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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.6.2015

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THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Company Appeal No.12 of 2013 &
M.P.No.1 of 2013 in Company Appeal No.19 of 2010

1. M/s. Sri Kanniamman Cotton Textiles Pvt. Ltd.
No.95-B, Srinivasapuram Main Road
Avanashi, Coimbatore 641 654
Tamil Nadu.

Appellants in
C.A. & Petitioners
.. in M.P.

2. E.Rukmani

Vs.

1. S.Murugarselvi

Respondents in
both C.A. and
.. M.P.

2. Minor S.Dhina Eswar
rep. by mother/guardian Murugarselvi

Appeal under Section 10-F of the Companies Act, 1956, filed against the order of the Company Law Board, Additional Principal Bench, Chennai Bench, Chennai, dated 24.10.2013 in C.P.No.61 of 2005; and Miscellaneous Petition to clarify the points raised in paragraph 23 of the order of this Court dated 13.3.2013 in Company Appeal No.19 of 2010.

For Appellants/
Petitioners : Mr.V.Venkadasalam

For Respondents : Mr.R.Rajesh

O R D E R

The above appeal has been filed under Section 10-F of the Companies Act, 1956, questioning the correctness of an order passed by the Company Law Board on a petition filed by the respondents under Section 111 read with Sections 397, 398 and 402 of the Companies Act.

2. Heard Mr.V.Venkadasalam, learned counsel for the petitioners and Mr.R.Rajesh, learned counsel for the respondents.



3. The second appellant in the above appeal is the mother-in-law of the first respondent. The second respondent is the minor son of the first respondent. The son of the second appellant, who was the husband of the first respondent and the father of the second respondent, died in a road traffic accident on 25.6.2004. Since parties are Hindus, the second appellant as well as the respondents 1 and 2 became the legal representatives of the deceased, namely E.Sathish Kumar.

4. The deceased E.Sathish Kumar was holding shares in the first appellant company. The family also owned several properties in Coimbatore. Therefore, disputes started between the parties, one of which related to the transmission of the shares held by the deceased E.Sathish Kumar in the first appellant company.

5. The respondents herein filed a petition in C.P.No.61 of 2015 under Sections 397, 398 and 402 of the Companies Act, 1956 read with Section 111, alleging oppression and mismanagement and also seeking transmission of shares. In the said petition, the defence of the second appellant was two fold, namely (a) that the deceased had left behind a Will dated 12.01.2004, bequeathing the properties in favour of his mother, namely the second appellant and giving her an option to take care of the interest of the minor, and (b) that there was also a Memorandum of Understanding entered into between the mother-in-law and the daughter-in-law on 10.6.2005.

6. Pending the company petition, the respondents took out an application in C.A.No.42 of 2008 for sending the original Will set up by the second appellant for forensic examination. The Company Law Board passed an order dated 24.9.2008 directing the Will to be forwarded to the Tamil Nadu Forensic Science Department for examination. The Department filed a report on 17.4.2009, opining that the Will set up by the second appellant was forged and fabricated.

7. Thereafter, the appellants moved an application in C.A.No.38 of 2009 for sending the Will for examination by the Forensic Science Laboratory at Hyderabad. That application was dismissed by the Company Law Board, forcing the appellants to come up earlier with an appeal in Company Appeal No.31 of 2009. I had an occasion to dismiss the said appeal by an order dated 09.12.2009.

8. Thereafter, the Company Law Board took up the main petition for hearing and passed an order dated 18.5.2010 dismissing the company petition. The respondents filed an appeal in Company Appeal No.19 of 2010 as against the said order. The appeal was allowed by this Court by an order dated 13.3.2013, remanding the matter back to the Company Law Board for deciding the case with regard to the rectification of the Register of Shareholders and the objection with regard to an annual general meeting as required under Section 220.



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9. Thereafter, the Company Law Board took up the main petition once again for hearing and passed an order dated 24.10.2013 directing the appellants to effect transmission of shares as per the law of succession. As per the said order, the appellants have come up with the above main appeal.

10. The appellants have also come up with a miscellaneous petition in M.P.No.1 of 2013 seeking a clarification of certain points raised in paragraph 23 of the order dated 13.3.2013 passed in Company Appeal No.19 of 2010. Therefore, the main company appeal, namely Company Appeal No.12 of 2013 as well as miscellaneous petition for clarification filed by the very same appellants were taken up together for hearing.

11. It will be convenient to deal with the miscellaneous petition for clarification first. Therefore, I shall take it up first.

12. The relevant portion of the paragraph 23 of the order dated 13.3.2013 passed by this Court in Company Appeal No.19 of 2010 reads as follows:

"The appellants successfully made out a case for transfer of shares held by late Sathishkumar in favour of his legal heirs, i.e. wife, son and mother. The learned Company Law Board was not right in coming to the conclusion that the matter could be adjudicated only after the decision by the civil Court, in view of the judgment of the Hon'ble Supreme Court referred to above."

13. The clarification that the petitioners are seeking is that the reasoning given in the order does not go well with the ultimate decision taken. According to the learned counsel for the petitioners, there are contradictions between the findings recorded in paragraphs 18, 23 and 24. The contention of the learned counsel for the petitioners is that there was actually a dispute with regard to the entitlement of the shares of the deceased, but this Court observed that there is no dispute.

14. In other words, what the petitioners now seek is a review of the order passed by the learned Judge on 13.3.2013. If it had been a review, it should have been filed within the period prescribed by law. Moreover, what this Court deals with in an appeal under Section 10-F is not an appeal on facts, but an appeal on a question of law. Therefore, the application for clarification is not maintainable in law. Hence, M.P.No.1 of 2013 is dismissed.

15. Coming to the main appeal, it is seen from the above narration of facts that the appellants set up two defences to the claim of the respondents, namely (a) that there was a Will, and (b) that there was a Memorandum of Understanding. In fact, both these defences go contrary to each other. If there was a Will, there need



not have been a Memorandum of Understanding at all. In any case, the Tamil Nadu Forensic Science Department, to which the Will was referred, has given a finding that the Will was forged and fabricated. Therefore, one of the two defences set up by the appellants to the claim of the respondents, was rightly rejected by the Company Law Board.

16. Insofar as the second defence revolving around the Memorandum of Understanding is concerned, it is seen from the pleadings of the appellants in their counter before the Company Law Board that the Memorandum of Understanding was not given effect to after the first instalment of Rs.30,000/-. The Memorandum of Understanding was entered into on 10.6.2005. Even as per the averments contained in paragraph 11 of the counter filed by the appellants before the Company Law Board, the Memorandum of Understanding dated 10.6.2005 was not carried into effect after the initial payment of Rs.30,000/-. It is not necessary for me to get into the dispute as to who was responsible for the failure of the Memorandum of Understanding. But, the Company Law Board has also recorded a finding that it was nobody's case that the Memorandum of Understanding was acted upon. On this finding of fact, there can be no appeal under Section 10-F of the Companies Act, 1956.

17. Therefore, the entire defence set up by the appellants has been rejected by the Company Law Board on the basis of the evidence available on record. No question of law arises for consideration in the above appeal.

18. The learned counsel for the appellant contended that the Company Law Board was not justified in accepting the report of the Forensic Science Department without a proper investigation and that the question as to whether Section 111 can be invoked by the Company Law Board was not considered in the proper perspective. But, I do not think that both these questions of law arise in the light of the categorical finding on facts recorded by the Company Law Board. The Company Law Board is primarily concerned with the affairs relating to the companies. Once one of the parties to a dispute before the Company Law Board sets up a Will, especially in relation to closely held private limited companies, a reference of a document to the Forensic Science Department and a conclusion drawn on the basis of a report cannot be found fault with.

19. The fact that the respondents are the wife and son of the deceased son of the second appellant is not in dispute. Therefore, the entitlement of the respondents to the transmission of shares dehors the defence taken by the appellant, cannot be disputed. Hence, I find no reason to interfere with the order of the Company Law Board.

20. Mr.V.Venkadasalam, learned counsel for the appellant submitted that his client is prepared to buy the shares that are to be transmitted to the respondents. But, I think it is too late in the



day for this Court to accept the offer made by the appellant. Therefore, the appeal is dismissed. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

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

1 cc to Mr. R.Rajesh, Advocate Sr.No.27586

Comp. Appeal No.12 of 2013
& M.P.No.1 of 2013 in
Comp. Appeal No.19 of 2010.

ts(co)
pmk.24.6.2015