



BEFORE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2017

Delivered on : 19.07.2017

Coram

WEB COPY

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(PD) (MD) No.775 of 2017

and

C.M.P. (MD) No.3536 of 2017

1.Selvarathnam

2.M/s Selvarathnam Matches Industries

Private Limited

Rep.by its Directors

.. Petitioners

/versus/

M/s Standard Fire Works Pvt. Ltd.,

Rep.by its Director Mr.P.Jaisankar

.. Respondent

Prayer: Civil Revision Petition is filed under Section 227 of the Constitution of India against the fair and decretal order dated 19.12.2016 in I.A.No.1080 of 2016 in O.S.No.199 of 2016 on the file of the District Munsif Court, Sivakasi.

For Petitioners :Mr.G.Prabhu Rajadurai

For Respondent :Mr.Yasothavarathen, Senior Counsel

for Mr.B.Saravanan Change of Vakalat filed

O R D E R

The plaintiff is a Private Limited Company represented through its Director. The defendants are the revision petitioners herein.

2. The averments in the plaint is that the share capital of the plaintiff company is as follows and the same is held either by family members in their individual names or by companies formed by family members.

1.Yennarkay Ravindran Family(34% shares)

2.Arunachalam Nadar of Pioneer Group (33% shares)

3.Chelladurai Nadar of Bell group (33% shares)

Each family represented through three Directors each. During 2011, two Directors namely, Mr.C.Subhasingh and Mr.C.Rajasingh representing Bell Group of Companies started functioning disadvantage to the plaintiff company affecting the business of the plaintiff company, so they were not elected after 2013. In that place, the Bell Groups of Company is now represented by Mr.C.Vijayasingh and Mr.C.Rajendrasingh.



3. From the branch of Yennarkay R.Rajarthnam family, which constitutes three matches compaznies namely, M/s Rajarathnam Matches Private Limited, M/s Yennarkay R.Selvarathnam Private Limited and M/s Chiranjeevirathnam Matches Private Limited each hold 11.09 % shares in the plaintiff's company. The second defendant M/s Yennarkay Selvarathnam owes Rs.7.5 crores to the plaintiff company but has not repaid. The erstwhile Directors Mr.C.Subhasingh and Mr.C.Rajasingh have joined hands with the second defendant to capture the plaintiff's company management in unethical way.

4. The second defendant has adopted hook and cook method to remove the present Directors of the plaintiff's company by calling for Extraordinary General Meeting(in short "EGM") for 27.09.2016, as if a board meeting was held on 19.08.2016 and he as Director of M/s Selvarathnam Matches Private Limited resolved to remove 2 of the existing Directors.

5. The relief sought are declaration to declare that the notice dated 08.10.2016 issued by the defendants 1 and 2 calling for the EGM on 09.11.2016 is illegal in valid and not binding on the plaintiff's company and consequently declare the notices dated 19.8.2016 and 27.09.2016 are also illegal and invalid and consequently, granting permanent injunction restraining the defendants, their employees, men, servants, agents from conducting any Annual General Body Meeting(in short "AGM") of the plaintiff company viz., M/s Standard Fireworks (P) Ltd., till the internal dispute of the first defendant is settled amicably and costs of the suit.

6. The cause of action as found in the plaint is as under:

"The cause of action arose for the above suit, when the first defendant gave request dated 27.09.2016 and 08.10.2016 for conducting EGM of M/s Standard Fireworks (P) Ltd., to fulfill his malafide intention".

7. On receipt of the suit notice, the defendants have filed I.A.No.1080 of 2016 under Order VII, Rule 11 of C.P.C., to reject the plaint on the ground that Civil Court jurisdiction is ousted by virtue of Section 430 of Companies Act, 2013(in short "the Act"). The Trial Court, has dismissed the I.A.No.1080 of 2016 for the following reason:

"On a bare perusal of this provision, it is clear that sec.430 of Companies Act, does not completely bar the jurisdiction of civil courts in respect of matters relating to companies. It is made clear that the jurisdiction of civil courts in respect of matters relating to companies. It is further made clear that the jurisdiction of



civil court is barred only in respect of matter in which the tribunal is empowered to determine by or under the companies act or any other law for time being in force. Hence, duty is cast upon the petitioner to establish that there is a specific provision in the companies act to deal with the issues raised in this suit. But the petitioner has failed to mention any such specific provisions in the Companies Act".

8. The plaintiff is the company represented by one of its Director. The plaint averment is that the defendants are attempting to capture the management by calling for EGM in violation of Section 100 of the Act and hence, to declare the EGM notice illegal and injunction restraining the defendants from convening AGM of the plaintiff company.

9. After notification of Sections 241 and 242 except Section 242(1)(b), 242(2) clauses(c) and (g) vide S.O.1934(E) dated 01.06.2016 and Section 242(1)(b) and 242(2)(c) and (g) vide, Notification S.O.2912(E), dated 09.09.2016, the National Company Law Tribunal (in short "NCLT) alone is empowered to deal matters relating to oppression. Likewise Section 100 of the Act, which was notified and brought into effect on 12.09.2013 lays down the procedure to be adopted to call for EGM by the Board. In case of any breach or violation, by virtue of the supervisory power conferred under Section 98 of the Act, the Tribunal either suo motu or on application can call for meeting of members. Member aggrieved by the decision of the EGM or the manner it was convened can challenge it before the Tribunal under Section 242 of the Act. Such power is exclusively conferred to Tribunal under Section 98 and 242 of the Act. In this case, the plaintiff company right to seek redressal is very well taken care by the statute under Section 242 of the Act.

10. Since this Court has dealt with the facts, law and submissions of respective counsels in detail in the connected C.R.P.No.8709 of 2017, it is suffice to cite the Hon'ble Supreme Court in *Church of North India v. Lavajibhai Ratanjibhai and others* reported in AIR 2005 SCC 2544 at paras 40 and 41 has held :

"40. The question as regard ouster of a jurisdiction of a Civil Court must be construed having regard to the Scheme of the Act as also the object and purport it seeks to achieve. The law in this regard is no longer res integra.

41. A plea of bar to jurisdiction of a civil court must be considered having regard to the averments disclosing cause of action and the reliefs sought for therein must be considered



in their entirety. The Court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure."

11. Section 430 of the Act ousts Civil Court jurisdiction on matters, which the Tribunal is empowered to determine. Insofar as the matter relating to EGM or AGM is concerned, the statute prescribes procedures under Sections 96 to 100 of the Act. There is a mandate prescribed under the statute that AGM should be conducted within the prescribed time limit and default in convening AGM beyond the prescribed period will invite consequences and in default in convening the AGM, the Tribunal has power to call for AGM under Section 97 of the Act. Similarly, under Section 98 of the Act, the Tribunal is empowered to call for any other meeting other than AGM which includes EGM either suo motu or on an application of any Director or members of the Company, who would be entitled to vote at the meeting. Section 100 of the Act prescribes the procedure how EGM should be conducted by the Board and under Section 100 (4) of the Act, if the Board fails to convene EGM within 21 days from the date of receipt of valid requisition in regard to any matter, the requisitionists themselves can convene EGM within 3 months from the date of requisition. If there is any resolution passed in such EGM removing the Managing Director, Manager or any of the Directors of the Company which shall be prejudicial or oppression to any member or members or to public interest or in a manner prejudicial to the interest of the company, application can be made to the Tribunal under Section 241 of the Companies Act, 2013 and the Tribunal is empowered to consider the said application under Section 242(1)(a) and 242(2)(h) of the Companies Act, 2013.

12. Therefore, in this case, on considering the plaint averments, cause of action and the statute governing the dispute in entirety undoubtedly indicates that the subject matter for determination squarely falls within the domain of the NCLT and therefore, Civil Court jurisdiction is ousted expressly by Section 430 of the Act. The Trial Court has erroneously dismissed I.A.No.1080 of 2016 without taking note of Section 98, 100 and 242 of the Companies Act, 2013. Failure to mention specific provision of Law by the petitioner cannot be an excuse for the Court to overlook the provisions relevant for the case. What the lower Court ought to have looked for is whether a real cause of action has been set out and clear right to sue is made out in the plaint.



As Supreme Court said in T.Arivandandam v. V.Satyapal and another reported in [AIR 1977 Supreme Court 2421] clever drafting creating illusions of cause of action are not permitted in law.

13. Hence, the Civil Revision Petition is allowed. The Plaint in O.S.No.199 of 2016 on the file of the District Munsif Court, Sivakasi is rejected. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif Court,
Sivakasi.

+One cc to Mr.B.Saravanan, Advocate, SR.No.66455

ari
RL/3C/5P/MR/KKR/SAR1/31/7/2017

Order made in

C.R.P.(PD)(MD)No.775 of 2017

19.07.2017