

In the High Court of Judicature at Madras

Dated : 17.4.2015

Coram :

The Honourable Mr. Justice V. RAMASUBRAMANIAN
and
The Honourable Ms. Justice K.B.K. VASUKI

Company Appeal Nos.5 and 6 of 2015
and
MP.Nos.1,1,2 and 2 of 2015

V.K.Saravanan

...Appellant in
Com.Appeal 5/2015
& R5 in Com.Appeal
6/2015

Vs.

1.R.Krishnamurthy

...R1 in Com.Appeal
5/2015 & appellant
in Com.Appeal 6/15

2.Samuthralakshmi Spinners (P)
Ltd., Tirupur.

...R2 in Com.Appeal
5/2015 & R1 in
Com.Appeal 6/15

3.P.S.Venkatachalam

...R3 in Com.Appeal
5/2015 & R2 in
Com.Appeal 6/15

4.P.S.Kathiresan

...R4 in Com.Appeal
5/2015 & R3 in
Com.Appeal 6/15

5.V.Vignesh

...R5 in Com.Appeal
5/2015 & R4 in
Com.Appeal 6/15

APPEALS under Section 10-F of the Companies Act, 1956 to set
aside the order dated 7.4.2015 passed by the Company Law Board in
C.P.No.45 of 2006.

For Appellant in Comp.Appeal No.5 of 2015

: Mr.P.H.Arvind Pandian, SC for
: Mr.Harishankar Mani

For Appellant in Comp.Appeal No.6 of 2015

: Mr.R.Shankaranayanan

For Respondents 2, 3 & 5 in Comp.Appeal No.5/2015 and
for Respondents 1, 2 & 4 in Comp.Appeal No.6/2015

: Mr.P.J.Rishikesh

COMMON JUDGMENT

Judgment was delivered by V.Ramasubramanian, J

Both the above appeals arise out of an order passed by the Company Law Board on 7.4.2015 in a petition under Sections 397 and 398 of the Companies Act, 1956 dismissing the company petition in C.P.No.45 of 2006, by refusing to entertain a request for adjournment and also holding that the dispute stood fully and finally resolved.

2. Heard Mr.P.H.Arvind Pandian, learned Senior Counsel appearing for the appellant in Comp.Appeal No.5 of 2015 and Mr.R.Shankaranarayanan, learned counsel appearing for the appellant in Comp.Appeal No.6 of 2015. Mr.P.J.Rishikesh, learned counsel takes notice for the company - Samuthralakshmi Spinners Private Limited, which is the second respondent in Comp.Appeal No.5 of 2015 and the first respondent in the other appeal. He also takes notice for two more respondents by name P.S.Venkatachalam and V.Vignesh, who are the respondents 3 and 5 in the first appeal and respondents 2 and 4 in the next appeal. That leaves only one party namely P.S.Kathiresan, whose shares have allegedly been purchased by V.K. Saravanan - the appellant in the first appeal, as a consequence of which, he remained ex parte through out.

3. The dispute between the parties dates back to the year 2006. The main company petition alleging oppression and mismanagement was filed in the year 2006.

4. In the special leave petition in S.L.P.(Civil) No.33549 of 2011, which arose out of a decree dismissing the claim for specific performance, the Supreme Court passed an order on 27.7.2012, directing the payment of a sum of Rs.10 lakhs towards full and final settlement to the agreement holder. The criminal proceedings arising out of the agreement of sale were also quashed by the very same order of the Supreme Court.

5. Therefore, it appears that when the company petition in C.P.No.45 of 2006 came up for hearing before the Company Law Board on 17.2.2015, it was contended by the contesting respondents in these appeals that all the disputes between the parties stood fully and finally disposed of by the order of the Supreme Court dated 22.7.2012.

6. Questioning the correctness of the said contention, the learned counsel for the appellant in Comp.Appeal No.6 of 2015 appears to have taken time from the Company Law Board on 17.2.2015 and the Company Law Board adjourned the matter by six weeks. When the matter came up for hearing after six weeks on 7.4.2015, the Company Law Board dismissed the company petition refusing a request for further adjournment and also holding that all disputes stood finally resolved by virtue of the order of the Supreme Court. The order dated 7.4.2015, against which, the appellants have come up with these appeals under Section 10-F of the Companies Act, reads as follows:

"This Bench by its order dated 17.2.2015 recorded that Shri R.Shankaranarayanan, learned counsel appeared for the petitioner requested the Bench to adjourn the matter for a period of six weeks, on the reason that they are intending to file some clarification before the Hon'ble Supreme Court. On the other hand, Shri.P.S.Raman, learned Senior Counsel appeared for the respondents submitted that the petitioner received an amount of Rs.10 lakhs as full and final settlement of all disputes and reported compliance before the Honourable Supreme Court and submitted that nothing survives in the CP and the CP has to be dismissed.

2. In view of the request made by the learned counsel for the petitioner, the matter has been adjourned for a period of six weeks and specifically stated that no further adjournments will be granted. The matter has been listed today for passing orders. However, the counsel appeared for the petitioner requested the Bench to adjourn the matter on or after 15.4.2015 due to personal reasons. This Bench has specifically stated that no further adjournment will be granted and I am convinced with the submissions made by the learned senior counsel for the respondents on 17.2.2015 that nothing survives in the company petition, in view of the fact that the petitioner received an amount of Rs.10 lakhs as full and

final settlement of all disputes and reported compliance before the Honourable Supreme Court. The counsel representing Shri.R.Shankaranarayanan, counsel for the petitioner has not produced any evidence regarding filing of application seeking clarification, which they intend to seek before the Honourable Supreme Court. I am also of the view that no ground is made for further adjournment. Accordingly, C.P.No.45 of 2006 is dismissed. No orders as to costs."

7. But, it is conceded by the learned counsel on either side that the request for adjournment was made on 7.4.2015 by the learned counsel appearing for the appellant in C.P.No.6 of 2015 on the ground that his father had expired. Therefore, considering the long history of the dispute between the parties, the Company Law Board ought to have given one more adjournment to the parties, when it is not disputed that the father of the counsel for the appellant in one of the appeals had passed away.

8. The learned counsel for the contesting respondents does not dispute the genuineness of the reason, on account of which, the learned counsel for the appellant in Comp.Appeal No.6 of 2015 sought adjournment. Therefore, the Company Law Board was wrong in dismissing the company petition, after refusing the request for adjournment.

9. In view of the above, both the appeals are allowed, the impugned order is set aside on the question of law that the appellants did not have a fair opportunity of representing their case before the Board. The Tribunal shall take up the matter for consideration and hear parties on all issues as to whether the disputes were resolved fully and finally or not or as to whether the disputes were only partially settled as between two parties. By virtue of the impugned order being set aside, the interim order that the appellant in Comp.Appeal No.6 of 2015 had been in enjoyment, will stand automatically restored. No costs. Consequently, the above miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
O.S. Department,
High Court, Madras.

2.The Company Law Board,
Additional Principal Bench, Chennai.

+1cc to Mr.Harishankar Mani, Advocate, S.R.No.21451

+1cc to Mr.R.Shankaranarayanan, Advocate, S.R.No.21402

Comp.Appeal Nos.5 & 6 of 2015
and
MP.Nos.1,1,2 & 2 of 2015

KU (CO)
CA(28/04/2015)



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