

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.02.2014

+ **CO. A (SB) 37/2013 & CA 1510/2013**

SATISH SHARMA

..... Appellant

versus

VRINDA REALTORS LTD AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Arvind Kumar Shukla and Mr Nihal Ahmad.

For the Respondents : Mr Sarwas Raza and Mr Takrim Asan Khan.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal has been filed by the appellant, under Section 10F of the Companies Act, 1956, seeking setting aside of the order dated 07.06.2013 (hereinafter referred to as the 'impugned order') passed by the Company Law Board. By the impugned order the Company Law Board has vacated the interim order passed on 01.08.2012 whereby the company was restrained from alienating the assets of the company.

2. The principal question in the present appeal is whether the Company Law Board could vacate the interim order *suo moto* without any application making such prayer being filed by the respondent.

3. The appellant was a Director in the respondent no.1 company and was holding 15,000 equity shares of ₹10/- each in respondent no.1 company. On 09.05.2012, the appellant is stated to have transferred his entire shareholding in the respondent no.1 company in favour of the respondent no.2 and is also stated to have tendered his resignation as a Director of the Company. The appellant is stated to have executed various documents and also signed an MOU thereby divesting all his interest in the respondent no.1 company. Respondent no. 3 is stated to have been co-opted as a Director on the Board of the respondent no. 1 company and the respondents have filed the requisite forms with the Registrar of Companies reflecting the change in the constitution of the Board of Directors. The MOU, resignation and the resolutions of the Board of Directors are disputed by the appellant, who claims that his signatures were obtained by coercion.

4. The appellant filed a company petition (CP No. 88(ND) of 2012), under Sections 397, 398, 401 and 403 of the Act, before the Company Law Board, *inter alia*, seeking setting aside the alleged decisions taken in the Board Meeting held on 09.05.2012. The appellant filed the said petition on the allegations that respondent no.2 had obtained the signatures of the appellant on various documents under coercion and intoxication. It is, therefore, contended that the transfer of shares and the appointments in the respondent no.1 company are illegal and void.

5. At this stage, it is pertinent to note that the appellant also lodged a complaint, on 19.05.2012, with the Sahibabad Police Station, Distt. Ghaziabad and pursuant thereto, an FIR No.413/2012 was registered. The

police investigated the case and filed a closure report. On 28.01.2013, the Chief Judicial Magistrate accepted the closure report and dismissed the protest petition filed by the appellant. The said order has been challenged by the appellant in Revision Petition No.88/13 filed before the District and Sessions Judge, Ghaziabad and it is stated by the parties that the same is pending before the said court.

6. The petition under Section 397 and 398 of the Companies Act 1956 was moved by the appellant on 01.08.2012. On the said date, the Company Law Board passed an interim order directing the respondent company not to alienate the fixed assets of the company until an order was passed on merits. The said restraint order was passed as the counsel for the respondent conceded to the same without prejudice to the rights and contentions of parties. The Company Law Board also issued further directions for completion of pleadings and listed the matter for hearing on 19.11.2012. Thereafter, the respondent filed an application (CA No.572/2012) under Regulation 44 of Company Law Board Regulations, 1991 seeking dismissal of the Company Petition, *inter alia*, on the ground that the company petition was not maintainable. It was contended that the appellant was not a shareholder of the respondent no. 1 company on the date of filing of the company petition and, therefore did not qualify the statutory requirement as prescribed under Section 399 of the Companies Act, 1956. By the impugned order, the Company Law Board disposed of the said application by vacating the interim order passed on 01.08.2012.

7. It is contended by the learned counsel for the appellant that the Company Law Board has vacated the interim order as passed on

01.08.2012 *suo moto* and without any application on behalf of the respondents. It has been pointed out by the appellant that the application in which the order has been passed by the Company Law Board was with regard to the maintainability of the company petition and not for the vacation of the interim protection as granted on 01.08.2012. It is further contended that the Company Law Board does not have powers under Section 403 of the Companies Act, 1956 to *suo moto* vacate the restraint order.

8. The appellant has further contended that, the fact that a closure report with respect to the FIR filed by the appellant could not be considered by the Company Law Board, while deciding the rival contentions. The learned counsel for the appellant has argued that the decisions in criminal proceedings cannot be considered by civil courts while adjudicating *inter se* disputes between parties.

9. The appellant has framed the following questions in the present appeal:-

“1. Whether the Hon'ble Company law Board is bound by an order of a criminal court, against which Revision is pending before the Competent Court?

2. Whether the Hon'ble Company Law Board on an application questioning the maintainability on factual aspects, without deciding the same can vacate the interim order?

3. Whether the Hon'ble Company Law Board without considering the merits of the case may vacate the status quo order, which may result in creation of third party rights?

4. Whether the Hon'ble Company Law Board cannot decide a dispute that falls within the scope of Companies Act, 1956, but the same also gives rise to separate criminal proceedings?

5. Whether the Hon'ble Company Law Board whose findings of facts are final and an appeal lies only on the basis of questions of law may without going into the facts of the case, vacate the interim orders at the stage when pleadings are complete and the matter may be heard and decided in toto?"

However, the learned counsel for the appellant has restricted the present appeal only to the questions whether the Company Law Board had erred in passing the impugned order *suo moto* without any application on behalf of the respondents and whether the Company Law Board could consider the fact that the closure report, with respect to the FIR lodged by the appellant, had been accepted.

10. I have heard the learned counsel for the parties at length. The controversy that has been raised in the present case is whether the Company Law Board has erred in vacating the interim orders without any application being filed by the respondent. It is also to be considered whether the Company Law Board could take notice of the fact that the protest petition filed by the petitioner against the closure report had been dismissed by the Chief Judicial Magistrate.

11. Before proceeding further in the matter, it is necessary to examine the reasons why the Company Law Board has decided to vacate the interim order. The interim order was passed on 01.08.2012 on the concession made by the learned counsel for the respondent that, without prejudice to its

rights and contentions, the company would not alienate any of its fixed assets. It is relevant to note that the petition was moved on 01.08.2012 and on the said date the stand of the respondents had not been placed on an affidavit, before the Company Law Board. Accordingly, the Company Law Board issued directions for completion of pleading and listed the matter for hearing on 09.11.2012. It is apparent that the matter could not be heard on the said date and remained pending.

12. It is the case of the respondent that the appellant did not hold any shares in the respondent no.1 company and, therefore, the appellant could not maintain a petition by virtue of Section 399 of the Companies Act. This stand of the respondents was placed before the Company Law Board by way of an application challenging the maintainability of the petition filed by the appellant. The said application being CA No.572/12 also remained pending and was finally taken up for hearing on 07.06.2013. On the said date, the Company Law Board considered the factual matrix of the case and came to the conclusion that the facts did not warrant any interim order in favour of the appellant. The Company Law Board has concluded that the appellant had not made out a case for passing a restraint order. However, as the pleadings in the matter were complete and the application also raised certain factual issues, the same was dismissed and the petition was set down for hearing.

13. I find no infirmity in the approach adopted by the Company Law Board. The interim order was passed on a concession made by the learned counsel for the respondent on the first date. Subsequently, the case of the respondent was brought before the Company Law Board by way of an

application challenging the maintainability of the petition. The case of the respondent was noted and on consideration of the same the Company Law Board concluded that an interim injunction was not warranted in the facts of the case. The contention that the Company Law Board did not consider the merits of the case is *ex-facie* erroneous as the impugned order does indicate that the Company Law Board has considered the contentions of the petitioner as well as the averments made by the respondent and arrived at its conclusion. This is apparent from the relevant extract of the impugned order reproduced as under:-

“ On seeing the documents filed by the Respondent counsel and on seeing the pleadings placed by the Petitioner in this case, the Petitioner failed to make out any prima facie case for passing restraint orders invoking jurisdiction under Section 397/398 of the Companies Act. The main allegation made by the Petitioner is the respondent-2 obtained the signatures of the petitioner under coercion and intoxication, on seeing such allegation, this Bench could not continue the restraint order pending against the respondents, hence it is hereby vacated.

The application questioning the maintainability of the petition being on factual aspect, the pleadings in the main petition being completed, CA 572/2012, instead of deciding it on maintainability, is disposed of vacating the interim order passed on 01.08.2012.”

14. The Company Law Board after considering the relevant facts has not found the case of the petitioner credible enough to warrant an interim order. Sections 397 and 398 of the Companies Act, 1956 give very wide powers to the Company Law Board with regard to the affairs of the company. By virtue of Section 397 of the Act, the Company Law Board is empowered to make such orders as it thinks fit with a view to bring an end to the matters

company of. And, by virtue of Section 398 of the Act, the Company Law Board is also empowered to pass such orders as it thinks fit to prevent matters which are apprehended. It is also settled law that the interests of the company have also to be considered by the Company Law Board before passing any orders. In view of the wide powers conferred on the Company Law Board. It cannot be accepted that the Company Law Board did not have the power to vacate an interim order which obviously relates to the functioning of the company and may be an impediment in its business since it is undisputed that the business of the respondent company included dealing in real estate.

15. The contention that Section 403 of the Act restricts the Company Law Board from vacating interim orders without an appropriate application is also erroneous. Section 403 of the Act is quoted below:-

“403-Interim order by (Tribunal):- Pending the making by it of a final order under section 397 or 398, as the case may be, the (Tribunal) may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.”

16. The said Section is also couched in wide terms and empowers the Company law Board to make any interim order which it thinks fit. It necessarily follows that the Company Law Board would also have the power and discretion to modify or vacate an interim order granted earlier. The words “..may, on the application of any party to the proceedings,..” at best qualify only making of an interim order and not vacating or modify an interim order granted earlier. As such, no restriction on the Company Law Board to vacate or modify interim orders can be read in Section 403 of the

Act. As stated above, the powers conferred on the Company law Board under Section 397 and 398 of the Act are very wide and Section 402 and 403 of the Act cannot be read to limit the scope of the powers of the Company law Board to regulate the affairs of a company.

17. The question, whether the Company Law Board erred in considering the fact that the protest petition filed by the appellant against the closure report was accepted by the Chief Judicial Magistrate, Ghaziabad has to be considered in the back drop of factual assertions made by the appellant. And, on the grounds on which the appellant had sought orders from the Company Law Board. It is the case of the appellant that he was called to the office of respondent no. 2 on 11.05.2012. The appellant has stated that when he reached the office of respondent no.2 he did not find the respondent at the said office. However, two men appeared and assaulted the appellant with slaps and fists to coerce him to sign certain documents and papers. The appellant states that he resisted the onslaught, but the said two men forcibly injected him with some drugs and also held a gun to him. The appellant states that, thereafter, he became drowsy and in this state his signatures were obtained on the documents. It is contended that the said documents have been used to show that the appellant had transferred his shares in the respondent no.1 company and also resigned from the Board of Directors of the respondent no.1 company. These are essentially the allegations made by the appellant in his complaint lodged with the police authorities also.

18. The Company Law Board exercises summary jurisdiction and its decisions are based on preponderance of probabilities. The standard of

proof in criminal proceedings is different. However, the fact that the similar allegations had been investigated by the Police would certainly be an aspect that would require consideration by the Company Law Board and would be a relevant fact in arriving at a conclusion. While it is correct that a pendency of a criminal complaint does not divest the jurisdiction of civil courts, it would be erroneous to contend that the outcome of a criminal proceeding regarding the same subject facts ought to be ignored by a civil court. The decision of the police authorities and the Chief Judicial Magistrate does not fetter the Company Law Board and the Board is empowered to evaluate all material and evidence to determine whether the alleged transfer of shares by the appellant and the change in the constitution of the Board of Directors are valid or not. However, the fact that the FIR filed by the appellant has been closed would certainly be a relevant fact to be considered by the Company Law Board.

19. The present appeal is without merits and is, accordingly, dismissed. The parties are left to bear their own costs. It is clarified that nothing stated above should be construed as an expression of opinion on the merits of the case and the Company Law Board would hear the matter uninfluenced by any observations made herein.

20. The appeal and the pending application stand disposed of.

VIBHU BAKHRU, J

FEBRUARY 17, 2014
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