

HON'BLE SRI JUSTICE P.NAVEEN RAO

COMPANY APPEAL No.6 OF 2016

Date: 22.07.2016

Between:

Dr Renuka Datla, w/o. late Dr Vijay Kumar Datla,
Aged about 65 years, r/o H.No.2-2-12/3/A,
D.D.Colony, Adikmet, Hyderabad, Telangana and
two others.

.....Appellants

and

M/s. Biological E. Limited, registered office at
18/1 and 3, Azamabad, Hyderabad, Telangana
and others.

.....Respondents

The Court made the following:

HON'BLE SRI JUSTICE P. NAVEEN RAO

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ORDER:

Heard Sri C.Ramachandra Raju, learned counsel for appellants and Sri S.Niranjana Reddy, learned counsel for respondents 2 to 4.

2. This appeal was taken up on 17.5.2016 in the summer vacation of the High Court on a special motion moved by the appellants. After hearing the arguments for some time, since the connected Appeal No. 5 of 2016 which was filed by very same appellants is pending, counsel for the appellant was informed whether he would be willing to tag this appeal to Company Appeal No. 5 of 2016. However, counsel for appellants insisted for consideration of this appeal independently and passing of appropriate orders. Accordingly, the arguments of counsel representing the parties were heard extensively.

3. On reopening of the Court after summer vacation, counsel for appellant made an oral request for tagging the case and also filed C.A.No. 756 of 2016 to list the matter under the caption 'for being mentioned'. Matter underwent few adjournments. At that stage, appellants filed petition in Company application No. 795 of 2016 praying to amend the prayer sought in the appeal and to raise additional grounds primarily on the ground that in the meantime Company Law Board has passed final orders.

4. Counsel representing respondents sought adjournment to file counter affidavit and accordingly counter is filed. Matter was heard to consider the applications filed by appellants._

5. Appellants herein instituted Company Petition No.36 of 2014 praying to grant several reliefs. The said company petition was pending consideration of Company Law Board, Chennai Bench.

6. First appellant is the wife of late Dr Vijay Kumar Datla and respondents 2, 3 and 4 are daughters of the first appellant. Husband of the first appellant was the Chairman and Managing Director of the

Company, called M/s. Biological E. Limited. After the demise of the husband of the first appellant, infighting surfaced between mother on one side and her three daughters on other side. Both groups are at loggerheads and are eager to take control the affairs of the company.

7. On 06.08.2014, Company Law Board (for short, CLB) passed interlocutory orders. Against said order, appellants herein filed Company Appeal No.17 of 2014 praying to grant several reliefs. On exhaustive consideration of the rival contentions, learned single Judge of this Court formulated seven points for consideration and answered accordingly. Suffice to note that learned Judge held that appellant no.1 is alone to continue as Executive Director and respondents 2 to 4 were not validly appointed as Directors and, therefore, respondents 2 to 4 and 5 cannot be allowed to run the affairs of the company. Having come to the said conclusion and pending disposal of the company petition, directions were issued by this Court. The directions read as under:

“ 1. An adhoc Board of Directors is constituted with appellant no.1 as the Executive Director and respondent Nos.2 to 4 as the Directors of respondent no.1-company. Appellant No.1 shall discharge the functions of the Managing Director of the company.

2. The adhoc Board is responsible for the day-to-day functioning of the company and shall carry out the statutory obligations under the Act.

3. All the decisions shall be taken by the Board based on unanimity and consensus. If consensus on any aspect relating to the day-to-day affairs of the company is eluded among the Board members, appellant No.1, as the Managing Director, shall approach the Company Law Board for appropriate directions.

4. The Board shall not transfer or deal with 81% shares held by late Dr Vijay Kumar Datla in any manner till the dispute on the issue of succession is adjudicated in O.S.No.184 of 2014.

5. The Board shall not take any major policy decisions unless there is unanimity among all its members and without the prior approval of the Company Law Board.

6. The adhoc Board shall continue to function till O.S.No.184 of

2014 is disposed of and appropriate orders in C.P.No.36 of 2014 are passed thereafter.

7. The Company Law Board shall keep C.P.No.36 of 2014 pending till O.S.No.184 of 2014 is finally disposed of. ”

8. Aggrieved by the said order of this Court, Civil Appeal Nos. 8275, 8276 and 8277 of 2015 are filed in the Supreme Court. Supreme Court by judgment dated 06.10.2015, allowed the appeals. Supreme Court directed the Company Law Board to dispose of the proceedings before the Board as expeditiously as possible. Supreme Court observed that CLB should decide the petition on merits after affording due opportunity.

9. Record would disclose that as a consequence to the directions of the Supreme Court, CLB has taken up the company petition. The chronological events would show that the company petition underwent several adjournments for completing the pleadings and to make submissions. It appears that on 24.03.2016, the matter was finally adjourned to 06.04.2016 for final hearing with a clear direction that no further adjournment would be granted. However, on 06.04.2016, on a request made on behalf of the petitioners, matter was posted for arguments on 21.04.2016 and 22.04.2016. Two clear dates are earmarked with an objective of hearings both sides. However, when the matter was taken up on 21.04.2016, the counsel for the appellants insisted to consider only the interim petitions. CLB did not agree for said request and insisted the appellants to make submissions for final disposal of the company petition. However, on a request made by the appellants, matter was adjourned to 02.05.2016. Again two clear dates i.e., 02.05.2016 and 03.05.2016 were fixed for final arguments. It appears that on 02.05.2016, when the matter was called, there was no representation on behalf of petitioners. As the senior counsel for respondents was pleading to dismiss the petition for non prosecution, initially party in person appeared and made submissions and later the

counsel appeared. On 3.5.2016, matter was closed for arguments and reserved for orders. The Board made it clear that the orders would be passed based on the pleadings and documents available on record. However, Bench gave further opportunity to the parties to file their written submissions within a period of 10 days and before 16.05.2016. Challenging the said order, this appeal is filed.

10. Learned counsel Sri Ramachandra Raju submitted that the Company Law Board ought not to have reserved the company petition for orders when a request was made to grant adjournment. He further submitted that the Board erred in hearing the respondents without first hearing the arguments on behalf of the petitioners. He further submitted that if the Board was not inclined to adjourn the matter, it ought to have dismissed the petition for default, but ought not to have heard the matter on merits in the absence of petitioners or their counsel or without hearing them. In support of the said contention, learned counsel placed reliance on Order XVII Rule 1 of CPC. He further submitted that as per the directions of the Supreme Court, in the judgment dated 06.10.2015, petitioners sought interim direction in the pending petition and without considering the said interim prayer the Board ought not to have taken up the hearing of the main petition itself. Aggrieved by non-consideration of the interim relief, the appellants instituted C.A.No. 5 of 2016 before this Court and the said Company Appeal is pending consideration of this Court. Thus, a request was made for granting adjournment informing the Board that Company Appeal is likely to be taken up on 01.06.2016 and such request ought to have been considered by the CLB. According to learned counsel, the CLB exceeded its jurisdiction in not acceding to the request of appellants for adjournment and not affording full and fair opportunity of hearing. He therefore prays to stay all further proceedings.

11. Learned Counsel Sri S. Niranjan Reddy submitted that provisions of the Code of Civil Procedure are not applicable to the

proceedings before the CLB. The CLB is governed by the Company Law Board Regulations, 1991 (for short the Regulation). Regulation 26 vests power in the CLB either to dismiss the petition for default or hear and decide the same *ex parte*. He further submitted that even assuming that CPC is applicable, according to Order XVII, Rules 2 and 3 of CPC, CLB is competent to hear the matter in the absence of one of the parties to proceedings. Thus, ample power is vested in the CLB to hear and dispose of the matter even if petitioners were not present. When the party was present in person or their counsel was present, CLB could not have dismissed petition for default. He therefore submitted that the procedure followed by the CLB is just and equitable and no illegality was committed. Though sufficient time was granted, appellants failed to avail the opportunity. The CLB was required to dispose of the company petition expeditiously in view of the directions issued by the Supreme Court. Only when final orders are passed, the aggrieved party can raise all the contentions as available in law including the contentions urged in this appeal and the appeal is premature. He further submitted that the order under challenge would disclose that even though the appellants did not cooperate for early disposal of the petition, further time was granted by the CLB to file written submissions and without availing such remedy, this appeal is filed. He submitted that in view of the provision contained in Regulation 26 of the CLB Regulations, point formulated by the appellants as substantial question of law for filing this appeal is not valid and on that ground alone the appeal is liable to be dismissed.

12. On 8.7.2016 while considering the two miscellaneous applications, learned counsel for appellants pleaded that recording of findings on merits would prejudice the claims of appellants in pending proceedings and in any proceedings that may be instituted and therefore requests to tag this appeal along with C.A.No. 5 of 2016.

13. I have given anxious consideration to the rival submissions.

14. Having regard to submissions made by learned counsel for Appellants which submission is not opposed by learned counsel for respondents, I am not recording detailed reasons. Suffice to note that principal challenge to the order dated 03.05.2016 is on the ground that the CLB ought not to have reserved the matter for orders without hearing petitioners first and without granting adjournment as requested and ought to have dismissed the petition for default. In this context, it is apt to note the provision in Regulation 26(1). The said provision reads as under:

“26. Procedure to be followed where any party does not appear:

(1) where, on the date fixed for hearing of the petition or any application or on any other date to which such hearing may be adjourned, the petitioner or the applicant as the case may be, does not appear when the petition or the application is called for hearing, the Bench may, in its discretion, either dismiss the petition or the application for default or hear and decide the same ex-parte.”

15. It appears from the reading of the provision that ample power is vested in the CLB to deal with the matter arising before it including hearing and to decide the matter *ex parte*. At this stage, it is premature to go into the issue whether in the given facts, the CLB erred in not granting adjournment or not dismissing the appeal for default instead of reserving the case for passing final orders and whether sufficient opportunity ought to have been afforded and refusal of request for adjournment was not validly made and scope of application of provisions in Civil Procedure Code, more particularly Order IX Rule 8, Order XVII Rules 2 and 3 vis-à-vis Regulations are matters to be considered in appropriate proceedings against final orders of CLB.

16. Admittedly, no orders were passed by the CLB by the time this appeal was moved. The proceedings of 3.5.2016 under challenge only records the chronological events and the submissions made on 3.5.2016. There is no dispute regarding jurisdiction of CLB to

consider the petition pending before the CLB. Only after final orders are passed the appellate forum or this Court can go into all aspects concerning the litigation. This Court cannot entertain the appeal and stall the proceedings before the validly constituted Tribunal at a stage before final orders are passed. It is also suffice to note that by the order impugned the Board only reserved the matter for orders while granting further time to the parties to make written submissions.

17. After the matter was reserved for passing final orders, the appellants filed two petitions, one petition to list the case as 'for being mentioned' and another petition to amend the main prayer and pleadings contending that final orders are passed by the Board. Since it is a new cause of action and the issues that arise for consideration against final order are entirely different from the issues agitated in the present appeal, the appellants may have to file comprehensive appeal, if so advised. Thus the application for amendment is rejected. By the application 'for being mentioned', appellants sought to reopen the case and to tag this appeal with CA No 5 of 2016. As noticed above, the appellants did not agree for tagging this appeal and made extensive submissions on merits. Thus, it is not open to appellants to make such plea after the case was reserved for passing final orders. Hence, this application is also rejected.

18. For the reasons aforesaid, Company Appeal is not maintainable and is accordingly dismissed. The observations made herein above are only for disposal of this appeal. It is made clear that there is no expression of opinion on various contentions urged by respective parties and all issues are left open to be raised in appropriate proceedings by the aggrieved party/parties against the final order passed by the CLB.

Miscellaneous petitions if any pending shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date:22.07.2016
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