IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2873 of 2015
Date of Decision.23.02.2015

Sh. R.P. Chhabra ....Petitioner

Versus

Securities & Exchange Board of India and another ......Respondents

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The petitioner is before this Court to challenge an order passed by the Securities & Exchange Board of India (SEBI), Bombay against the petitioner who was once an old time Director of a non-banking financial company which has failed in repayments. The petitioner has been prevented by the order issued in December, 2014 from operating in any of the securities which he owns until further orders.

2. The intervention through writ is sought on the ground that he has since retired from directorship of the company and the petitioner is wholly dependent on the income that is generated through his holdings in shares and the order passed by SEBI will grossly prejudice him. According to him, he has a handicapped daughter whose daughter is also similarly handicapped and he is himself aged nearly 75 years and

he will be inconvenienced to go to Bombay to contest the order. The learned Senior Counsel would state that although the order is passed by SEBI at Bombay, the effect of the order will operate against the petitioner who resides within the jurisdiction of this Court and therefore, this Court has jurisdiction.

3. The point relevant for consideration is whether the Court can interfere. The Senior Counsel would refer me Full Bench ruling of the Madras High Court in ***Sanjos Jewellers Vs. Syndicate Bank 2011(1) RCR (Civil) 89***. The Full Bench was considering the issue of the tenability of a challenge to an order passed by DRAT, Chennai considering the fact that original order was passed by the DRT, Bangalore and the cause of action had arisen at Bangalore. The Court was holding that the decision passed by the DRAT Chennai constituted one of the causes of action and it was open for the petitioner to resort to either one of the Courts either at Bangalore or at Chennai and therefore, the writ petition was maintainable.

4. The Senior Counsel would argue that this decision was on a reliance of the judgment of the Supreme Court in ***M/s Kusum Ingots & Alloys Ltd. Vs. Union of India 2004(6) SCC 254*** where the Court referred to the issue of *forum conveniens* that allows for a High Court exercising jurisdiction under Article 226 to direct a case to be brought within its jurisdiction under Article 226 of the Constitution brought by the 42nd amendment to the Constitution that allows for the Court's intervention if any of the causes of action arises in that Court. The Senior Counsel also relies on a judgment of the Gujarat High Court in ***Mohan Vs. Pednekar Vs. Executive Director (HR) 2007(6) SLR 830.***

Forum conveniens is not to be understood as what is convenient to the party irrespective of where the cause of action for the case arose. If the cause of action arose in two or more places, the *forum conveniens* will make possible to approach the Court at the most convenient forum. The 'conveniens' is not a physical comfort for a person not to be troubled by logistic burdens. The place where the person residing is not a cause of action. The place where the respondent resides or where the order is issued alone is the place of jurisdiction.

5. In my view, the attempt by the petitioner approaching this Court is not appropriate at all for the following reasons. The order passed by SEBI is not a final one and it is interim in nature to consider the fact that the company which is a non banking financial company had made some defaults and the Directors were accountable for such default. In furtherance of the final order that is required to be passed to provide for appropriate protection to persons who have lost their monies, it has passed an order meant to secure rectitude in financial dealings by Directors of companies and making them accountable for their alleged lapses. It can be a harsh situation for person who is retired from a company from the directorship to be held responsible for defaults but if there is any order that is passed by SEBI at Bombay which is causing inconvenience and which is not even a final order but merely an interim direction by SEBI, it is amenable for review by SEBI itself and does not require to be monitored through proceedings of this Court. Even as regards the *forum conveniens,* it will be wrong to argue that the petitioner's own residence will give him a cause of action, as explained above. The Full Bench was dealing with the case of an order which was

passed by Appellate Tribunal at Chennai and the Court was finding that the jurisdiction was available to it and even either a case could have also been filed at Bangalore. Such situation does not arise here. No part of the cause of action arises here except the fact that the petitioner is residing here. Even the decision of the Supreme Court in ***M/s Kusum Ingots & Alloys Ltd.'s case*** (supra) was in a situation of what was appropriate and what was the *forum conveniens*. Convenience ought not to be understood as convenience of the parties at all times and that cannot be again spoken from the context of personal tragedies obtaining to the petitioner. He must challenge the order which is against him in a Court which is appropriate and in a forum which is competent. In this case, since it is not a final order and the order was not really adjudicated on rights of parties, I would think that there is no scope for intervention through writ petition. Therefore, I do not propose to make any intervention. The petitioner is at liberty to approach SEBI itself for modification of the order.

6. There is yet another reason why it shall be wholly inexigent to make intervention at this stage. If the impugned order were to be taken as a final adjudication qua petitioner and hence cannot be modified by SEBI itself then every such order passed by SEBI is amenable for a challenge through an appeal to Securities Appellate Tribunal under Section 15 T of SEBI Act. The writ petition is not even competent or efficacious, since there is an alternative remedy of appeal provided under the Act. On issue of merit, the Senior Counsel was pleading that the decision of the Board was without giving any notice to him to show cause against such an order. A pre-decisional hearing to subserve

justice even without notice was held to be not contemplated under SEBI Act of 1992 by the decision of a Division Bench in ***Anand Rathi Vs. Securities and Exchange Board of India 2002(1) Mh.LJ 522.*** The decision is a full answer to the petitioner's plea of untenability of decision as violation of natural justice. This decision says "a pre-decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing."

7. The writ petition is dismissed with the observations made above. Any of the observations made by this Court will have no bearing with the petitioner's right to canvass before any other forum or before any other Court.

(K. KANNAN)
JUDGE

February 23, 2015
Pankaj*

PANKAJ KUMAR
2015.02.25 16:16
I attest to the accuracy and
integrity of this document