

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

O.S.A.No.243 of 2016

V.Manoharan
Rep. by Power of Attorney
Holder, P.J.Chelladurai
No.298, Amman Nagar
Papaniackenpalayam
Coimbatore - 37. ... Appellant

Vs

1. S.R.K.Prasad
Director, Ramakrishna Industries Pvt. Ltd.
53-54, Jothi, Race Course Road
Coimbatore - 641 018.
2. Ramakrishna Industrial Pvt. Ltd.
315, Mettupalayam Road
Jothipuram Post
Perinaickanpalayam
Coimbatore - 641 047
(Amended as per order dated
23.8.2013 in C.A.No.847/2013)
3. The Tashildar (South)
Taluk Office
Coimbatore - 18. सत्यमेव जयते Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of the Original Side Rules against the order dated 22.6.2016 passed in C.A.No.1708 of 2010 in C.A.No.218 to 221 of 1995 in C.P.No.30 of 1981.

For Appellant : Mr.V.Raghavachari
For Mr.C.Hanumantha Rao

JUDGMENT
(Delivered by M.Sundar,J.)

This intra court appeal is directed against an order dated 22.06.2016, made in Company Application No.1708 of 2010 in a disposed off Company Petition, namely, C.P.No.30 of 1981.

2. The appellant herein is the applicant, before the learned Single Judge. The appellant herein, took out an application, with a prayer to direct the respondents 1 and 2 in the application, to jointly and severally pay gratuity amount to the tune of Rs.34,49,345/-, which is said to be due and payable to the Assistant Commissioner of Labour, Coimbatore. The prayer was not acceded to and the application was dismissed. Aggrieved, the applicant has preferred the instant intra court appeal.

3. It would be relevant to set out the factual matrix in brief. Factual matrix containing details and particulars, which are absolutely necessary for disposal of the instant application sans other details and particulars is set out infra.

FACTUAL MATRIX :

i] A private limited company, namely, Ramakrishna Industries Pvt. Ltd. [hereinafter referred to as 'RIPL' in this order for sake of brevity] was incorporated, way back in 1946. RIPL was controlled by two families viz., families of [1] R.Venkateswaran Naidu and [2] P.R.Ramakrishnan. Subsequently, differences arose amongst the members of the families and a Company Petition came to be filed on the Original Side [Company Court] of this Court. The said Company Petition is C.P.No.30 of 1981 and the same was presented on 13.07.1981. The Company Petition was one for winding up and it was filed invoking Sections 433[e][f] and 434 read with 439[1][b][c][d] of the Companies Act, 1956. In the Company Petition, by order dated 07.12.1981, the Official Liquidator attached to this Court, was appointed as Provisional Liquidator of RIPL. As the Provisional Liquidator set out to do his task, the family members of the two families commenced some kind of dialogue amongst themselves. It is stated that an oral family arrangement was arrived at, on 22.01.1995. It is also stated that the oral family arrangement was reduced to writing, on 10.02.1995.

ii] Based on the oral family arrangement, Application Nos.218 of 1995 to 221 of 1995 [five applications in all] were moved. Prayers in these five applications together were to the effect that an order should be passed, directing allocation of shares / properties as per the family arrangement and appointment of Directors on the Board of Companies, as per the family arrangement. It may not be necessary to go into the details of the prayers, in each of the five Company Applications.

iii] For the purpose of this order, it would suffice to say that these five Company Applications were disposed of, by this Court, by a common order dated 21.09.1995. By this common order, after directing allocation of properties to the members of the families, this Court held that the share certificates presented in Court shall lie with the Assistant Registrar. It

was made clear in and by the said order, that only after the family arrangement is implemented fully, the covers/envelopes containing the share certificates will be handed over to the respective advocates. Thereafter, it is not in dispute before us, that the share certificates were in fact handed over to the respective counsel and that the same have been transferred many times over. Therefore, the indisputable inference is that the family arrangement was implemented fully.

iv] Thereafter, the main Company Petition lay dormant for nearly six years and on 19.12.2001, this Court dismissed the main Company Petition, holding that nothing survives in the matter. Be that as it may, it is stated that the appellant herein, who is one of the respondents in the Company Petition took over the factory premises that was allocated to him and is running a company therein, in the name and style of R.V.S. Industries Pvt. Ltd. ['RVSIPL' for brevity]. It is further stated that the appellant herein was served with summons dated 26.07.2004, from the jurisdictional Tahsildar. This summons pertained to certain gratuity dues of RIPL. The appellant sent a reply. The appellant also moved this Court, by way of a Writ Petition, namely, W.P.No.27911 of 2004 and assailed the above said summons of the Tahsildar. This Writ Petition came to be disposed of, by this Court on 12.09.2007, holding that it is open to the appellant to appear before the Tahsildar and give his explanation. It appears that the appellant did so and thereafter, the Tahsildar passed an order dated 20.10.2008. In and by this order, the jurisdictional Tahsildar threatened attachment of movable and immovable properties belonging to the appellant herein and RVSIPL. It is further stated that the Tahsildar sealed the factory, but no sealing order was placed before the Learned Single Judge and this Court.

v] Be that as it may, the appellant again moved this Court, by way of a Writ Petition, namely, W.P.No.4989 of 2009, with a prayer for removing the seal. This Writ Petition was dismissed on 09.12.2009. The matter was carried in Writ Appeal, by way of an intra court appeal W.A.No.170 of 2010 and the result was same. Writ Appeal was dismissed on 23.04.2010. The appellant carried the matter to the Supreme Court, by way of S.L.P. Civil No.18742 of 2010 and it is admitted that the S.L.P. was withdrawn on 06.08.2010.

vi] It is stated by the appellant that while withdrawing the S.L.P., the appellant withdrew the same, on the basis that he would pursue his remedy in the Company Court. Stating so, the above said C.A.No.1708 of 2010 was moved with a prayer to direct the respondents 1 and 2 therein to pay the gratuity balance to the Assistant Commissioner of Labour, Coimbatore, which was said to be due. This application, which was filed on 06.09.2010, was resisted by RIPL, inter alia on the grounds that it is not a party to the family arrangement, the Company Petition has been dismissed and that and that this is not the

forum to make such a prayer. After contest, the Company Application was dismissed, by a learned Single Judge of this Court, in and by an order dated 22.06.2016, which has been called in question in this intra court appeal.

4.The sheet anchor ground of attack of the appellant, in the instant appeal is that the oral family arrangement dated 22.01.1995 which was subsequently reduced to writing on 10.02.1995 has been recorded by this Court owing to which it has fructified into a decree of this Court and therefore a prayer to implement the same by way an application in the disposed off CP has to be acceded to.

5. It is the further case of the appellant that as per the family arrangement, the workshop unit with six acres of land within a compound at Coimbatore, being the workshop unit of RIPL with all movable and immovable assets of the unit were allotted to him and 50% of all the liabilities of the workshop unit alone were transferred to the appellant. In other words, the appellant's case is that his liability qua the gratuity claim of RIPL is only 50% and that the remaining 50% has to be absorbed by RIPL.

6. It is the further case of the appellant that he has duly paid his 50% liability, RIPL has acknowledged the same and that it is now the obligation and legal duty of RIPL under the purported decree of this Court, made in C.P.No.30 of 1981 to pay and discharge the balance liability to the Assistant Commissioner of Labour, Coimbatore pertaining to the workmen claim.

7. RIPL in resisting this application would say that it was not a party to the family arrangement and therefore, even if there was a decree that was passed by this Court as contended by the appellant, it cannot be put against RIPL. Responding to this, the appellant would contend that the individuals who were party to the memorandum of family arrangement, particularly, one S.R.K.Prasad [SRKP for brevity] found a place on the board of RIPL and cannot escape the liability.

8.Based on the above rival contentions, the learned Single Judge examined the matter and inter alia held that the Doctrine of Identification would have no application in the facts of the instant case, as the appellant herein has not even averred with specificity as to the time span, in which, SRKP was on the board of RIPL. The Doctrine of Identification was pressed into service by the appellant herein, before the learned Single Judge by relying on the ratio in Reliance Industries Case reported in [2010] 7 SCC 1 and the Delhi Development Authority Vs Punjab National Bank case reported in [1981] 19 DLT 353.

9.As stated supra, this was repelled by the learned Single Judge by holding that the applicant has not even averred with specificity the time span, during which, SRKP was on the board of RIPL as a Director. Now, in the instant appeal, as stated supra, the main ground on which, the submissions of the appellant was pitched is that the memorandum of family arrangement has been clothed with the sanctity of a decree of this Court, as the same has been recorded by this Court in the main Company Petition and therefore, the appellant has an inalienable legal right to have the same implemented by way of the application, which was unsuccessfully moved before the learned Single Judge.

10.To buttress the above submission, Mr.V.Raghavachari, learned counsel for the appellant pressed into service a Division Bench judgement of the Delhi High Court reported in AIR 1975 Delhi 144 [Daljit Singh's case]. Learned counsel for the appellant drew our attention to a portion of the judgment, which reads as follows:

"The Court thus treated that part of the compromise which related to the payment of the profits to the appellant as executable. If so it related to the suit and a decree had to be drawn up in respect of at least that part of the compromise. This position would be inconsistent with the dismissal of the suit if such a dismissal meant a total dismissal and grant of no relief whatever. Such contradiction avoided if the words "suit is dismissed" are construed to mean suit is dismissed in respect of the original reliefs in the plaint. This view no harm was done to the appellant by the use of these words by Jagjit Singh J. As the whole of the compromise was recorded and only the original reliefs claimed in the plaint were disallowed, the plaintiff appellant was fully satisfied and he could not have filed any appeal under Order XLIII Rule 1 [m] Civil Procedure Code."

11.Learned counsel would further go on to contend that the dismissal of the Company Petition would not preclude his rights, to have the decree implemented by moving an application. In his endeavour to advance this argument/proposition further before us, learned counsel drew our attention to another portion of the said judgment which reads as follows:

"The words "suit is dismissed" were added by Jagjit Singh J. In the order recording the compromise. Under Order XXI If rule 3 Civil Procedure Code the Court has to accept the compromise as it is if it is legal. There is no discretion in the Court to add to or vary the terms. Further, the Court has to pass a decree in accordance with the compromise so far as it relates to the suit. The appellant in the order appealed

against in F.A.O.[O.S.] 43 of 1972 made a grievance that the words "suit is dismissed" should not have been added by the order recording the compromise. Shri Harish Chandra, for the respondent rightly pointed out that if the appellant was aggrieved by these words in the order recording compromise then his remedy was to file an appeal against such order under Order XLIII Rule I[m] Civil Procedure Code. As no such appeal as filed within limitation, the complaint against these words by the appellant was out of place and time barred. The appellant would have been in serious difficulty if we would have taken the view that the words "suit is dismissed" in the order recording the compromise gave the appellant a cause of action for filing an appeal under Order XLIII Rule I[m] Civil Procedure Code and that because of these words either the compromise could not be recorded or if so recorded a decree could not be passed according to it. To take such a view would be hypertechnical and unjust. After all, parties enter into compromise with some purpose and to shorten the process of litigation. The Court should be therefore, sympathetic to the purpose of the compromise and try to effectuate it rather than take a technical view which would result in defeating the purpose, in our view, the words "suit is dismissed" used by Jagjit Singh, J.can have only one meaning. It was that the reliefs originally claimed in the suit were denied to the plaintiff and in that sense or to that extent the suit was dismissed."

12.On this aspect, we are unable to agree. We are unable to persuade ourselves that the ratio would be applicable to the case in hand. The reasons are as follows:

i] Facts in Daljit Singh's case would show that the recording of the compromise and disposal of the suit are co terminus, but in the instant case, the memorandum of family arrangement was taken note of, applications inter-alia apportioning shares/properties as per Family Arrangement was disposed of on 21.09.1995 and post full implementation of the family arrangement the main Company Petition was dismissed on 19.12.2001.A plain reading of the said two orders of this Court makes it indisputably clear that the dismissal of the main Company Petition was after the family arrangement was fully implemented and after covers containing the share certificates were handed over to the respective counsel by the Assistant Registrar.

ii] Daljit Singh's case arises out of a suit for dissolution of partnership. It was a civil suit simplicitor, where the provisions of Code of Civil Procedure applied in full force.

iii] There is a huge difference between the recording of compromise and disposal/dismissal of the main matter being co terminus on the one hand and recording of compromise and dismissal of the main matter much thereafter, post full and complete implementation of the compromise.

iv] Unlike facts in Daljit Singh's case, in the instant case, there is only a decree of dismissal after implementation of the compromise and nothing else.

13. Therefore, we are of the view that Daljit Singh's case is clearly distinguishable both on facts and in law and not applicable to case on hand.

14. Learned counsel for the appellant also pressed into service AIR 2001 Allahabad 28 [Punjab National Bank Vs Lakshmi Industrial and Trading Company Pvt. Ltd.]. This case again in our view does not help the appellant in any manner, because this is not a case of change of management simplicitor.

15. Though some other citations/decisions were compiled and filed by the appellant, the other judgments and citations were not pressed into service. From the papers placed before us, we also notice that the application out of which, this intra court appeal arises has been filed merely under Order XIV Rule 8 of Original Side Rules alone, without giving any substantial provision/s of law. We notice that The Companies [Court] Rules, 1959, does not specifically provide for such an application, more so, in a disposed off Company Petition.

16. As stated supra, the main Company Petition is one for winding up and the same has been filed invoking the provisions of Section 433[e][f] read with 434 and 439[1][b][c][d] of the Companies Act, 1956. After Official Liquidator of this Court was appointed as Provisional Liquidator, in the light of inter se compromise between the warring members of the family, orders for allocation of shares and properties were passed and after the memorandum of family arrangement was fully implemented, the main Company Petition was dismissed, holding unambiguously that nothing 'survives' in the same. Therefore, we are not able to persuade ourselves to hold that an application of such a nature can now be filed in a Company Petition disposed off in such a manner.

17. The fact that SRKP has not made a party to the present proceedings also takes the wind out of the sails of the application. SRKP is certainly a proper party, though may technically not be a necessary party. This aspect has also been examined by the learned Single Judge. However, as we are

unable to persuade ourselves that the instant application is otherwise sustainable, we do not go further into this aspect into the matter. We agree with the learned Single Judge, when he held that jurisdiction to deal with an application of such nature will not be there, given the fact that the main Company Petition has already been dismissed. In other words, we agree with the finding of the learned Single Judge that no interlocutory orders can be passed when the main company proceedings have come to an end, particularly, when there is no application for revival of the main petition.

18. Most importantly, in and by the order of the learned Single Judge, which has been called in question in the instant intra court appeal, the avenues for the appellant to pursue his remedies in appropriate Fora if so advised, has been left open. This in our view, fully and wholly safeguards the interests of the appellant. In other words, the appellant has not been left without a remedy.

19. For all the reasons and discussions that have been set out supra, the instant Original Side Appeal, namely, O.S.A.No.243 of 2016 stands dismissed, sustaining the order of the learned single Judge wholly.

20. As we have not ordered notice, there is no need to deal with the aspect of costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Tashildar (South)
Taluk Office
Coimbatore - 18.

2.The Sub Assistant Registrar,
Original Side, High Court,
Madras.

+1 cc to Mr.C.Hanumantha Rao,advocate,sr.72448.

kk(co)
krd 27/12

O.S.A.No.243 of 2016