
(2011) 04 CAL CK 0012

In the Calcutta High Court

Case No : ACO No. 44 of 2011, APOT No. 166 of 2011 and CP No. 201 of 2007

Universal Paper Mills Ltd.

APPELLANT

Vs

Dharam Godha and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11, 141
Companies Act, 1956 — Section 10E(4C)

Citation : (2011) 3 CALLT 190

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Sudipta Sarkar, Mr. Debangshu Basak and Mr. D.N. Sharma, for the Appellant; Ratnanko Banerjee, A. Roy, Ms. R. Sen and Mr. S. Sharma for Respondent Nos. 1 to 7 Mr. S.N. Mitra for Respondent No. 30, for the Respondent

Judgement

I.P. Mukerji, J.—The Court: This Is an appeal from an order of the Company Law Board dated 13th April, 2011. The order is as follows:

C.A. No.210/11 mentioned. Respondents to file reply within a week, rejoinder, if any within a week thereafter. CP & CAS to be argued on 4th & 13th May at 10:30 a.m. and on 9th May 2011 at 2:30 p.m.

2. The ground of appeal is that the Board could not have ordered Company Application No.210/11 to be heard along with the company petition.

3. On the face of the order, no question of law arises from it. But after hearing the argument of the learned Counsel for the respective parties, it seems that some question of law arises from this order.

4. It is submitted on behalf of the appellant that their application, CA No.210/11 is in the nature of an application under Order 7 Rule 11 of the Code of Civil Procedure. Therefore, it has to be heard first.

5. Learned counsel for the respondent shows me an order made by this Court on

11th January, 2011, disposing of an earlier appeal between the parties by, inter alia, directing the Company Law Board to dispose of the main proceeding by 15th May, 2011.

6. It is said that this application, CA No.210/11, which was filed on 6th April, 2011, and moved on 13th April, 2011, was with a view to delay the proceedings.

7. He cited the judgment in the case of B. Subba Reddy Vs. S.S. Organics Limited and V.N. Sundana Reddy, [In the Andhra Pradesh High Court] dated July 3, 2009. The following passages from that judgment are important:

Section 10E(4C) of the Companies Act is to the effect that every Bench of the Company Law Board shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (CPC), while trying a suit in respect of only the following matters : (a) discovery and inspection of documents, (b) enforcing the attendance of witnesses, (c) compelling production of documents or material objections, (d) examining witnesses on oath, (e) granting of adjournments, and (f) reception of evidence on affidavits. This would show that all the powers under the CPC are not vested in the Company Law Board.

Learned counsel for the respondents has not placed before this Court any provision of Companies Act or Regulations (except regulation 44) which confers the power on the Company Law Board to decide the preliminary issues as per Order XIV, rule 2 of the CPC. It must, therefore, be held that the Company Law Board has no power to decide preliminary issues nor can exercise powers under CPC other than those conferred u/s 10E(4C) of the Companies Act.

8. Therefore, he submits that the Company Law Board has no power to determine any preliminary issue.

9. It is true that section 10E(4C) of the Companies Act, 1956, specifies certain powers of a Civil Court to be vested in the Company Law Board.

10. Power and procedure are, in my judgment, completely different concepts. By section 10E(4C) certain coercive powers of the Court are conferred on the Company Law Board. But the procedure followed by the Court is certain rules of Justice which are followed by it to deal with a case. Section 141 of the CPC makes it absolutely plain that the procedure provided in the Code with regard to suit shall be followed as far as it can be made applicable in all civil proceedings. This right granted by the CPC has to be expressly taken away by statute so as to make it inapplicable. I find nothing in the Companies Act or the Company Law Board regulations, 1991, taking away that procedure from proceedings before the Company Law Board. Of course, such procedure may be suitably modified as provided by section 141 itself by the above statute and regulations or by the Company Law Board.

11. In my further judgment, this provision of the CPC was not brought to the knowledge of the Hon"ble Judge of the Andhra Pradesh High Court deciding the case mentioned above.

12. Therefore, the Company Law Board can determine preliminary issues.

13. Now, let me come to the purport of the application made before the Company Law Board. Paragraph 2i avers that certain decisions in certain proceedings have become final between the parties regarding particular issues. These issues are sought to be reagitated before the Company Law Board in the instant company petition. Hence, the company petition is dismissed.

14. Paragraph 2ii says that the company petition stands abandoned by virtue of CS No. 113 of 2007 filed in this Court.

15. Therefore, the application of the appellant, CA No.210/11 falls into the category of a demurrer application.

16. If the appellant in CA No.210/11 succeeds in establishing that by virtue of what is pleaded there and annexed thereto, it can be clearly shown that the company petition can be dismissed, the Company Law Board will decide accordingly and dismiss the company petition. If the contrary is the case, the Company Law Board will dismiss that application and proceed to hear the company petition. If, after perusal of the said application, the Company Law Board is of the opinion that it is not possible to make a final decision on the basis of the papers contained in it, then the Company Law Board will hear this application along with the company petition.

17. But it is essential that the Company Law Board should come to a decision in CA No. 210/11 first. Such decision should be arrived at as quickly as possible so that the time period mentioned in the earlier order of this Court can be adhered to as far as possible.

18. By consent of the parties, this appeal and the stay application are treated as on the day's list and disposed of by passing an order admitting this appeal and disposing them of in terms of the order above.

19. All undertakings are dispensed with.

All parties- concerned are to act on a signed photocopy of the operative part of this order upon the usual undertakings.