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

COMPANY APPEAL NO.14 OF 2014
IN
COMPANY PETITION NO.109 (ND) OF 2013

Shri Jagdish Lal Gupta	...Appellant
V/s.	
M/s.Sabina Woolens Mills Pvt. Ltd. & Ors.	...Respondents

WITH
COMPANY APPLICATION NO.31 OF 2015
IN
COMPANY APPEAL NO.14 OF 2014

Shri Jagdish Lal Gupta	...Applicant
V/s.	
M/s.Sabina Woolens Mills Pvt. Ltd. & Ors.	...Respondents

WITH
COMPANY APPLICATION NO.6 OF 2015
IN
COMPANY APPEAL NO.14 OF 2014

Prem Kumar Gupta	...Applicant
V/s.	
M/s.Sabina Woolens Mills Pvt. Ltd. & Ors.	...Respondents

AND
COMPANY APPLICATION NO.57 OF 2015
IN
COMPANY APPEAL NO.14 OF 2014

Shri Jagdish Lal Gupta	...Appellant
V/s.	
M/s.Sabina Woolens Mills Pvt. Ltd. & Ors.	...Respondents

Ms.Ankita Singhania with Ms.Shruti Sardesai i/b Mr.Kuldeep Nikam for the Appellant.

Mr.Rajnish Sinha with Ms.Minakshi Surve i/b Mr.Satyan Israni for the Respondent Nos.1, 2 and 9 to 14.

Ms.Meenakshi Arora, Senior Counsel with Ms.L.M. Jenkins for the Respondent No.22.

CORAM : R.D. DHANUKA, J.

DATE : 12TH JULY, 2017.

P.C. :-

1. The Company Appeal No.14 of 2014 arises from an order passed in Company Petition No.109 (ND) of 2013 refusing to grant various interim reliefs sought by the appellant (original petitioner). The Company Application No.31 of 2015 is filed by the appellant *inter-alia* praying for stay of the operation, implementation and the effect of the impugned order dated 10th September, 2013 in Company Petition No.109 (ND) of 2013 passed by the Company Law Board and seeking order of *status-quo qua* assets, shareholding and management of the respondent nos.1 to 4 and 6 and seeking injunction from creating any third party rights, lien, directly or indirectly on the assets of the respondent nos.1 to 4, 6 to 25. The Company Application No.6 of 2015 is filed by the respondent no.9 *inter-alia* praying for liberty to the applicant (original respondent no.9) to cross-examine the hand writing expert appointed by this Court in terms of the expert opinion submitted by him to this Court. The

Company application No.57 of 2015 is filed by the appellant praying for taking specimen of handwriting of Mr.Prem Kumar Gupta in front of an independent Court appointed hand writing expert and be sent for forensic examination. Some of the relevant facts for the purpose of deciding this appeal and the company applications are as under :

2. The appellant herein is the original petitioner in Company Petition No.109 (ND) of 2013 *inter-alia* praying for various reliefs under sections 397 and 398 of the Companies Act, 1956. It is the case of the appellant that the respondent no.1 was acquired as a shell company by Gupta family consisting of five brothers viz. i). Somdeo Gupta, ii) Nandlal Gupta, iii) Jadgish Gupta, iv) Subhash Gupta and v) Prem Gupta. According to the appellant, the respondent no.1 is in nature of quasi partnership and a flagship concern of the Gupta family. The registered office was shifted from Delhi to Mumbai and was common office of the respondent no.1 and M/s.Cameo Fabrics Private Limited. It is the case of the appellant that he was instrumental for setting up the respondent no.1 and had pumped in capital and worked over a decade to acquire valuable industrial licence for the respondent no.1.

3. It is the case of the appellant that since the appellant was a resident of New Delhi, Nandlal Gupta (respondent no.20) and Prem Gupta (respondent no.9) looked after the office and affairs of the

respondent no.1 in Mumbai and Prem Gupta looked after the operations in Punjab. It is the case of the appellant that the appellant originally held 25.27% shareholding in the respondent no.1 along with his wife, which has been reduced to 19.40%. The appellant, Mr.Prakash Gupta, Mr.Somdeo Gupta (now deceased) and Mr.Subhash Chander Gupta were the original directors of the respondent no.1. Mr.Nandlal Gupta has resigned as the director of the respondent no.1. It is the case of the appellant that since 1980 onwards, the appellant was not actively involved in the affairs of the respondent no.1.

4. It is the case of the appellant that in the month of February, 2006, considering the advanced age of the brothers, Gupta family held discussions regarding the family business / companies. Mr.Prakash Gupta Group has admitted to have siphoned off the funds from the family concern, including the respondent no.1 and M/s.Cameo Fabrics Private Limited and purchased various personal assets and has set up Tara Industries Limited and few other companies from such funds. The said Mr.Prakash Gupta Group has alleged to have admitted 1/3rd effective shareholding of the appellant in the family concern. Mr.Nandlal Gupta Group has alleged to have accepted that it would be fair to give the appellant an equal share in the assets of Tara Industries Limited.

5. It is the case of the appellant that during the period between the month of March and June, 2006, Mr.Nandlal Gupta Group resiled from his earlier commitment made to the appellant and refused to divulge any information regarding the affairs of the respondent no.1. During the period between June, 2006 and August, 2006, the appellant has alleged to have learnt of massive manipulation of records of the family company M/s.Cameo Fabrics Private Limited. It is the case of the appellant that the appellant therefore filed a company petition (70 of 2006) against the said M/s.Cameo Fabrics Private limited before the Company Law Board at New Delhi under sections 397 and 398 of the Companies Act, 1956. During the pendency of the Company Petition No.70 of 2006, the appellant got inspected the records of the respondent no.1 and alleged to have learnt that his signatures were forged on records of the respondent no.1 by Prakash Gupta Group and Nandlal Gupta Group. The records of the respondent no.1 company were alleged to have been fabricated by the said two groups.

6. It was alleged by the appellant that there was illegal increase in the shareholding by Prakash Gupta Group and Nandlal Gupta Group with a view to take control of the respondent no.1. It was alleged that the salary and fixed deposits of the appellant were alleged to have been misappropriated and that the funds of the

respondent no.1 company were siphoned too with a view to set up Tara Industries Limited and other companies.

7. On 28th July, 2008, the appellant filed Criminal Complaint bearing No.97/M/2008 before the learned Metropolitan Magistrate, who was pleased to pass an order issuing directions for registration of F.I.R. against some of the respondents.

8. On 24th February, 2010, Mr.Subhash Chander Gupta filed a Company Petition No.21(ND) of 2010 against M/s.Sabina Woollen Mills Private Limited before the Company Law Board at New Delhi and several others including the appellant herein.

9. On 4th March, 2010, the Company Law Board passed an order in Company Petition No.21(ND) of 2010 ordering *status-quo* on the Board of Directors of the company and directed that in the event of any assets of the company were to be alienated or any charge is to be created thereon, 72 hours prior notice was directed to be given to Mr.Subhash Chander Gupta, the petitioner in the said Company Petition No.21(ND) of 2010.

10. On 16th March, 2010, all the matters pending in respect of the family concern of Gupta family were referred to mediation. On 18th April, 2010, the mediation proceedings failed. On 13th March, 2012, pursuant to an order dated 9th March, 2012, passed by the Company Law Board directing to produce the statutory records of the

respondent no.1, Mr.Prakash Gupta filed an affidavit stating that no statutory records of the respondent no.1 company were available and allegedly produced a back dated lease between the respondent no.1, S.T. Cottex Export Private Limited (respondent no.4) herein.

11. On 16th April, 2013, the Delhi High Court passed an order in Writ Petition (Civil) No.2452 of 2013 directing that the Company Application No.470 of 2012 be heard and disposed of by the Company Law Board.

12. On 14th August, 2013, the appellant filed Company Petition No.109 (ND) of 2013 against the respondent no.1 and several others before the Company Law Board under sections 397 and 398 of the Companies Act, 1956 and also applied for various interim reliefs.

13. On 10th September, 2013, the Company Law Board declined to grant any interim relief in favour of the appellant.

14. On 11th November, 2014, the appellant filed this company appeal under section 10-F of the Companies Act, 1956. The appellant also filed two company applications referred to aforesaid. On 15th April, 2014, this Court admitted this company appeal and stayed the impugned order passed by the Company Law Board on 10th September, 2013.

15. On 23rd June, 2014 this matter was heard in chamber of the learned then Company Judge when the appellant, through his

counsel, tendered four documents allegedly bearing the original signatures of the appellant. This Court recorded that as far as the disputed signatures are concerned, none of the original documents bearing the signatures of the appellant were produced before this Court and the documents produced before the Court with disputed and photocopy of the documents. This Court accordingly directed the Registrar of Companies to produce 16 documents referred to in the said order. The matter was adjourned to 1st July, 2014 and was adjourned to subsequent date on 1st July, 2014. The Additional Chief State Examiner of Police Maharashtra State (Retired) submitted a report before this Court on 18th July, 2014. The said hand writing expert opined that there were dissimilarities in the writing habits found between the questioned signatures and the standard signatures that led into conclusion of different authorship, when considered collectively. The respondent no.9 has filed a company application *inter-alia* praying for permission to cross-examine the said hand writing expert.

16. Ms.Singhania, learned counsel for the appellant invited my attention to some of the averments made in Company Petition No.109 (ND) of 2013 and also interim orders sought in the said company petition. She also invited my attention to the averments made and the prayers in the Company Petition No.70 of 2006 filed by

her client against M/s.Cameo Fabrics Private Limited. It is submitted by the learned counsel that during the course of proceedings in Company Petition No.70 of 2006, the appellant got inspection of the records of the said company M/s.Cameo Fabrics Private Limited and also got inspected records of the respondent no.1. She submits that the appellant also had filed a Criminal Complaint No.97/M/2008 before the learned Metropolitan Magistrate, who was pleased to pass an order dated 28th July, 2008, issuing directions for registration of F.I.R. She submits that on 24th February, 2010, Mr.Subhash Chander Gupta, the respondent no.26 herein, who is brother of the appellant, filed Company Petition No.21(ND) of 2010 before the Company Law Board at New Delhi against the respondent no.1 and also the appellant and several others.

17. It is submitted that during the pendency of the proceedings in Company Petition No.21(ND) of 2010 filed by Mr.Subhash Chander Gupta, the appellant noticed the additional information in respect of the respondent no.1. The appellant filed reply in the said company petition and took out an application being Company Application No.470 of 2013 in Company Petition No.21(ND) of 2010 *inter-alia* praying for forensic examination of the records of the respondent no.1 company. The said petition and the application are pending adjudication. She submits that Prem Gupta Group filed an affidavit in

Company Petition No.21(ND) of 2010 alleging that no statutory records of the company were available and produced a back dated lease between the respondent no.1 company and S.T. Cottex Private Limited. She submits that in view of these facts, the appellant filed a separate Company Petition No.109 (ND) of 2013 against the respondent no.1.

18. Learned counsel for the appellant invited my attention to the impugned order passed by the Company Law Board and submits that the Company Law Board has rejected the interim reliefs sought by the appellant on the ground that the same reliefs were granted in Company Petition No.21(ND) of 2010 filed by Mr.Subhash Chander Gupta and hence the appellant ought not to have filed Company Petition No.109 (ND) of 2013. Learned counsel invited my attention to the cause title in Company Petition No.109 (ND) of 2013 and also cause title in Company Petition No.21(ND) of 2010 and the reliefs sought in both these company petitions and would submit that Company Petition No.109 (ND) of 2013 filed by the appellant is comprehensive petition that covers and deals with substantive issues which were not dealt with in Company Petition No.21(ND) of 2010. She submits that in Company Application No.470 of 2012 in Company Petition No.21(ND) of 2010, the appellant had prayed only for forensic examination of the records of the respondent no.1

company i.e. only one of the prayers sought in the Company Petition No.109 (ND) of 2013 whereas all the interim reliefs sought in the Company Petition No.109 (ND) of 2013 were rejected by the Company Law Board by the impugned order. She submits that the appellant being an independent shareholder of the respondent no.1 is entitled to file his own petition in respect of the respondent no.1 company. She submits that the impugned order is contrary to the provisions of law, as the appellant is entitled to maintain the petition under section 399 of the Companies Act, 1956. She submits that the appellant could not have sought reliefs in the petition filed by Mr.Subhash Chander Gupta. She submits that the impugned order does not record any reasons / findings whatsoever while rejecting the interim reliefs sought by the appellant. She submits that the impugned order shows perversity and thus requires interference by this Court.

19. It is submitted by the learned senior counsel for the respondent no.22 that the findings of facts rendered by the Company Law Board in the impugned order are not perverse and cannot be interfered with by this Court in this appeal filed under Section 10F of the Companies Act, 1956. She submits that no question of law arises in this appeal.

20. It is submitted by the learned senior counsel that the

respondent nos.9 to 14 have already filed Company Application No.59 of 2014 *inter-alia* praying for permission to cross-examine the said so called hand writing expert.

21. Learned counsel for the respondent nos.9 to 14 submits that the Company Petition bearing No.109 (ND) of 2013 was filed by the appellant only as a device to obtain the same reliefs indirectly which were already made by Mr.Subhash Chander Gupta in Company Petition No.21(ND) of 2010. In the said company petition, the appellant had made similar allegations of fraud and forgery in the matter against Mr.Prem Kumar Gupta, respondent no.2 therein and the respondent no.9 in this company appeal. He submits that the appellant had also made similar allegations of transfer of property of M/s.Sabina Woollen Mills Pvt. Ltd. and also made allegations of siphoning of funds of the respondent no.1 - company to Mr.Nand Lal Gupta.

22. It is submitted that the Company Petition No.21(ND) of 2010 was filed in the first week of March 2010. That most of the documents which were challenged by the appellant formed part of the Company Petition No.21(ND) of 2010 filed by Mr.Subhash Chander Gupta against M/s.Sabina Woollen Mills Pvt. Ltd. He submits that though the Company Law Board has directed the appellant herein to file a detailed reply, contrary to such directions

issued by the Company Law Board, the appellant had filed Company Application bearing No.470 of 2012 in September 2012 i.e. after a gap of two and a half years for the same reliefs. He submits that the appellant has been taking advantage of issue of mismatch of his signature for the sake of his own convenience. The appellant thus challenged his own letters written by him and has suppressed those letters from the Company Law Board and from this Court.

23. It is submitted by the learned counsel for the respondent nos.9 to 14 that his clients have obtained a separate opinion from an hand writing expert placed on record by his clients. He submits that the opinion submitted by hand writing expert appointed by this Court is not binding and conclusive. He prays that an opportunity be granted to his clients to cross examine the said handwriting expert appointed by this Court to prove that the allegations of forgery made by the appellant are false and the said report does not help the appellant. He submits that the reliefs claimed by his clients in a separate company application be allowed.

24. Learned counsel for the respondent nos.9 to 14 also placed reliance on the salary cheques issued by the appellant himself from the bank account of the respondent no.1 - company in HDFC bank account in favour of the appellant from 11th June 2004 to 7th April 2012. The said payments were made by the respondent

no.1 to the appellant as Director. Learned counsel also placed reliance on certificate issued by the HDFC bank confirming the salary cheques cleared from the saving account of the appellant. He submits that there is no substance in any of the allegations of fraud or fabrication made by the appellant.

25. Ms.Singhania, learned counsel for the appellant in rejoinder submits that the Company Law Board has rejected the company application filed by the appellant merely on the ground that the reliefs claimed by her clients were identical to the reliefs claimed in the company petition filed by Mr.Subhash Chandra Gupta against M/s.Sabina Woollen Mills Pvt. Ltd. though several reliefs were claimed by the appellant in the company application filed by him which shows non-application of mind. She submits that the findings rendered by the Company Law Board are *ex-facie* perverse and thus deserves to be set aside.

26. A perusal of the Company Petition No.21(ND) of 2010 filed by Mr.Subhash Chander Gupta and others against M/s.Sabina Woollen Mills Private Limited before the Company Law Board at New Delhi indicates that Mr.Jagdish Gupta was the respondent no.6 in the said company petition. The said Mr.Subhash Chander Gupta had prayed for termination of the agreement between M/s.Sabina Woollen Mills Private Limited and A.P.S. International Private Limited as

illegal, void and not binding on the company and for various other reliefs. The said Mr.Subhash Chander Gupta had also prayed for various interim reliefs in the said Company Petition bearing No.21(ND) of 2010. A perusal of the Company Petition No.109 (ND) of 2013 filed by the appellant herein before the Company Law Board, New Delhi indicates that some of the parties to the said proceedings were not the parties to the proceedings filed by Mr.Subhash Chander Gupta before the Company Law Board, New Delhi. A perusal of the reliefs sought by the appellant herein in the said company petition indicates that most of the prayers in the said company petition filed by the appellant herein were not identical to the prayers sought by Mr.Subhash Chander Gupta in the company petition filed by him before the Company Law Board, New Delhi.

27. A perusal of the impugned order passed by the Company Law Board, dated 10th September, 2013 indicates that the Company Law Board has refused to grant interim relief in favour of the appellant herein on the ground that the appellant had filed an application in the Company Petition No.21(ND) of 2010, seeking various reliefs, inspite of the fact that similar reliefs were asked in the earlier company petition filed by Mr.Subhash Chander Gupta. The Company Law Board has proceeded on the premise that the appellant had filed an application to send the signatures and the

documents to the forensic expert in Company Petition No.21(ND) of 2010 on the allegation that his signatures were forged and thus a party to the proceedings in the earlier suit is precluded for re-agitating the same issues pending in the earlier company petition. The Company Law Board accordingly held that there was no triable issue to take up separately from the company petition already pending before the Company Law Board.

28. It is held that there was no *prima-facie* case and balance of convenience was in favour of the appellant and no irreparable loss and injury would be caused to the appellant warranting the Company Law Board to grant interim reliefs, as sought by him. In my view, the learned counsel for the appellant is right in her submission that though most of the reliefs in both the company petitions i.e. one filed by Mr.Subhash Chander Gupta and another filed by the appellant herein were not identical, the Company Law Board has erroneously proceeded on the premise that the reliefs sought in both the proceedings were identical.

29. A perusal of the company petition filed by the petitioner herein however, indicates that there was no interim relief sought by the appellant *inter-alia* praying for referring the signature of the appellant to any handwriting expert. The appellant however, chose to file a company application before this Court i.e. Company Application

No.57 of 2015 *inter-alia* praying for taking specimen of handwriting of Mr.Prem Kumar Gupta in front of an independent Court appointed handwriting expert and for sending the said signature for forensic examination. In my view since there were no such reliefs claimed by the appellant before the Company Law Board in the company petition filed by the appellant, the appellant for the first time cannot seek such relief before this Court in the company appeal arising out of the order passed by the Company Law Board.

30. Insofar as the order passed by Shri Justice S.J. Kathawalla on 23rd June, 2014 in this appeal is concerned, it appears that the said order was passed *ex-parte* and more particularly when the contesting respondents were absent. This Court had directed the Registrar of Companies to produce 16 documents referred to in the said order. There is no further order passed by this Court which indicates whether the Registrar of Companies had produced any such 16 documents. It is common ground that the report submitted by the Additional Chief State Examiner of Police, Maharashtra State (Retired) is not conclusive and is not binding on the parties.

31. The respondent no.9 has also filed a separate company application bearing No.6 of 2015 *inter-alia* praying for liberty to the respondent no.9 to cross-examine the handwriting expert appointed by this Court in terms of the opinion submitted by him to this Court. In

my view, since there was no such interim reliefs sought by the appellant before the Company Law Board in the company petition or by filing any separate company application for examination of the signatures of any party by referring the signatures for forensic examination, the application filed by the applicant before this Court for such relief itself is not maintainable. I am thus not inclined to grant any reliefs in the Company application No.57 of 2015 filed by the appellant herein and in the Company Application No.6 of 2015 filed by the respondent no.9 herein.

32. Be that as it may, a perusal of the record clearly indicates that the company petition filed by Mr.Subhash Chander Gupta against the respondent no.1 herein was already pending before the Company Law Board since 2010. The appellant herein was a party to the said proceedings. The appellant herein had filed Company Application bearing No.470 of 2012 in September, 2012 i.e. after a gap of two and half years. A perusal of the record clearly indicates that the appellant had been delaying the out come of the two company petitions filed by the appellant i.e. one against M/s.Cameo Fabrics Private Limited and others and another against M/s.Sabina Woollens Mills Private Limited and others. The appellant herein was already a party respondent to the company petition filed by Mr.Subhash Chander Gupta. Instead of proceeding with those

matters before the Company Law Board, the appellant has been filing one or other company application for interim reliefs deliberately with a view to delay the out come of those two company petitions filed under sections 397 and 398 of the Companies Act, 1956.

33. However, since the Company Law Board has refused to grant interim relief in favour of the appellant herein on the ground that the reliefs claimed in two proceedings referred to aforesaid were identical and thus no interim reliefs could be independently granted in the company petition filed by the appellant against M/s.Sabina Woollen Mills Private Limited and others, which is an *ex-facie* erroneous and perverse finding, though this appeal remained pending in this Court for more than two years, an interest of justice would be met with if the impugned order passed by the Company Law Board, which is the subject matter of this appeal, is set aside and the company application made by the appellant is restored to file with a direction to the National Company Law Tribunal, New Delhi to hear the said application afresh expeditiously and not later than three months from the date of communication of this order.

34. I therefore, pass the following order :-

- a). The impugned order dated 10th September, 2013 passed by the Company Law Board, Principal Bench, New Delhi in Company Petition No.109

(ND) of 2013 filed by the appellant herein is set aside.

- b). The National Company Law Tribunal, New Delhi is directed to hear application filed by the appellant in Company Petition No.109 (ND) of 2013 for interim reliefs and shall dispose of the same within three months from the date of communication of this order. The National Company Law Tribunal, New Delhi shall not grant any unnecessary adjournment to the parties.
- c). Hearing of the Company Petition No.109 (ND) of 2013 is expedited. The National Company Law Tribunal, New Delhi shall make an endeavor to dispose of the said company petition within six months from the date of communication of this order. The parties to the proceedings are directed to co-operate with each other and with the National Company Law Tribunal, New Delhi for disposal of the Company Petition No.109 (ND) of 2013 and to dispose of all company applications filed so far, if pending, expeditiously

within the time prescribed.

- d). Company Application No.13 of 2015 filed by the appellant and Company Application No.6 of 2015 filed by the respondent no.9 and Company Application No.57 of 2015 filed by the appellant are dismissed.
- e). There shall be no order as to costs.

(R.D. DHANUKA, J.)