

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPEAL (L) NO.74 OF 2015
WITH
COMPANY APPLICATION (L) NO.114 OF 2015**

Sharma Realty Pvt. Ltd. & Ors.Appellants
Vs.
Vinod Muktinath SharmaRespondent

Mr. Ravi Kadam, senior advocate a/w. Mr. Ashish Kamat, Mr. Kunal Mehata and Mr. Pravin Kamble i/b. ANP Chambers for the appellants/applicants.

Mr. Navroz Seervai, senior advocate a/w. Mr. Nikhil Sakhardande, Mr. Pralhad Paranjape and Mr. Akshay Udeshi i/b. M/s. Sanjay Udeshi & Co. for the respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 21st JANUARY, 2016**

P.C.:-

1 This appeal is filed against an interim order dated 29th October, 2015 passed by the Company Law Board. It is a short order and it will be useful to reproduce the order. The order dated 29th October, 2015 reads as under :-

“The petition mentioned.

Reply on behalf of respondent no.2 has been filed and time has been sought for filing reply on behalf of the other respondents. Let the reply be filed within four weeks with a copy in advance to the counsel opposite. Rejoinder, if any, be filed within two weeks thereafter.

Heard learned counsel for the parties on interim relief.

Learned counsel for the petitioner has, inter alia, argued that the petitioner's shareholding was reduced. However, it has been restored which is evident from gift deed and transfer deeds. Even income tax return 2009-2010 shows that his share-holding was restored to

33.3%. The documents gift deed and share transfer deed are duly signed by the father of the petitioner namely respondent no.2. These documents show that the share certificates amounting to 33.5% have been transferred to the petitioner although no entry in the Register of Members of the company has been made. The main prayer is rectification of member's register.

Having heard learned counsel for the parties and perusal of record, I feel that interest of justice would be served if alienation of land in question is stayed till the next date of hearing. Accordingly the respondents are restrained from alienating property situated in the village Bhandup, Taluka Kurla, District Bombay (the detailed description of the property is available at pages 122 and 123 of C.P.)

The aforesaid order has been necessitated to safeguard the interest of the petitioner particularly when learned counsel for the respondent has accepted that no construction for flats has commenced so far and the site plan is awaiting sanction from the authorities.”

2 Section 10F reads as under :-

10F. Appeals against the order of the Company Law Board.

Any person aggrieved by any decision or order of the Company Law Board ²[made before the commencement of the Companies (Second Amendment) Act, 2002] may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]

The scope of the court admitting an appeal under section 10F of the Act has been analysed and considered in detail in the recent judgment of the Apex Court in the matter of ***Purnima Manthena and another vs. Renuka Datla and others***¹.

1. (2016) 1 SCC 237

3 In a appeal under section 10F of the Act, the High Court will entertain an appeal against the decision or order, only if a question of law arises out of such order.

4 When a question of law is neither raised nor considered by the board, it would not be a question arising out of its order notwithstanding that it may arise on the findings given by the Board. In the matter of *Commissioner of Income-Tax vs. Scindia Steam Navigation Co. Ltd.*², it was propounded that it was the only question that had been raised before and dealt with by the Tribunal that could be held to arise out of this order. In the matter of *Shri V.S. Krishnan & Ors vs. M/S Westfort Hi-Tech Hospital*³, it was held that no question of law arises unless its findings are perverse, based on no evidence or are otherwise arbitrary. The court also held that the jurisdiction of the Appellate Court is restricted to the question as to whether on the facts as noticed by the Company Law Board and as placed before it, its conclusion was against law or was founded on a consideration of irrelevant material or was as a result of omission to construe the relevant material.

5 While dealing with appeals against orders granting or refusing a prayer for interlocutory injunction, the Apex Court, in the matter of

2. AIR 1961 SC 1633

3. 2008 (3) SCC 363

*Wander Ltd. And Anr. vs Antox India P. Ltd.*⁴, reiterated that the order being in exercise of judicial discretion, the Appellate Court ought not to interfere therewith and substitute its own discretion except where such discretion is shown to have been exercised arbitrarily or capriciously or perversely or where the court whose order has been appealed from, had ignored the settled principles of law, regulating grant or refusal of interlocutory injunctions.

6 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. The Apex Court in *Purnima Manthena* case (supra) has held that the Appellate Court should generally not interfere 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. The Appellate Court may decide to entertain an appeal or not, based on the nature of the impugned order, whether it is interlocutory or final, if the order is

4. 1990 SCC 727

arbitrary or perverse. It will be useful to reproduce paragraphs 41 to 50 and 52 of the *Purnima Manthena* case (supra) :-

“41. In *Dale & Carrington Invt. (P) Ltd. (supra)*, this Court had an occasion to dwell upon the scope of [Section 10F](#) of the Act qua an appeal preferred against the decision of the Company Law Board after a full-fledged adjudication before the High Court. While negating the argument, that the High Court could not have disturbed the findings arrived at by the Company Law Board and record its own findings on certain issues which it could not go into, this Court held that if a finding of fact is perverse and is based on no evidence, it can be set-aside in an appeal even though the appeal is permissible only on the question of law. It was clarified that, perversity of a finding itself, becomes a question of law. Reverting to the facts of that case, this Court observed that the CLB had rendered its decision in a very cursory and cavalier manner without going into the real issues which were germane for the determination of the controversy involved, and thus approved the exercise of the High Court in elaborately dealing with the matter.

42. While reiterating in *V.S. Krishnan and others (supra)*, that the CLB is the final authority on facts and that no question of law arises unless its findings are perverse, based on no evidence or are otherwise arbitrary, this Court reiterated that in an appeal under [Section 10F](#) “on a question of law”, the jurisdiction of the appellate court is restricted to the question as to whether on the facts as noticed by the Company Law Board and as placed before it, its conclusion was against law or was founded on a consideration of irrelevant material or was as a result of omission to consider the relevant material.

43. Adverting to the right of appeal, as a creature of statute, as provided by [Section 35](#) of the Foreign Exchange Management Act, 1999, this Court in *Raj Kumar Shivhare (supra)* held that the expression “any decision or order” did mean “all decision or order”. While extending this interpretation to the expression “any decision or order” applied in [Section 35](#) as above, to dismiss the plea that such an appeal is contemplated only from a final order, this Court distinguished a right of appeal as a creature of statute from an inherent right of filing a suit, unless barred by law. It was underlined that while conferring such a right of appeal, a statute may impose restriction or condition in law, limiting the area of appeal, to question of law or sometime to a substantial question of law and ruled that whenever such limitations are imposed, those are to be strictly adhered to.

44. This Court in *Wander Ltd. (supra)*, while dealing with appeals against orders granting or refusing a prayer for interlocutory injunction, did reiterate that the same, being in exercise of judicial discretion, the appellate court ought not interfere therewith and

substitute its own discretion except where such discretion is shown to have been exercised arbitrarily or capriciously or perversely or where the Court whose order has been appealed from, had ignored the settled principles of law, regulating grant or refusal of interlocutory injunctions. It was enunciated, that appeal against exercise of discretion is an appeal on principle and the appellate court would not reassess the materials and seek to reach a conclusion different from the one reached by the court below, if it was reasonably possible on the materials available. It was held as well, that the appellate Court in such a situation would normally not be justified in interfering with the exercise of discretion of the Court below, if made reasonably and in a judicial manner, solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. It was proclaimed that an interlocutory remedy is intended to preserve in status quo, the rights of the parties which may appear on a prima facie examination of a case. It was held that the prayer for grant of interlocutory injunction, being at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence, it is required to act on certain well-settled principles of administration of such interlocutory remedy which is both temporary and discretionary. Referring to the fundamental object of interlocutory injunction, this Court noted with approval that the need for such protection of the plaintiff against injury by violation of his rights must be weighed against the corresponding need of the defendant to be protected against any injury resulting from the restraint on the exercise of his rights, as sought for, which he could not be adequately compensated. The need of one, thus was required to be compared against the other, to determine the balance of convenience to ensure an appropriate exercise of discretion for an interim remedy as suited to a particular fact situation.

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 presupposes 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 prejudge 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.

46. [Section 10F](#) of the Act engrafts the requirement of the existence of a question of law arising from the decision of the CLB as an essential pre-condition for the maintainability of an appeal thereunder. While the language applied therein evinces that all orders, whether final or interlocutory, can be the subject-matter of appeal, if it occasions a question of law, in our comprehension, the Section per se defines the perimeters of inquisition by the appellate forum conditioned by the type of the order under scrutiny. The nature and purport of the order i.e., interlocutory or final, would thus logically present varying canvases to traverse and analyse. These too would define the limits of adjudication qua the appellate forum. Whereas in an appeal under [Section 10F](#) from an order granting or refusing interim relief, being essentially in the exercise of judicial discretion and based on equity is an appeal on principle and no interference is merited unless the same suffers from the vice of perversity and arbitrariness, such constrictions may not necessarily regulate and/or restrict the domain of examination in a regular appeal on facts and law. [Section 10F](#), thus, statutorily demarcates the contours of the jurisdictional exercise by an appellate forum depending on the nature of the order impugned i.e. interlocutory or final and both cannot be equated, lest the pending proceeding before the lower forum, if the order impugned is purely of interlocutory nature, and does not decide any issue on a consideration of the rival assertions on merits, stands aborted and is rendered superfluous for all intents and purposes.

47. Reverting to the present facts, noticeably the parties are contentiously locked on several issues, legal and factual, a brief outline whereof has been set-out hereinabove. While seeking the intervention of the CLB on the key accusation of oppression and mismanagement as conceptualised in [Sections 397](#) and [399](#) of the Act, the respondent No. 1 had retraced the march of events from 9.4.2013, the date on which, according to her, when the meeting of the Board of Directors, invalid in law, was convened and conducted by Mr. G.V. Rao , who allegedly had no authority to do so, he having

resigned from the company. She had asserted her express and implicit reservation in this regard and her disapproval not only of the constitution of the Board of Directors since then but also of the decisions taken from time to time. Without recapitulating the stream of developments that had occurred, suffice it to mention, that after a series of intervening legal proceedings, she finally did submit a petition before the CLB amongst other under [Sections 397, 398, 402/403/404](#) and [406](#) of the Act alleging oppression and mismanagement and highlighting in that regard, the imminent possibility of alienation of the vital assets of the company through a purported scheme of demerger to the undue benefit of other Directors of the Board of the company. In contradiction, the appellants and the contesting Directors have not only endorsed the validity of the meetings on or from 9.4.2013 contending that respondent No. 1 though intimated thereof, had opted out therefrom and on the basis of the record, have sought to demonstrate her participation in the meetings, amongst others on 24.5.2013, 22.8.2013 and the Annual General Meeting held on 18.12.2013 as permitted by the CLB, they have also emphatically adverted to the letter dated 15.4.2013 addressed by the respondent No. 1 seemingly acknowledging the lawful induction of the appellant (Ms. Mahima Datla) as the Managing Director and her two sisters as the Directors in the Board. The appellants and other contesting respondents have also endeavoured to underline that the respondent No. 1 has accepted the distribution of the shares held by Dr. Vijay Kumar Datla in the HUF as decided in the meeting dated 24.5.2013 and also the enhancement in her remuneration as the Executive Director as minuted in the Annual General Meeting dated 18.12.2013. There is no denial by her as well as of the pendency of the demerger proceeding before the High Court.

48. In the above overwhelming factual premise, the High Court, as the impugned decision would demonstrate, being fully conscious that the proceeding before the CLB was pending for final adjudication, proceeded to undertake an in-depth exercise to fathom and analyse the facts and the law involved and has recorded its decision on merits in total substitution of the order of the CLB. This to reiterate, is in absence of any pleadings by the appellants, the contesting Directors before the CLB. This assumes importance as the High Court did resort to a full-fledged scrutiny of the factual and legal aspects, to test the legality and/or validity of the order dated 6.8.2014 of the CLB at the stage of mentioning. Having regard to the fact that the appeal before the High Court under [Section 10F](#) of the Act was one from an interim order passed in exercise of judicial discretion at the stage of mentioning, in our view, bearing in mind the permissible parameters of exercise of appellate jurisdiction in such matters, the elaborate pursuit so undertaken by it, is neither contemplated nor permissible. The High Court, in any view of the matter, was not dealing with a regular appeal under [Section 10F](#) of the Act on a question of law from a decision rendered by the CLB on merits, after a complete adjudication. The appeal before it, being one on principle and from

an order rendered by the CLB in the exercise of its discretion at the preliminary stage awaiting the pleadings of the respondents therein, we are of unhesitant opinion that the scrutiny in the appeal ought to have been essentially confined to the aspects of which the CLB had taken cognizance, to pass its order at that stage, and not beyond.

49. As it is, though a colossus of facts with the accompanying contentious issues are involved, having regard to the stage at which the order of the CLB had been passed, no exhaustive examination of the factual and legal aspects ought to have been undertaken by the High Court to record its conclusive deductions on the basis thereof. Keeping in view the stage wise delineation of the jurisdictional frontiers of the forums in the institutional hierarchy as codified by law, the High Court's quest to unravel the entire gamut of law and facts involved at the preliminary stage of the proceeding before the CLB and to record its findings on all issues involved on merits did amount to prejudging those, thereby rendering the petition before the CLB redundant for all intents and purposes.

50. In the instant case, though the CLB, as a matter of fact, did not record any view on the merits of the case while deferring the consideration of the interim relief , being satisfied with the undertakings offered on behalf of the appellants and other contesting Directors, the High Court has, by the impugned decision, decisively furnished its views and conclusions on all vital issues, as a consequence, leaving little or none for the CLB to decide. This is not the role of the appellate forum as is contemplated under [Section 10F](#) of the Act qua the stage from which the appeal had been preferred from the order of the CLB.

51.

52. In the wake up of above, we feel persuaded to interfere with the impugned decision of the High Court, without observing any final opinion on the merit of the contrasting assertions. In our comprehension, having regard to the relief provided by the CLB by its order dated 6.8.2014 to the parties, it ought to be left to decide the petition on merits after affording them a reasonable opportunity of furnishing their pleadings. As in the course of hearing, some grievance was expressed on behalf of respondent No. 1 that her status as the Executive Director of the company, stands undermined due to uncalled for surveillance imposed at the instance of the existing Board of Directors, we make it clear, as has been assured before us, that she ought to be allowed to function in the aforesaid capacity being provided with all facilities and privileges attached to the office as permissible in law, so much so that she does not have any occasion to complain in this regard. This indeed ought to be in accord with the letter and spirit of the undertaking offered by the Board of Directors to the CLB. The respondent No. 1 too would cooperate in the day to day management of the affairs of the company in her said capacity. The existing Board of Directors would also abide by the undertaking

as recorded in the order dated 6.8.2014 of the CLB qua the alienation of the assets of the company. The set-up of the Board of Directors and the arrangement vis-a-vis the administration of the affairs of the company, as was existing on the date on which the order dated 6.8.2014 was passed by the CLB, would continue until further orders by it. The CLB is, however, directed to dispose of the proceeding before it as expeditiously as possible. As the suit filed by the respondent No. 1, as noted hereinabove, is also pending, we hereby direct the Civil Court before which it is pending, to deal with the same with expedition as well, so as to provide a quietus to the lingering family discord in the overall well-being of the company and its constituents.”

7 Now lets us examine whether the order impugned is perverse or arbitrary.

8 It is the case of the appellant that the order has been passed in a cursory manner and the reason for stating this is, by that order the Company Law Board has in effect stopped the business of the appellant no.1. The appellant no.1 carries on business of development of land by constructing apartments on that and selling the apartments. Therefore, by way of impugned order, it is alleged, the appellant no.1 has been restrained from developing the land, stopped from constructing flats and from selling the flats.

9 The board in paragraph 5 of the order dated 29th October, 2015 has only stayed alienation of land in question until the next date of hearing. The order has been passed on 29th October, 2015 and the next date of hearing was 4th December, 2015. The reason why this interim

arrangement was also ordered can be found in the last paragraph of the order. It is because only respondent no.2, who is appellant no.2 herein, had filed the reply and appellant nos.1 and 3 herein had sought time to file reply. They were granted four weeks time to file the reply and the respondents, who are petitioners before the board were granted two weeks thereafter to file the rejoinder. On 14th December, 2015 the appellant nos.1 and 3 did not file any reply but sought extension by another four weeks to file the reply. The time was granted and consequently the respondents herein, i.e., petitioners before the Company Law Board were granted two weeks time to file rejoinder after receiving a copy of the reply.

10 The matter is now stood over to 25th January, 2016 and the interim order is continued. The board has also noted that the reason why the alienation of land in question was stayed was because the counsel for the respondents viz., counsel for the appellants herein had accepted that no construction for flats has commenced and the site plan is awaiting sanction from the authorities. The order does not stop the appellants business of developing the land by constructing apartments. If according to the appellants now the site plans have been sanctioned, in other words, the circumstances have changed, it will be open to the appellants to move the Company Law Board for suitably altering the interim order

and the Company Law Board may consider and decide the same on merits. Moreover, the proceedings before the Company Law Board is at a preliminary or introductory stage awaiting a final adjudication on merits following a full contest. The pleadings are incomplete as the appellants have infact sought further time to file a reply. The Company Law Board has only ensured a working arrangement, if one may call it, until the pleadings are complete and parties are heard. Further, I do not find any perversity or arbitrariness in the order passed.

11 In the circumstances, the appeal is not maintainable. The appeal, therefore, is dismissed with costs. The appellants to pay Rs.1 lakh as cost to the respondent by way of cheque drawn in favour of the advocate for the respondent.

12 Company application, if any, accordingly stand disposed.

(K.R.SHRIRAM,J)