

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPEAL No. 13 OF 2015

DATED 27TH JANUARY, 2016

BETWEEN

M. Venkat Rao

...Appellant

And

Emjay Industries Private Limited,
Rep. by Chairman and Managing Director,
Somajiguda, Hyderabad and ors.

...Respondents.

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPEAL No. 13 OF 2015

JUDGMENT:

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This Company Appeal is preferred against the order dated 18.11.2015 passed in Company Application No. 1 of 2015 in Company Petition No. 84 of 2013 by the learned Company Law Board, Chennai.

This Court while ordering notice before admission on 25.11.2015 took into consideration the principal grievance of the appellant that the Company Law Board without disposing of the eight interlocutory Applications is proceeding with Company Petition No. 84 of 2013. The deciding of the interlocutory applications is crucial and vital for determination of the issue raised in the Company Petition filed under Sections 397, 398 read with Sections 402 and 403 of the Companies Act, 1956. In view of the same, this Court granted stay of hearing the main

Company Petition while giving liberty to the Company Law Board to proceed with the interlocutory applications for disposal.

Once again when the matter was listed on 30.12.2015 this Court considering the fact that the dispute involved in the Company Petition being between the father and his sons, the learned Counsel of respective parties were suggested to make an effort for out of Court Settlement in order to resolve the dispute. On their willingness and readiness for settling the dispute out of Court, Mr. D. Krishna Rao, a practicing Company Secretary was appointed as a Mediator with a direction to him to make an effort for settlement of the disputes between the parties. Today the learned Counsel appearing for the contesting respondents 2 and 3 submitted that the settlement could not be reached despite the hectic effort made by the Mediator and in view of the same, the matter has to be decided by the Court on merits.

Heard Sri N. Subba Rao, learned Counsel appearing for the appellant, Sri P. Vikram, learned Counsel appearing for the second respondent, Sri Balaji Varma, learned Counsel appearing for the third respondent, Mrs. Kalpana Ekbote, learned Counsel appearing for the fourth respondent, Sri D.Hanumantha Rao, learned Counsel appearing for Respondent Nos. 7 and 8, and Sri Abu Akram, learned Counsel appearing for Respondent No. 16. Despite service of notice on Respondent Nos. 1,6,7,8,9,10,12,13,17,18,19 and 20, none appeared for them nor any representation is made on their behalf. Notice sent to Respondent Nos. 5 and 11 not yet returned, unserved.

Though notices sent by the Registry of this Court are not served on some of the respondents, considering the nature of dispute which is raised before this Court, non service of notice on them does not prejudice in any manner. The respondents on whom notice of this petition has not been served are yet to be impleaded before the Company Law Board. In other words, they are not parties before the Company Law Board. Impleadment application filed by the appellant seeking impleadment of those respondents and some others is yet to be decided.

In that view of the matter, this Court is of the opinion that this Company Appeal can be disposed of even without their presence. It is only a Company Petition alleging mismanagement in between the share holders of the first respondent-Company. The Company Petition being of the year 2013, all the parties appears to have made sincere effort for out of Court settlement, however, they failed to report the settlement before the Company Law Board and at that stage the appellant filed eight Company Applications seeking various reliefs. It is the specific case of the respondents that those interlocutory applications have been filed only to drag on the Company Petition and coerce the parties for settlement with unreasonable terms. It is also the contention of the learned Counsel for second respondent that the second respondent is aged about 84 years and on account of criminal cases filed against him by Respondents 8,9 and 10, he is being harassed and in that view of the matter, the learned Counsel for the second respondent prays for a direction to the Company Law Board to dispose of the Interlocutory Applications as well as

Company Petition itself, on merits, on day-to-day basis. Even the learned Counsel for the appellant also makes a similar prayer.

Considering that the controversy lies in a narrow compass, particularly non disposal of the interlocutory applications by the Company Law Board and after hearing the learned Counsel on either side at length, this Company Appeal is disposed of directing the Company Law Board to consider and dispose of the Interlocutory applications/Company Applications which are stated to be posted to 02.02.2016 after hearing the respective parties, on merits and in accordance with law and thereafter to proceed with the main Company Petition for its disposal on day-to-day basis. The learned Counsel appearing on either side submit that they will not seek adjournment and that they will proceed with the matter on that day. It is made clear that even if adjournment is sought on behalf of the contesting respondents, the Company Law Board is directed to refuse the same and proceed with the matter. This Court has no manner of doubt that the Company Law Board would pass individual orders in each of the Company Applications pending before it by taking into consideration the relevancy of the relief sought for in the main Company Petition vis-à-vis Company Applications. The Presiding Officer may bear in mind and conduct the proceedings and ensure the Company Law is not converted into a Civil Court especially considering the wide powers conferred on it in Section 402 of the Companies Act.

The learned Counsel appearing for the appellant as well as second respondent submit that the Mediator so appointed by

this Court has made sincere and serious efforts for resolving the dispute involved in the subject matter. They further submit that the Mediator had number of sittings with the parties without intervention of the respective Counsel and independently with the Counsel also and made hectic effort to resolve the dispute. Unfortunately, the settlement could not be reached. They suggested a fee of Rs.1,50,000/- payable to the Mediator equally by the appellant and second respondent. The respective Counsel take responsibility for arranging the remuneration payable to the Mediator and file a Memo to that effect with in ten days.

The Company Appeal is accordingly disposed of.

Miscellaneous petitions pending consideration if any in the Company Appeal shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 27TH JANUARY, 2016.

Note: CC in four days

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