

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CAPP No. 40 of 2014
Date of decision : April 6, 2015

Smt. Sudevi Beriwal @ Shalini Beriwal

..... Appellant

Versus

M/s Shree Lalit Fabrics Pvt. Ltd.and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Chopra, Advocate
for the appellant.

Mr. Anand Chhibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

This is a second round of litigation at the instance of the appellant-petitioners before the Company Law Board. The petitioners on the grounds aggrieved against the alleged action of the respondent filed CP No.5/ND-2012 before the Company Law Board. The aforementioned petition was dismissed by the Company Law Board on 1.6.2012. Aggrieved against the said order the appellants (herein) filed CAPP No. 22/2012 in this Court and on 6.12.2013 the same was allowed on the basis of the arrangement between the parties passed the following order.

“During the course of hearing learned senior counsel for the respondent states that he has no objection if the impugned order passed by the CLB

is set aside and the case is sent to the Board for decision on merits. In view of the above, the appeal is allowed. The impugned order dated 1.6.2012 is set aside and the case is remitted to the CLB to decide the same on merits.

Parties are directed to appear before the Board on 19.12.2013. The Board shall make an endeavour to decide the proceedings expeditiously and preferably within four months. The respondent company shall not alienate its immovable properties without prior permission of the Board. If the Board's permission is sought, it shall pass appropriate orders to protect the interest of the appellant herein.

Disposed of.”

The Company Law Board vide impugned order dated 28.8.2014 has dismissed the petition CP No.5/ND/2012 by reiterating the observations recorded in the previous order i.e. 1.6.2012. It is against the aforementioned order the appellants have approached this Court by filing an appeal.

Mr. Ashish Chopra, learned counsel for the appellant contended that since the direction contained in the order dated 6.12.2013 passed by this Court was to the Company Law Board to decide the appeal within a period of four months. Though, the order reflects the concession given by the learned Senior counsel as is borne out from the impugned order, the appeal has, yet, not been decided on merits despite the fact that this Court vide order dated 20.5.2014 extended the time to a further period of four months to decide the controversy between the parties to the *lis*. Though, there have been arguments/counter arguments with regard to the

conduct of the petitioner-respondent, I refrain from reflecting the same in the order.

It appears that the Company Law Board has not afforded an opportunity of hearing before deciding the appeal including the objections qua maintainability despite factum of clear directions in the order dated 6.8.2014 passed by this Court.

The impugned order suffers from perversity much less erroneous, the Company Law Board has not taken pain to decide the appeal considering the same on merits.

I deem it appropriate to remand the case back to the Company Law Board by setting aside the impugned order.

Accordingly the impugned order is set aside and the petition is restored back to its original number.

The parties through their counsel are directed to appear before the Company Law Board on 4.5.2015 at 10.30 A.M..

Both the parties have informed the Court that the respondent has filed the written statement. However, the petitioner intends to file re-joinder.

The Company Law Board is directed to give an opportunity to the petitioner to file the re-joinder within a period of three weeks and thereafter shall decide the appeal, including the objections qua maintainability of the appeal within a period of four months from the date of receipt of certified copy of this order.

Till the matter is listed before the Company Law Board, Mr. Vaibhav Sahni, Advocate on instructions from his client fairly states that they will not alienate the property of the Company.

The statement is fair and justified and it is expected that it shall be kept aberrant, thereafter, on appearance the petitioners will be at liberty to move an appropriate application for an interim direction.

With the aforementioned directions, the appeal is disposed of.

(AMIT RAWAL)
JUDGE

April 6, 2015
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