

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVATION: 19.11.2015

DATE OF PRONOUNCEMENT: 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Review Application Nos.94 and 95 of 2015
in
Company Appeal Nos.13 and 14 of 2014

Review Application .No.94 of 2015:-

S.Natarajan

Petitioner

Vs

1. S.V.Global Mills Limited, Chennai-1
2. M.Ethiraj, Chairman, S.V.Global Mill Limited, Chennai-4
3. E.Shanmugam, Managing Director, S.V.Global Mill Limited
Chennai-28
4. Sheetala Credit Holding Pvt Limited, Chennai-28
5. Satluj Credit and Holdings Pvt Limited, Chennai-28
6. Twentieth Century APCO Leasing Private Limited, Chennai-28
7. Rajat Chakra Credit and Holdings Limited, Chennai-28
8. Calcom Credit and Holdings Pvt Limited, Chennai-28
9. N.Rajalakshmi, Chennai-28
- 10.Y.Satyajit Prasad, Chennai-17
- 11.Dr.K.Shivaram Selvakumar, Director, S.V.Global Mill Limited
Chennai-40
- 12.R.Narayanan, Chennai-42

Respondents

Review Application .No.95 of 2015:-

1. Sheetala Credit Holding Pvt Limited, Chennai-28
2. Satluj Credit and Holdings Pvt Limited, Chennai-28
3. Twentieth Century APCO Leasing Private Limited, Chennai-28
4. Rajat Chakra Credit and Holdings Limited, Chennai-28
5. Calcom Credit and Holdings Pvt Limited, Chennai-28
6. N.Rajalakshmi, Chennai-28

Petitioners

Vs.

1. S.V.Global Mills Limited, Chennai-1
2. M.Ethiraj, Chairman, S.V.Global Mill Limited, Chennai-4
3. E.Shanmugam, Managing Director, S.V.Global Mill Limited
Chennai-28
4. Y.Satyajit Prasad, Chennai-17
5. Dr.K.Shivaram Selvakumar, Director, S.V.Global Mill Limited
Chennai-40
6. R.Narayanan, Chennai-42
7. S.Natarajan

Respondents

Prayer:- These Review Applications have been filed to review the order of this dated 27.04.2014 made in THE Company Appeal Nos.13 and 14 of 2014 respectively.

For Petitioners : Mr. R.Murari, SC for Ms.Preethi Mohan-Rew.A.94/15

Mr. P.Chidambaram, SC for Mr.Anirudh Krishnan
(Rew.A.95/15)

For Respondents: Mr. R.Venkatavaradhan-R1-(Rew.A.94 & 95/15)

Mr.P.S.Raman, SC for T.K.Bhaskar- R2 & 3
(Rew.A.94 & 95/15)

Mr. T.K.Seshadri, SC for Mr. T.K.Bhaskar
(RR10, 11 & 12 in Rew.A.94/15 and
RR4, 5 & 6 in Rew.A.95/15)

ORDER

These Review Pitions have been filed against the orders in CA.Nos.13 and 14 of 2014, dated 27.04.2015, contending that the questions of law raised in the appeals have not been considered and therefore, the appeals were erroneously dismissed, as not maintainable.

2. The appeals were filed against the against the order dated 23.10.2014 passed in C.P.No.62/2014 by the Company Law Board, Chennai, dismissing the interim reliefs sought for by the Petitioners therein, who are the petitioners in RP No 95 of 2015 and the 7th respondent therein, who is the petitioner in R.P No 94 of 2015. The Company Petition was filed after the 7th respondent was defeated in the election for the post of Director. Alleging irregularity in the election process and oppression, the petition was filed seeking many reliefs. Interim reliefs in the nature of injunction to enable the 7th respondent to continue as a Director and also for certain directions were also filed. The Company Law Board refused to grant the interim reliefs. Aggrieved the appeals were filed. This court after elaborately hearing the parties, dismissed the appeals concurring with the views of the Company Law Board and issued directions for the early disposal of the Company petition. The orders were passed by this Court on 27.04.2015. It appears that though the present revision petitions were filed, the petitioners were not in a hurry to give life to it and moved Special Leave Petitions before the Supreme Court.

Ultimately, they withdrew the SLP's with a liberty to rejuvenate the sleeping review petitions. While disposing of the SLP's, the Honourable Supreme Court has directed this Court to consider the review petitions at the earliest preferably within two weeks. The Review Petitions were listed on several dates at the convenience of the parties and heard at length.

3. The Learned Senior Counsel Mr.P.Chidambaram, appearing for the petitioner in R.P.No 95 of 2015 articulously contended that this court has failed to consider the questions of law raised in the appeal referring to questions of law Nos 7, 8, 9 and 10 and therefore, the appeals under Section 10 F of the Companies Act were maintainable. The Learned Senior Counsel contended that the above questions are pure questions of law and therefore, non-consideration of the same is an error apparent on the face of the record. The Learned Senior Counsel also relied upon Sections 106 to 109 of Companies Act, 2013 and Rule 20 of the Companies (Management and Administration) Rules to contend that once the Company decides to have election by e-voting, the voting by other means are barred and the same is a pure question of law. The Learned Senior Counsel also drew the attention of this court to the notice issued to the shareholders and pointed out that the scrutinizer was also duty bound to block the votes registered in the e-voting in the presence of two independent witnesses and submit a report to the chairman. Therefore, the voting by paper ballot poll was not contemplated and cannot be permitted. The Learned Senior Counsel also submitted that the notification dated 19.03.2015 issued by the Ministry of Corporate Affairs, amending the Companies (Management and Administration) Rules 2014 will

only have prospective effect and therefore, the votes by paper ballot are invalid. Further according to the Learned Senior Counsel, once a prima facie case is made out as to the bar of other forms of voting, the interim reliefs sought for ought to have been granted and the failure of the CLB to consider the questions of law and grant interim injunction is itself a question of law and under those circumstances, the interim reliefs sought for must be granted by this Court. The Learned Senior Counsel, in reply to the contention of the respondents that the review application is not maintainable, placed reliance upon Rule 2 (4) and (5) and Rule 6 of the Company Court Rules, Section 141 and Order 47 Rule 1 of CPC to contend that unless the applicability of the provisions of CPC relating to review are expressly barred, the review application is maintainable. The Learned Senior Counsel also submitted that the case of the appellant has all along been that the paper ballot in addition to e-voting was not contemplated and hence, the contention that the appellants are arguing against their own case before the CLB is incorrect. The Learned Senior Counsel in support of his contentions relied upon the judgements reported in AIR 1961 SC 1633 (Commissioner of Income Tax, Bombay Vs. scindia Steam Navigation Co. Limited), AIR 1957 SC 49 (Sree Meenakshi Mills Limited Vs. Commissioner of Income Tax, Madras), AIR 1969 SC 460 (Oriental Investment Co. P Limited Vs. Commissioner of Income Tax, Bombay), AIR 1964 SC 1379 (Naunihal Kishan and others Vs. R.s.Ch.Partap Singh and another), 2014 7 BOMB CR 464 (Godrej Industries Limited), 2010 15 SCC 118 (Gian Singh Vs. State of Punjab and another) and 1990 69 Company Cases 372 (Guj) (Saurashtra Cement and Chemicals Industries

Limited and others Vs. Esma Industries P Limited).

4. The Learned Senior Counsel Mr.R.Murari, appearing for the petitioners in R.P 94/15, adopting the arguments of the Learned Senior Counsel Mr.P.Chidambaram submitted that in view of the non-consideration of the questions of law raised in the appeals, there is an error apparent on the face of the record and also contended that each of the appellants are espousing their own cause and the petitioner has been defeated by adopting oppressive means and hence, the CLB ought to have granted the interim relief. Non consideration of this aspect is an error apparent on the face of the record and hence, the order ought to be reviewed.

5. The Learned Senior Counsel Mr.P.S Raman, representing Mr.T.K.Baskar, counsel for the 2nd and 3rd Respondents countenanced the contentions of the Learned Senior Counsel for the petitioners, contending that the review as against the orders passed in an appeal under Section 10 F is not maintainable. The Learned Senior Counsel also contended that there is no error apparent on the face of the record of this court's order dated 27.04.2015 as this court has already considered the pleas raised now and given a finding in para 18, 20 and 23 holding that this court is in consonance with the views of the CLB and there is no perversity in the order. The Learned Senior Counsel also contended that various High Courts under similar circumstances have refused to interfere with the interim orders of the CLB. The Learned Senior Counsel also contended that once this court has held that the questions raised are not questions of law, it is not an error apparent on the face of record and in consonance with the Clause 37 of the Letters Patent Act, the High Court has

framed the rules under the Original Side and only a clerical or an arithmetical error can be rectified. However, even such rules cannot be applied while exercising jurisdiction under the Companies Act and the Company Court Rules. The Learned Senior Counsel also brought to the notice of this court that the petitioners also failed in their attempt to convince the Supreme Court and are now once again agitating the matter only to protract the proceedings before the CLB. The Learned Senior Counsel also contended that the provisions do not bar the voting at the place of meeting. The Learned Senior counsel also relied upon the judgements reported in **AIR 1960 SC 137 (Satyanarayanan Laxminarayan Hedge and others Vs. Millikarjun Bhavanappa Tirumale)**, **1997 3 CTC 134 (A.C.Muthiah Vs. Madras Refineries Limited)**, **2000 3 Callt 434 (Manohar Rajaram Chhabaria Vs. Union of India)**, **2008 144 Company Cases 619 (Palanisamy and another Vs. Milka Nutrients P Limited)**, **2012 108 CLA 25 Kar (D.Victor Samuel Vs. Pretechplast (P) Limited)**, **2015 128 CLA 353 SC (Purnima Manthena and others Vs. Renuka Datla and others)** and **2010 9 SCC 437 (Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others)** and sought for dismissal of the review petitions.

6. The Learned Senior Counsel Mr.T.K.Seshadri, representing Mr.T.K.Baskar, counsel for the Respondents 10 to 12 in Rev.A.No.94/2015/ Respondents 4 to 6 in Rev.A.No.95/2015, contended that there is no error apparent on the face of the record and hence the review petitions are not maintainable. The Learned Senior Counsel relied upon para 45 of the judgement reported in **2015 128 CLA 353 (SC)** to contend that the deferment of the adjudication to a future point cannot constitute a question of law to be

appealed therefrom. Since the CLB has held that the issue needs to be adjudicated at the final hearing after the counter of the parties are filed, there is no necessity to interfere. The Learned Senior Counsel also contended that the rights of the shareholders to vote cannot be ousted on technicalities and therefore, the orders of this Court does not require any reconsideration and sought for dismissal of the review petitions.

7. The Learned Counsel, Mr.R.Venkatavaradhan, appearing for the 1st respondent painstakingly contended that there is no error apparent on the face of the record. The Counsel also relied upon the findings of this court in the order dated 27.04.2015 in paragraphs 18, 19 and 23 to contend that considering all the facts and contentions, including the ones which are raised now, this court thought it fit not to interfere with the orders of the CLB and issued appropriate directions leaving all the issues open and protecting the rights of the parties. The counsel also contended that in para 8.4 of the prayer in the petition before the CLB, the petitioners therein has pleaded to include the paper ballot by other members by excluding only the votes of second and third respondent therein. Therefore, the petitioners cannot now contend that the entire paper ballot is bad in law. The counsel also contended that the notification dated 27.03.2015 is only clarificatory in nature and therefore, paper ballot is permissible even in cases of e-voting.

8. Heard all the counsels and perused the materials.

9. The case of the review petitioners is that the question Nos 7 to 10 are pure questions of law and therefore, the dismissal of the appeals under section 10 F as not maintainable on the premise that there is an error apparent

on the face of the record. Also, it has been contended that the failure of the CLB to consider the case on merits is itself a question of law and the same was also not considered by this Court.

Question No 7:- Whether the procedure adopted by the Respondents 2 and 3 in the meeting held on 26.09.2014 in relation to the method of voting violated the provisions of Section 107 of the Companies Act, 2013 read with Section 109.

Question No 8:- Whether the procedure adopted by the Respondents 2 and 3 in the meeting held on 26.09.2014 in relation to the method of voting violated Rule 20 of the Companies (Management and Administration) Rules, 2014?

Question No 9:- Whether the procedure adopted by the Respondents 2 and 3 in the meeting held on 26.09.2014 in relation to the method of voting violated the guidelines provided by Securities Exchange Board of India vide circular dated 17.04.2014?

Question No 10:- Whether the procedure adopted by the Respondents 2 and 3 in the meeting held on 26.09.2014 in relation to the method of voting violated the guidelines provided by the Ministry of Corporate Affairs contained in the circular dated 17.06.2014?

10. The relevant provisions are as under.

Sections 106:- Restriction on voting rights:-

(1) Notwithstanding anything contained in this Act, the articles of a Company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the Company has exercised any right of lien.

(2) A Company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

(3) On a poll taken at a meeting of a Company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

Section 107:- Voting by show of hands:-

(1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(2) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the Company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Section 108: Voting through electronic means:-

The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Section 109. Demand for poll:-

(1) Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf,—

(a) in the case a Company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other Company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power. (2) The demand for a poll may be withdrawn at any time by the persons who made the demand.

(3) A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.

(4) A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than forty-eight hours from the time when the demand was made, as the Chairman of the meeting may

direct.

(5) Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

(6) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

(7) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

1) Notwithstanding anything contained in this Act, a Company—

(a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(b) may, in respect of any item of business, other than ordinary business and any business in respect of which Directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.

(2) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

11. Rule 20 of the Companies (Management and Administration)

Rules as it stood before amendment reads as under:-

“20. Voting through electronic means:-

(1) Every listed Company or a Company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.

Provided that the Company may provide the facility referred to in this sub rule on or before the 1st day of January 2015.

(2) A member may exercise his right to vote at any general meeting by electronic means and Company may pass any resolution by electronic voting system in accordance with the

provisions of this rule.

Explanation.- For the purposes of this rule.-

(i) the expressions “voting by electronic means” or “electronic voting system” means a ‘secured system’ based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate ‘cyber security’;

(ii) the expression “secured system” means computer hardware, software, and procedure that -

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

(iii). the expression “Cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

(3) A Company which provides the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure, namely;

(i) the notices of the meeting shall be sent to all the members, auditors of the Company, or Directors either -

(a) by registered post or speed post ; or

(b) through electronic means like registered e-mail id;

(c) through courier service;

(ii) the notice shall also be placed on the website of the Company, if any and of the agency forthwith after it is sent to the members;

(iii) the notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the Company is providing facility for voting by electronic means;

(iv) the notice shall clearly indicate the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner;

(v) the Company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the Company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters, namely:-

(a) statement that the business may be transacted by electronic voting;

(b) the date of completion of sending of notices;

(c) the date and time of commencement of voting through electronic means;

(d) the date and time of end of voting through electronic means;

(e) the statement that voting shall not be allowed beyond the said date and time;

(f) website address of the Company and agency, if any, where notice of the meeting is displayed; and

(g) contact details of the person responsible to address the grievances connected with the electronic voting;

(vi) the e-voting shall remain open for not less than one day and not more than three days:

Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting;

(vii) during the e-voting period, shareholders of the Company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically:

Provided that once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.

(viii) at the end of the voting period, the portal where votes are cast shall forthwith be blocked.

(ix) the Board of Directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the Company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner:

Provided that the scrutinizer so appointed may take assistance of a person who is not in employment of the Company and who is well-versed with the e-voting system;

(x) the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(xi) the scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the Company and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman;

(xii) the scrutinizer shall maintain a register either manually or electronically to record the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;

(xiii) the register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the register and other related papers to the Company.

(xiv) the results declared along with the scrutinizer's report shall be placed on the website of the Company and on the website of the agency within two days of passing of the resolution at the

relevant general meeting of members;

(xv) subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members. '

12. The Learned Senior Counsel for the review petitioners has relied upon the following judgements.

13. In **AIR 1961 SC 1633 (Commissioner of Income Tax, Bombay Vs. scindia Steam Navigation Co. Limited)**, the Honourable Supreme Court has held as under :-

"10. On these provisions, the question that arises for decision is whether in a reference under section 66, the High Court can consider a question which had not been raised before the Tribunal and/or dealt with by it in its order even though it be one of law. On the answer to be given to it there has been a difference of opinion among the High Courts and that turns on the meaning to be given to the words, "any question of law arising out of" the order of the Tribunal. There is no pronouncement of this court which concludes this question, though there are decisions which afford guidance in the determination thereof. These decision will now be considered.

39. The result of the above discussion may thus be summed up :

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it."

14. In **AIR 1957 SC 49 (Sree Meenakshi Mills Limited Vs. Commissioner of Income Tax, Madras)**, the Honourable Supreme Court has

held as under:-

"10. In between the domains occupied respectively by questions of fact and of law, there is a large area in which both these questions run into each other, forming so to say, enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then a determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained. To take an example, the question is whether the defendant has acquired title to the suit property by adverse possession. It is found on the facts that the land is a vacant site that the defendant is the owner of the adjacent residential house and that he has been drying grains and cloth and throwing rubbish on the plot. The further question that has to be determined is whether the above facts are sufficient to constitute adverse possession in law. Is the user continuous or fugitive? Is it as of right or permissive in character? Thus, for deciding whether the defendant has acquired title by adverse possession the court has firstly to find on an appreciation of the evidence what the facts are. So far, it is a question of fact. It has then to apply the principles of law regarding acquisition of title by adverse possession, and decide whether on the facts established by the evidence, the requirements of law are satisfied. That is a question of law. The ultimate finding on the issue must, therefore, be an inference to be drawn from the facts found, on the application of the proper principles of law, and it will be correct to say in such cases that an inference from facts is a question of law. In this respect, mixed questions of law and fact differ from pure questions of fact in which the final determination equally with the finding or ascertainment of basic facts does not involve the application of any principle of law. The proposition that an inference from facts is one of law will be correct in its application to mixed questions of law and fact but not to pure questions of fact. The following observations of Lord Atkinson' in *Herbert v. Samuel Fox and Co., Ltd.*(1) clearly bring out the principle above stated:

".... Your Lordships were pressed with the usual argument, that as the County Court judge though a judge of law and facts, is the sole judge of fact, his findings cannot be disturbed if there was any evidence before him upon which he, as a reasonable man, could find as he has found. That argument is quite sound if it be applied to pure findings of fact. It is utterly unsound if it be applied either to findings on, pure questions of law or on mixed questions of law and fact It is wholly illegitimate, in my view,

in cases such as the present, by finding in the words of the statute to endeavor to secure for 'a finding on a pure question of law, or on a mixed question of law and fact, that unassailability which properly belongs only to a finding on a question of pure fact'.

These observations were made in a case under the Workmen's Compensation Act, 1904. But the same principles have been applied to revenue cases, and it has consistently been held that inferences from facts may themselves be inferences of fact and not of law, and that such inferences are not open to- review by the court.

24. We have discussed the authorities at great length, as some of the observations contained therein appear, at first sight, to render plausible the contention of the appellant, and it seems desirable that the true (1) [1949] L.R. 76 I.A. 271, meaning of those observations Should be clarified, lest error and misconception should embarrass and fog the administration of law. The position that emerges on the authorities may thus be summed up:

(1)When the point -for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under section 66(1).

(2)When the point for determination is a mixed question of law and fact; while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those finding is a question of law which can be reviewed by the court.

(3) A finding on a question of fact is open to attack, under section 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself in inference from other basic facts will not alter its character as one of fact. ”

15. In AIR 1969 SC 460 (Oriental Investment Co. P Limited Vs.

Commissioner of Income Tax, Bombay), it has been held as follows:-

“6. There is no doubt that the jurisdiction conferred on the High Court by s. 66(1) of the Act is limited to entertain references involving questions of law.If, for instance, the point raised on reference relates to the construction of a document of title or

interpretation of relevant provisions of a statute, it is a pure question of law. In dealing with it, the High Court may have due regard for the view taken by the Tribunal, but its decision would not be lettered by that view. In some cases, the point sought to be raised in a reference may turn out to be a pure question of fact and if that be so, the finding of fact recorded by the Appellate Tribunal must be regarded as conclusive in a proceeding under s.66(1). But it would be open to challenge the conclusion of fact drawn by the Appellate Tribunal on the ground that it is not supported by any legal evidence or material or that the conclusion of fact drawn by the Appellate Tribunal is perverse and is not rationally possible. It is within these narrow limits that the conclusions of fact by the Appellate Tribunal can be challenged under s. 66(1). Such conclusions can never be challenged on the ground that they are based on misappreciation of evidence. There is, however, a third class of cases in which the assessee or the department may seek to challenge the correctness of the conclusion reached by the Tribunal on the ground that it is a conclusion on a question of mixed law and fact. Such a conclusion is no doubt based upon the primary evidentiary facts, but its ultimate form is determined by the application of relevant legal principles. To put it differently, the proper construction of statutory language is always a matter of law and therefore the claim of the assessee that the profits and losses arising from the sale of shares, securities etc. cannot be taxed as profits of a business involves the application of law to the facts found in the setting of the particular case. In dealing with findings on such questions of mixed law and fact the High Court must no doubt accept the findings of the Tribunal on the primary questions of fact; but it is open to the High Court to examine whether the Tribunal had applied the relevant legal principles correctly or not in reaching its final conclusion; and in that sense, the scope of enquiry and the extent of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of law. (See the decision of this Court in *G. Venkataswami Naidu & Co. v. C.I.T.*(1)). On the last occasion it was pointed out by this Court that the question as to what are the characteristics of the business in shares or that of an investor is a mixed question of fact and law. To put it differently, the question as to what is the legal effect of the facts found by the Tribunal and whether as a result the assessee can be treated as a dealer or an investor is itself a question of law. The final conclusion of the Tribunal can, therefore, be challenged on the ground that the relevant legal principles have been mis-applied by the Tribunal in reaching its decision on the point; and such a challenge is open under s. 66(1) because it is a challenge on a ground of law. It is

because the question involved in this case was not a question of pure fact but was a mixed question of fact and law that this Court allowed the appeal on the last occasion and set aside the judgement of the Bombay High Court dated June 15, 1952 and directed the Appellate Tribunal to state a case, but owing possibly to some mistake or inadvertence the actual questions framed by this Court (quoted at page 676 of 32 I.T.R.) and the form in which the questions were framed by this Court seem to assume that the questions involved are questions of fact. The reason is that it is only in regard to a finding of fact that the question can be properly framed "as to whether there was material to support the said finding". We are accordingly of the opinion that the questions actually framed by this Court on the last occasion are not appropriate and (1) 35 I.T.R. 594 54 do not reflect the real controversy between the parties. It is therefore, expedient in the interest of justice that the questions should be modified as suggested by the assessee Company in its petition under s. 66(1) of the Act to the High Court and the Appellate Tribunal should be asked to make a fresh statement of the case."

16. In AIR 1964 SC 1372 (M/s.Thungabhadra Industries Limited

Vs. The Government of Andhra Pradesh), it has been held as under:-

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an 'identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. No questions of fact were involved in the decision of the High Court in T.R.Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of r. 18(1)

of the turnover & Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956 nor could it be doubted or disputed that these were substantial questions of law. In the circumstances therefore, the submission of the appellant that the order of September 1959 was vitiated by "error apparent" of the kind envisaged by O. XLVII r. 1, Civil Procedure Code when it stated that "no substantial question of law arose" appears to us to be clearly well-founded. Indeed, learned Counsel for the respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error."

17. In **2014 7 BOMB CR 464 (Godrej Industries Limited)**, it has

been held as under:-

"20. There is also question about the determination of electronic votes cast. The rules seem to indicate that electronic voting must stop three days before the meeting. The chairman of the meeting is to be given a tally of the electronic votes cast and the decision on any item of business is supposed to have been passed or not passed only on the basis of these electronic votes. Ex facie this is an untenable mechanism. If, as I have said, electronic voting is not limited to voting from a remote location but must also include electronic voting at the meeting in addition to postal ballots received, then it is a sum total of all these votes that must be taken into account.

21. This means that while a meeting must be held provision must also be made for electronic voting at the meeting by those shareholders who desire it. Every shareholder being given that option of exercising their votes by postal ballot or by electronic voting, the later being either from a remote location or at the meeting itself."

18. In **2010 15 SCC 118 (Gian Singh Vs. State of Punjab and**

another), it has been held as under:-

"7. We are of the opinion that the above three decisions require to be reconsidered as, in our opinion, something which cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non compoundable offences cannot be permitted to be compounded by the court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided."

19. Per contra, the Learned Senior Counsel for the respondent has

relied upon the following judgements

20. In AIR 1960 SC 137 (**Satyanarayanan Laxminarayan Hedge and others Vs. Millikarjun Bhavanappa Tirumale**), it has been held thus:-

“18. ... If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgement of the Bombay Revenue Tribunal, viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.”

21. In 1997 3 CTC 134 (**A.C.Muthiah Vs. Madras Refineries Limited**), it has been held as under:-

“48. "The power to review is a restricted power which authorises the Court to look through the judgement not in order to substitute a fresh or second judgement but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong application of the law and failure to apply the correct law have been held to be not a ground for review.”

22. In 2008 144 Company Cases 619 (**Palanisamy and another Vs. Milka Nutrients P Limited**), it has been held:-

“7. Under Section 10F of the Companies Act, “an appeal lies to

the High Court on any question of law arising from any decision or order of the Company Law Board". Finding of fact recorded by the Company Law Board is final and is therefore not appealable. The jurisdiction of the High Court in appeal is expressly confined to the determination of question of law. The mere fact that the High Court would have come to a different conclusion on the facts also does not make the matter appealable.

10. No question of law, much less, substantial questions of law is involved in this appeal. No substantial question of law is involved to entertain the CMA. "

23. In **2012 108 CLA 25 Kar (D.Victor Samuel Vs. Pretechplast (P)**

Limited), it has been held as under:-

"6. We have given careful consideration to the contention of the learned counsel for the Appellant and scrutinised the material on record. The appeal is filed against an interim order passed by the Company Law Board. The prayer that was sought for in the application and considered by the Company Law Board in the impugned order was to restrain holding of the meeting on 12.5.2011 and to prevent Respondents 2 and 3 from removing the Appellant from the Board of Directors of 1st Respondent Company under Section 284(3) of the Companies Act. It is well settled that this court in appeal, would be slow to interfere with the discretion exercised by the Company Law Board while granting or rejecting the interim application for directions, unless some exceptional ground is made out for interference. Having regard to the above said facts, we are of the opinion that no exceptional ground is made out and the Company Law Board has observed that convening of EGM and decision taken therein shall be subject to the outcome of the Company Petition.

24. In **2015 128 CLA 353 SC (Purnima Manthena and others Vs.**

Renuka Datla and others), it has been held as under:-

"45. The unequivocal legal propositions as judicially ordained, to ascertain the emergence and existence of a question of law, the scope of examination thereof by a court of appellate jurisdiction and the balancing of the competing factors in the grant of interlocutory remedy, hallowed by time, indeed are well settled. A question of law, as is comprehended in Section 10F of the Act, would arise indubitably, if a decision which is the foundation thereof, suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants. A

decision however, on the issues raised, is a sine qua non for a question of law to exist. A decision logically per-supposes an adjudication on the facets of the controversy involved and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a question of law to be appealed from. However, an omission to record a finding even on a conscious scrutiny of the materials bearing on the issues involved in a given case, may be termed to be one. Be that as it may, in any view of the matter, the appellate forum though exercising a jurisdiction which otherwise may be co- ordinate with that of the lower forum, ought to confine its judicial audit within the layout of the adjudgment undertaken by the forum of lower tier. This is imperative, more particularly in the exercise of the appellate jurisdiction qua a decision on discretion rendered at an introductory stage of any proceeding, otherwise awaiting final adjudication on merits following a full contest. It is settled that no adjudication at the preliminary stage of a proceeding in a court of law ought to have the attributes of a final verdict so as to pre-judge the issues at that stage, thereby rendering the principal determination otiose or redundant. This is more so, if the pleadings of the parties are incomplete at the threshold stage and the lower forum concerned seeks only to ensure a working arrangement vis-a-vis the dissension and postpone fuller and consummate appreciation of the rival assertions and the recorded facts and the documents at a later stage. ”

25. In the present case, admittedly the contentions raised now were also raised earlier before this Court and also before the CLB. This court after considering the contentions, is of the view that the questions have already been answered in paragraphs 18,19,20 and 23 of the order dated 27.04.2015 which is extracted as under:-

“18. Upon consideration of the grounds and the impugned order, this court is of the view that the questions that have been raised before this court are not purely questions of law, but are only mixed questions of law and fact, which cannot be entertained by this court. Even though, as per the judgement relied upon by the learned senior counsel for the appellants, a perverse finding or non-consideration of relevant documents can amount to question of law, this court is of view that there is no perversity in the impugned order of the Company Law Board and therefore, the appeals are not maintainable. The interim relief as sought in this case are in the nature of prohibitory and

mandatory injunction for which the Petitioners must satisfy the mandatory tests of prima facie case, balance of convenience and irreparable loss. This court feels that the 7th respondent cannot be permitted to continue as a Director after he has failed in his endeavour to be re-appointed by virtue of an interim order. Any subsequent act(s) of mismanagement would give rise to a fresh cause of action to the petitioners. Hence, the loss if any cannot be held to be irreparable. The Company Law Board has considered the pleadings and the documents and considering the nature of claims, refused to grant interim orders by giving specific findings.

19. In the judgement **reported in 1990 1 LW 495 (Wander Limited and another Vs. Antox India (P) Limited)** , the Apex Court has held as under:

“8. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

20. The grant of interim relief is only discretionary. Hence, sitting in appeal, this court is not inclined to interfere with the impugned order of the Company Law Board. The appellants have alleged various acts of oppression and mismanagement. Necessarily, the Company Law Board will have to go into the same at the time of final hearing.

23. In the facts of the case, whether the proceedings held on Annual General meeting on 26.09.2014 is as per law and the implication of the same with regard to allegations of oppression and mismanagement and whether the acts complained constitute independent acts of oppression and mismanagement or not will be determined by the Company Law Board. The Respondents have already filed their counter. Therefore, in the facts and circumstance of the case, the Company Law Board is directed to dispose of the CP.No.62/14 within three months on day to day basis. With the above directions, these Company Appeals are dismissed. Consequently, the connected MPs are closed. No costs.”

26. It can be seen that specific findings were given by this Court in the order dated 27.04.2015. This court has recorded that there is no perversity in the findings of the CLB. The nature of relief and scope of the Company petition have been discussed. The main issue is regarding the validity of the elections. The reason for holding the elections is that the term of the 7th respondent had expired. In para 18, this court has clearly held that by virtue of the interim order, a person who has failed in his endeavour cannot be permitted to continue. The above finding implies that the grant of interim order would be against the democratic process more so against the will of the shareholders. This court earlier refrained from giving specific findings on the

primal issue as it may affect the either case of the parties.

27. The relevant provisions extracted above deal with the voting procedures. It was contended that when e-voting is contemplated, voting by poll is prevented. This argument requires an adjudication of the main petition before the CLB as it requires an adjudication as to whether e-voting bars other types of voting. Again, was it the intention of the Board of Directors to exclude the poll by ballot and prescribe only e-voting is a question of fact. The provisions as it stood before the notification does not clearly specify, as to whether, the electronic voting bars the other types of voting at the venue. The notice to the shareholders convening the meeting for election is available and the contents therein again has to be gone into only at the final hearing of the Company petition. Further, whether, the 7th respondent is liable to retire or not is also a relevant and preliminary question of fact which will have a binding on the question regarding the voting process.. Though the question as to whether voting by poll is excluded when e-voting was contemplated could appear to be a question of law, the same cannot be decided without rendering factual findings. Therefore, in the circumstances narrated above, it is only a mixed question of fact and law. It is the main relief and it cannot be isolated from the questions of facts as indicated above and decided at the introductory stage.

28. The judgements relied upon by the Learned Senior Counsel for the Appellants, clearly lay down the propositions regarding the question of law and the question of fact. What emerges is that when a question of construction of a provision is raised, it is a pure question of law. Also, the facts have to be applied to give a finding on the question of law. The Judgements are not

relevant at this stage because, what was under appeal before this court is the order of refusal by the CLB, exercising its discretionary relief by giving specific findings. As held by the Various Courts and also by this Court, the scope for interference in the matter of discretionary reliefs is very limited and this court has already rendered its findings. Error if any has to be established by long drawn process, then the error is not an error apparent on record. In order to interfere with the orders of the CLB, the order must be perverse or a patent error in fundamental principles of law must exist and non-consideration of relevant or consideration of irrelevant materials must arise. As rightly contended by the Learned Senior Counsel for the respondents, deferment to a future date cannot be carved as a question of law to be tried by the appellate court.

29. The application of law to the facts of the case, that too in a case of this nature can be decided only at the final hearing. The central government has come up with a notification dated 27.03.2015. The scope and validity of the notification also has to be looked into only at the final hearing by the CLB. The CLB has specifically given findings that interim relief cannot be granted without providing opportunity to the respondents to file their counters. Considering the above, this court had held in para 18 that there is no perversity in the findings of the CLB. The nature of relief sought is similar to an election petition, where interim injunction against the elected member would not be granted as it would amount to making a mockery of the democratic process. Of course, if there is procedural violation, the same would be decided only at the final stage. On the face of the order of the CLB, it can be seen that considering the poll on 'the day', the 7th respondent was declared to have lost. It was also observed that

he did not raise any objections during the voting. So the CLB has held that no prima facie case was made out. It has considered the questions of law but has only refrained itself from adjudicating on the issue of voting pattern for the time being. The CLB has given findings on all the tests required for grant of interim reliefs. It is not necessary for the CLB to specifically use the words, prima facie case, balance of convenience and irreparable loss. It is sufficient if specific findings on the tests are given. Upon perusal of the order it is clear that the CLB has given findings in page 6, 7 and 8 of its order. Therefore, this court does not agree with the contentions of the Learned Senior Counsel for the petitioners that the CLB has not considered the questions raised before it.

30. In so far as the personal grievance of the 7th respondent is concerned, there are specific findings in para 6 of the order of the CLB at pages 6 and 7 of the order. The communication of the 7th respondent has been referred to in page 7 of the order of the CLB indicating that the grievance is not just the elections. Again considering all these aspects only, this court in a nutshell held that there is no perversity in the findings of the CLB and the questions raised are not pure questions of law. Hence, there is no error apparent on the face of the record, warranting interference.

31. In so far as oppression is concerned, any decision on the same can be arrived at only if the other questions are decided. On the face of it, the 7th respondent has been permitted to participate in the elections and his family members have been permitted to vote. Therefore, again mindful of the prejudice, that may be caused before the CLB, this court held in para 23 that

the same would have to be decided by the CLB during the final hearing.

32. The CLB has exercised its discretion against the appellants after giving reasons. Even if prima facie case, regarding a question of law is made out, the interim relief can be denied. All the tests required for grant of interim relief must be satisfied. This court has already given its findings in Paragraphs 18 and 19. It is pertinent to mention here that this Court has only held that no pure question of law have been raised. The above only implies that the decision on the question of law is dependent on appraisal and decisions on various facts and interpretation of the provision and will of the parties regarding the election process. Hence, there is no error in the findings of this court.

33. The Hon'ble Supreme Court **in the Judgment reported in 2013 (8) SCC 320, [Kamlesh Verma Vs. Mayawati and others]**, after examining various Judgments passed earlier has held as follows"

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....." In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review

are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

- (i). Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii). Mistake or error apparent on the face of record;
- (iii). Any other sufficient reason.

The words 'any other sufficient reason' has been interpreted in Chhajju Ram Vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar BasseliosCatholicos Vs. Most Rev.MarPoulose Athanasius & others [1955] 1 SCR 520, to mean, "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India Vs. Sandur Manganese & Iron Ores Ltd., ors., JT (2013) 8 SC 275. 20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii). Minor mistakes of inconsequential import.
- (iii). Review proceedings cannot be equated with the original hearing of the case.
- (iv). Review is not maintainable, unless the material error, manifest on the face of the order, undermine its soundness or results in miscarriage of justice.
- (v). A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi). The mere possibility of two views on the subject cannot be a ground for review.
- (vii). The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii). The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix). Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

34. On consideration of facts, no new grounds have been made out and the points agitated were already negated by this Court in its earlier order. An attempt is only now made to re-appreciate the same contentions. The applications to review cannot be used as a substitute to file an appeal. Therefore, applying the ratio laid down in the judgment referred above, there is no scope to review. This court after considering the contentions only feels that there is only a necessity to clarify. Though this court had held that the appeal is not maintainable, what is to be understood is that this court only implied that the relief claimed in the appeal is not sustainable. Hence, this court holds that there is no scope for reviewing the order dated 27.04.2015 and in the above facts and circumstances, the review petitions are dismissed. No costs.

18.12.2015

Index:Yes/No
Web:Yes/No
Srcm

R.MAHADEVAN, J

Srcm

Pre Delivery Order in
Review Application Nos.94 and
95 of 2015
in
Company Appeal Nos.13 and
14 of 2014

18.12.2015