IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*****

O.S.A.Nos.31 and 38 of 2015

Between:

M/s. Pinakini Sheep Farms Pvt. Ltd., Company,
Rep. by its Managing Director Ch. Ghosh,
Stonehouse Pet, Nellore, SPSR Nellore District.

… Appellant

And

M/s. Pinakini Sheep Farms Pvt. Ltd. Company,
Rep. by its Director Sri Venkateswarlu Cheedella,
3-23, 1st Floor, RTC Colony, Madinaguda,
Serilingampally, Hyderabad, Telangana-500 049
and another.

… Respondents

JUDGMENT PRONOUNCED ON: 26.08.2015

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be marked to Law Reports/Journals :

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

O.S.A.No.31 & 38 of 2015

COMMON JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan) While we were initially inclined to admit the appeals and grant stay, Sri B.Chandrasen Reddy, learned counsel for the respondents, submitted that, instead, the appeals be finally decided on merits at the stage of admission. Sri S.Ravi, learned Senior Counsel appearing on behalf of the appellant, readily agreed for the appeal being heard and disposed of at this stage.

Both these appeals are preferred against the order passed by the learned Company Judge in C.A.No.1616 of 2014 in C.P.No.67 of 2014 and C.A.No.1618 of 2014 in C.P.No.66 of 2014. Both these applications, in C.A.No.1616 and 1618 of 2014, were filed by a third party to the Company Petitions seeking recall of the order whereby the learned Company Judge had accorded sanction for a scheme of arrangement. As the learned Company Judge dismissed both these applications, the applicant has preferred the present appeals. The parties shall, hereinafter, be referred to as they are arrayed in these appeals.

In the applications filed to set aside the order dated 16.04.2014 according sanction for the scheme of arrangement, the appellant contended that C.A.Nos.135 and 136 of 2014 were filed suppressing material facts, and playing fraud on the Court; both these applications were filed by the respondent herein under Sections 391 and 394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 requesting the Court below to dispense with the meeting of the share holders of the respondent company, and to dispense with publication of the notice of the meeting of the shareholders; in C.A.No.135 of 2014, the registered office of the transferor-company was shown as Madinaguda, Sherilingam Pally, Rangareddy District; C.A.No.135 of 2014 was filed on 01.02.2014; and the affidavit filed in support thereof was signed on 23.01.2014.

C.A.No.135 of 2014 was allowed by the learned Company Judge, by his order dated 19.02.2014. In the order, passed in C.A.No.135 of 2014 dated 19.02.2014, the learned Company Judge recorded the submission of the respondent that the scheme of arrangement was circulated to all the shareholders who were only three in number; all the three equity shareholders had given their affidavits consenting for demerger of the applicant-company; while there were no secured creditors, the unsecured creditors (four in number) had given their consent letters for demerger; the applicant in C.A.No.135 of 2014 had filed affidavits of the equity shareholders, and the unsecured creditors; and, inasmuch as the shareholders and the unsecured creditors had given their consent for the proposed demerger, he did not find any reason to reject the reliefs claimed in the Company Application. Thereafter, by order dated 19.03.2014, the learned Company Judge directed notice of the petition to be published in Business Standard (English Daily) Hyderabad Edition and Andhra Bhoomi (Telugu Daily) Hyderabad Edition. Subsequently, by his order dated 16.04.2014, the learned Company Judge approved the scheme of arrangement, and allowed both the company petitions.

Sri S.Ravi, learned Senior Counsel appearing on behalf of the appellant, would submit that the appellant is a shareholder of the transferor-company having subscribed to its Memorandum and Articles of Association; the application, in C.A.No.135 of 2014, was filed to dispense with the meeting of the shareholders of the respondent (transferor) company only to avoid notice being served on the appellant-shareholder; though the registered office of the transferor-company was situated at Nellore, the respondent had misrepresented before the learned Company Judge that the registered office of the company was situated in Rangareddy District; this misrepresentation of facts was made only to avoid publication of the Company Petition being caused in daily newspapers under circulation in Nellore District, where the appellant resides; and, in the affidavit filed before the learned Company Judge seeking a direction to dispense with the meeting of the shareholders, the respondent had suppressed the fact that the appellant was also a shareholder, and the registered office of the transferor-company was situated only at Nellore on the date on which the affidavit, filed in support of C.A.No.135 of 2014 requesting the Court to dispense with the meeting of the shareholders, was sworn to.

Learned Senior Counsel has also drawn our attention to Form No.INC-22 which is the notice of situation or change of situation of the registered office. In the said Form, the respondents appear to have stated, at paragraph 3(d) thereof, that the purpose of the form was for change of the registered office in the State within the jurisdiction of the same RoC; notice was being given regarding change in the address of the registered office of the company with effect from 23.01.2014; and the date of the order of the Central Government was 23.01.2014. Clause 4(a) therein shows the address of the registered office of the transferor -company as Serilingampally, Hyderabad in the State of Telangana. Clause 4(d) thereof records the full address of the police station, under whose jurisdiction the registered office is situated, also to be Serlingampally, Hyderabad. Clause 5(c) of Form No.INC-22 shows the date of the order of the Central Government as 23.01.2014.

Sri S.Ravi, learned Senior Counsel, has also drawn our attention to the letter dated 23.01.2014, allegedly addressed by the owner of the building to the Registrar of Companies, Telangana, Hyderabad (to which place the registered office of the transferor company was allegedly relocated) conveying his no objection for setting up the registered office of the transferor-company in his building.

The submission of Sri S.Ravi, learned Senior Counsel, is that the State of Telangana came into existence only on 02.06.2014; and the very fact that the application for change of registered office, and the enclosed letter dated 23.01.2014, refer to the State of Telangana, even before it had come into existence, itself shows that both the application, and the enclosed letter, are fabricated only to avoid a meeting of the shareholders of the transferor-company being convened and held; and to deny the appellant-shareholder an opportunity to oppose the scheme of arrangement. Learned Senior Counsel would submit that, having subscribed to 10 shares as recorded in the Memorandum and Articles of Association, the appellant became a shareholder of the transferor company holding atleast 10 shares in his name; and the allegations of a change in the share holding pattern thereafter, or of transfer of shares by the appellant, is for the respondent to establish.

If, as is now contended before us by Sri S.Ravi, learned Senior Counsel appearing on behalf of the appellant, the appellant does hold ten shares in the respondent-transferor company, the respondent was obligated either to obtain his affidavit of consent for dispensing with the holding of the meeting of the shareholders of the transferor-company, or to convene and hold a meeting of the shareholders of the transferor company seeking their consent to the scheme of arrangement.

The paper publication caused in Business Standard (Hyderabad Edition) is placed for our perusal. The requirement of publication of the petition, seeking sanction of a scheme of arrangement, is to inform persons, who are either interested in supporting or opposing the de-merger, that they can approach the Company Court in this regard. If the submission of Sri S.Ravi, learned Senior Counsel, that the registered office of the respondent-transferor company was shown to be situated in Rangareddy District only to restrict publication of the petition in newspapers circulated in Hyderabad, and thereby ensure that shareholders residing in Nellore District are unaware of a petition having been filed, is true, then the appellant has, in addition, been denied the opportunity of approaching the Company Court, and putting forth his objections to the sanction of the scheme of arrangement.

Sri B.Chandrasen Reddy, learned counsel appearing on behalf of the respondent-transferor company, would draw our attention to an undated annual return which reflects the capital structure of the company during the period when the AGM was held on 29.09.2011. The names of the three shareholders reflected therein do not include the appellant. Clause (4) of the said annual return details the transfer of shares since the date of last AGM, and records the transfer which allegedly took place on 10.08.2011. Curiously, the name of the transferor is shown therein as Sri C.Venkateswarlu and the name of the transferee as the appellant, regarding transfer of 10 shares.

Sri B.Chandrasen Reddy, learned counsel for the respondents, would submit that this is evidently a typographical error and, instead of the appellant's name being shown as the transferor, his name is erroneously shown as the transferee. Sri S.Ravi, learned Senior Counsel, would however contend that the return itself is a concocted document created only to cover up the respondent-transferor company's failure to obtain the consent of the appellant before requesting the learned Company Judge to dispense with the meeting of the shareholders of the transferor company. While emphasis is placed by Sri S.Ravi, learned Senior Counsel, on the fact that the annual return is not dated, Sri B.Chandrasen Reddy, learned counsel for the respondent, would draw our attention to the receipt issued by the Ministry of Corporate Affairs dated 29.01.2014 to submit that it is under this receipt that the annual return was filed. Even if this submission of Sri B.Chandrasen Reddy, learned counsel for the respondent-transferor-company, were to be accepted as true, it would only mean that annual return was filed on 29.01.2014, after the affidavit was sworn to on 23.01.2014, and thereafter filed along with the application seeking permission of this Court to dispense with the meeting of the shareholders of the transferor-company.

Section 12(4) of the Companies Act, 2013 (for short "the Act") requires notice of every change of situation of the registered office to be given to the Registrar within 15 days of the change, and requires the Registrar of Companies to record the same. Section 13 of the Act relates to alteration of the Memorandum. Section 13(7) stipulates that, where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government, approving the alteration, shall be filed by the company with the Registrar of each of the States within such time, and in such manner, as may be prescribed. While the notice of change in the registered office, within the same State, is only required to be intimated to the Registrar of Companies under

Section 12(4) of the Act, approval of the Central Government is required, in terms of Section 13(7) of the Act, when the registered office of a company is shifted from one State to another.

Clause 5(c) of Form No.INC-22, allegedly filed by the respondent, records the date of the order of the Central Government as 23.01.2014. As approval of the Central Government is required only in cases where the registered office of a company is shifted from one State to another, the reference to the order of the Central Government in the said Form would imply that the registered office of the transferor company was moved from the State of Andhra Pradesh to the State of Telangana, which event could only have taken place after the State of Telangana came into existence on 02.06.2014, and not in January 2014. Though Clause 5(c) of Form No.INC-22 refers to the order of the Central Government, the order of the Central Government, allegedly approving the change of the registered office from one State to another, is not placed on record.

The rights conferred on a shareholder of a Company, under the provisions of the Companies Act, is to be put on notice of a meeting of the shareholders, to participate therein, and, if he so chooses, to oppose the scheme of arrangement. The statutory requirement, of a paper publication of the company petition being caused, is to afford an opportunity to the shareholders, and the creditors of the company, to file applications before the company court either supporting or opposing the scheme of arrangement. If the appellant's allegations hereinabove mentioned are true, not only must the appellant be held to have been denied the opportunity of participating in the general meeting of the transferor company, and to invoke the jurisdiction of this Court by filing an application opposing sanction of the scheme of arrangement, but also that the respondent-transferor company has suppressed material facts and has played fraud on the Company Court.

The fact, however, remains that none of the contentions now urged before us in the appeal were raised before the learned Company Judge who cannot, therefore, be said to have committed any error in passing the order under appeal. While Sri S.Ravi, learned Senior Counsel, would submit that Form No.INC-22, *ex facie,* shows the fraud played by the respondent-transferor company, these are matters which ought to have been urged before the learned Company Judge in the petition seeking recall of the order sanctioning the scheme of arrangement.

As serious allegations of misrepresentation and fraud are made, and are sought to be substantiated by the documents and contentions hereinabove mentioned, we are of the opinion that the applications filed by the appellant need to be considered afresh by the learned Company Judge. The orders, under appeal, are set aside, and the applications, in C.A.Nos.1616 and 1618 of 2014, are restored to file. The learned Company Judge shall consider the applications afresh, and in accordance with law. It is open to both the appellant and the respondent herein to file an additional affidavit/additional counter affidavit placing all relevant facts, including those urged before us in these appeals, before the learned Company Judge.

Both the appeals are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

26th August 2015

Note: Issue C.C. in ten (10) days.

JSU