total of 403, supporting the third respondent, and the other, controlling anything upto 163 shares ; following the leadership of the first respondent. It would appear, if the allegations of the first respondent are true, that the third respondent, as the controller of the larger number of shareholders, succeeded in depriving the first respondent of all share in the management, with the result that the first respondent filed O.S. No. 395 of 1948, on the file of the District Munsif of Poonamallee for a declaration that he was equally entitled with the third respondent to manage the affairs of Ramaswami and Company, of which the main concern was the conducting of the Weavers' Welfare and Benefit Company, and praying for an injunction to restrain the third defendant from unlawfully ousting him from the joint managership of the companies. At the same time, he filed I.A. No. 939 of 1948 for a temporary injunction. A temporary injunction was passed on 3rd November, 1948 ; but as the first respondent was not satisfied with the extent of the temporary injunction passed, he filed C.M.A. No. 90 of 1948 in the Court of the District Judge of Chingleput against the order in LA. No. 939 of 1948. On 10th November, 1948, on an application for the appointment of a receiver one Devaraja Mudaliar was appointed as receiver on the 4th December, 1948. The third respondent attempted to circumvent this order in favour of the first respondent by getting two men of his faction to file I.A. No. 54 of 1949 in C.M.A. No. 90 of 1948, to restrain the receiver from interfering with the affairs of the management of the Thirunageswaram Weavers' Welfare and Benefit Company. By that time there were proceedings pending in the High Court also and so the learned District Judge dismissed that application. C.M.A. No. 52 of 1949 has been filed against the order of the District Judge dismissing LA. No. 54 of 1949, while in C.R.P. No. 92 of 1949, the third respondent prays this Court to revise and set aside the order of the District Judge appointing a receiver. We may add that: Devaraja Mudaliar refused to accept the office of receiver, with the result that the learned District Judge was unable to secure the unanimous approval of all interested parties with regard to the person to be appointed as receiver. Various names were submitted to him by the rival factions, and he appointed one Janab M.A. Sandhamiyan Sahib, whom he considered to be the most fitted for that office.

2. Very many points have been argued on behalf of the third respondent and the two members of his faction who filed I.A. No. 54 of 1949. The

first is that the Court had no jurisdiction to appoint a receiver in a going concern like Ramaswami and Company. Their learned advocate seeks as

authority for that contention a brief dictum to be found at the conclusion of the judgment of Greaves, J., in Kailashchandra Butt v. Sadar Munsif,

Silchar ILR (1924) Cal. 513. There, the learned Judge said without giving any reasons,

...there is no jurisdiction in a Court to appoint a receiver of a company. If it is necessary to protect the assets of a company other means must be

sought which are provided by the provisions of the Companies Act.

We find no provision in the Companies Act which excludes the jurisdiction of a Court to appoint a receiver; though since the Companies Act

makes provision for dealing with circumstances in which a company is mismanaged, it should not be necessary in the vast majority of cases to

appoint a receiver. It might even be improper to do so in certain circumstances. Our attention has been drawn to a number of instances in which

Receivers have been appointed; and although the particular case that we are here considering does not fall within one of the categories of cases in

which receivers have been appointed by courts, we think this is a case in which, if the allegations are accepted, the appointment of a receiver

would be the most satisfactory way of dealing with the temporary difficulty that exists during the pendency of the suit. If the allegations of the first

respondent be true he is kept out of possession and management by the third respondent and seeks in his suit to have it declared that he is entitled

to participate equally with the third respondent in the management of Ramaswami & Co., Ltd.

3. It was next argued that even though it be unobjectionable to appoint a receiver for Ramaswami and Company with regard to its own business, it

would be improper to appoint a receiver for that part of the business of Ramaswami and Company which deals with its managing agency on behalf

of the Weavers' Welfare and Benefit Company. It has been argued that since the contract of agency was between the Weavers' Welfare and

Benefit Company on the one hand and Ramaswami and Company on the other, a receiver cannot be substituted for Ramaswami and Company. If

Ramaswami and Company is not to manage the affairs of the Weavers' Welfare and Benefit Company, then it is argued, it is for the company to

decide who shall manage it. The receiver is however only the manager of the business of Ramaswami and Company and was not substituted for

Ramaswami and Company. The business of Ramaswami and Company was not taken away from it. That company continues to exist and to be the

managing agents of the Weavers' Welfare and Benefit Company. As the manager of that company, the receiver is entitled to perform all the duties

of that company, including the managing agency of the Weavers' Welfare and Benefit Company.

4. In arguing against the appointment of a receiver for the management of the Weavers' Welfare and Benefit Company in the place of Ramaswami

and Company, it is contended that Ramaswami and Company was appointed because of the peculiar confidence which the Weavers' Welfare and

Benefit Company had in Ramaswami and Company. If from the managing agency agreement it appeared that that was so, there would be

considerable force in the argument, and it would then not be proper on the part of a Court to appoint somebody in whom the Weavers' Welfare

and Benefit Company had no confidence, in the place of persons whom they selected because of the confidence that they had reposed in them.

We have already pointed out that Ramaswami and Company was not appointed as agents by a company already in existence. The Directors of

Ramaswami and Company were responsible for bringing the Thirunageswaram Weavers' Welfare and Benefit Company into existence. The

agreement makes it clear in very many places that Ramaswami and Company, Ltd., is entitled to assign or transfer its interests, and that the

company, by whatever name it may be known or whoever may be the assignees or transferees, is entitled as of right to manage the affairs of the

Weavers' Welfare and Benefit Company for the period of the contract. We therefore find nothing in the terms of the agreement which affords any

ground for concluding that the continued right of Ramaswami and Company to manage the affairs of the Weavers' Welfare and Benefit Company

was dependant upon the peculiar confidence reposed in the directors of the one by the shareholders of the other.

5. A fourth argument is that I.A. No. 54 of 1949 should not have been dismissed in limine, and that the learned Judge should have considered the

arguments put forward on behalf of the Weavers' Welfare and Benefit Company and passed a reasonable order after considering their objections.

That argument is akin to another point that has been made in the Appeal and the Revision Petition, i.e., that even apart from the application, I.A.

No. 54 of 1949, the learned Judge should have consulted the Weavers' Welfare and Benefit Company before appointing a receiver, because it

was their interests and were primarily affected by the order of appointment. In principle, we agree that it would have been advisable to consult

members of the company and that the learned Judge should have given fuller reason for dismissing I.A. No. 54 of 1949; but in this connection one

has to remember that consulting the members of the Weavers' Welfare and Benefit Company is tantamount to consulting the first and third

respondents again, for they are the leaders and spokesmen of their respective factions amongst the weavers.

6. Another argument by the learned advocate for the two petitioners in I.A. No. 54 of 1949 is that the services of Ramaswami and Company,

Ltd., were legally dispensed with, for misconduct, and that since Ramaswami and Company, Ltd., is no longer entitled in law to manage the affairs

of the Weavers' Welfare and Benefit Company, the receiver, whose powers are not greater than those of Ramaswami and Company would also

be precluded from interfering with the affairs of the Weavers' Welfare and Benefit Company. We have been taken through the various affidavits

and statements made on behalf of the third respondent and the faction that he leads; and it is not at all clear that any definite allegation has been

made--still less proved--that the agency of Ramaswami and Company has been legally determined. In some affidavits reference is made to a

determination of the agency as early as May, 1948; but there appears to have been another meeting on 15th November, 1948, on which the

learned advocate for the third respondent and his faction chief relies in the proceedings before this Court. As to what happened on that date we

may well refer to the third respondent's reply affidavit in C.M.P. No. 1049 of 1949, paragraph 3, in which he said:

As the notice for the statutory meeting was too short, the statutory meeting was adjourned to 15th November, 1948. On 14th October, 1948,

notice of an extraordinary general body meeting to be held on the same day, i.e., 15th November, 1948, to remove the said directors including the

first respondent herein was issued to all the shareholders. On 15th November, 1948, after the statutory meeting was over, the general body

meeting was held in which Ramaswami and Company as well as the six directors who colluded with the first respondent were removed.

So it would appear that the extraordinary general body meeting was for the removal of the first respondent and others from the directorship of the

Weavers" Welfare and Benefit Company. No material has been put before us or before the lower Court to show the nature of the summons that

was issued in that case, that it was received by the first respondent and others, that the meeting was regularly held, and that the requisite statutory

majority was obtained in support of the resolution terminating the agency of Ramaswami and Company.

7. Lastly, it is said that the receiver appointed was not a. man of substance. The learned District Judge has given reasons which seem to us

sufficient for selecting the person whom he appointed, as being a man outside the factions and of considerable experience in the business carried on

by or on behalf of the Weavers" Welfare and Benefit Company. It is of course clear that the powers of the receiver are co-terminous with the

powers of Ramaswami and Company. It should not be necessary for us to say that the appointment of a receiver does not prevent the Weavers"

Welfare and Benefit Company from holding meetings and conducting business other than that covered by the agency agreement with Ramaswami

and Company, Limited.

8. C.M.A. No. 52 of 1949 and C.R.P. No. 92 of 1949 are dismissed with the costs of the contesting first respondent, one set.