



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2017
Pronounced on : 19.07.2017

WEB COPY

Coram

The Hon'ble Dr. Justice G. Jayachandran

C.R.P (PD) (MD) No. 870 of 2017
and
C.M.P. (PD) (MD) No. 3846 of 2017

1. Chiranjeevi Rathnam
2. Selvarathnam
3. Inbarajalingam
4. Vijayalakshmi
5. Jebarali
6. Mahesh Kumar

.. Petitioners

/versus/

1. Ramesh
2. Ganesan

.. Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India praying to set aside the fair and decretal order dated 19.12.2016 in I.A.No.1015 of 2016 in O.S.No.188 of 2016 on the file of the District Munsif Court, Sivakasi.

For Petitioners

: Mr. G. Prabhu Rajadurai

For Respondents

: Mr. Yasothvarathan, Senior counsel
for Mr. B. Saravanan Change of Vakalat filed

O R D E R

The legal issue for decision before this Court is, whether a civil suit to declare the appointment/co-option of some of the defendants/Directors of a Private Limited Company as illegal and void; to grant permanent injunction restraining them from any manner functioning as Directors of that company; further injunction restraining the said company from conducting any Extraordinary General Body Meeting/Annual General Body is maintainable in a civil court, in the light of Section 430 of the Companies Act, 2013?

<https://hcservices.ecourts.gov.in/hcservices/>

2. M/s Standard Fireworks Private Limited, which is the epicentre of the dispute, is a Private Limited Company controlled

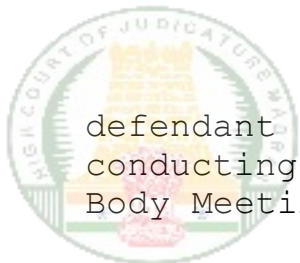


by three families namely, Yennarkay Ravindran Family (34% shares), Arunachalam Nadar of Pioneer Group (33% shares) and Chelladurai Nadar of Bell Group (33% shares). The 34% shares in M/s Standard Fireworks Private Limited Company held by Yennarkay Ravindran family are with three companies run by that family. Those three companies are M/s Rajarathnam Matches Private Limited, M/s Chiranjeevi Rathnam Matches Private Limited and M/s Selvarathnam Matches Private Limited. Each of these three companies hold 11.09% of share in M/s Standard Fireworks Private Limited. While so, due to heavy pressure and burden of work, Yennarkay R.Ravindran and Mrs.Thilagavathi/Directors of M/s Rajarathnam Matches Private Limited resigned from their directorship in the year 2003 and co-opted the plaintiffs, who are the employees of M/s Rajarathnam Matches Private Limited, as the Directors of the Company.

3. The plaintiff averment is that, Mr.Yennarkay Selvarathnam/second defendant requested calling for Extraordinary General Body Meeting(EGM), removal of directors, payment of dividend and external audit for the machinery investment. Those requests were considered and declined in the Board of Directors Meeting held on 31.08.2015 for the reasons stated. Since he was not able to succeed with his attempts, he wanted to remove the Directors, who are not accepting his demands. To achieve his illegal object, he has decided to capture all these three Match Industries viz. M/s Rajarathnam Matches Private Limited, M/s Chiranjeevi Rathnam Matches Private Limited and M/s Selvarathnam Matches Private Limited, held by his family members, which possess 33.27% of shares in the 9th defendant company namely, M/s Standard Fireworks Private Limited.

4. In order to hold the 11.09% of shares in M/s Standard Fireworks Private Limited, the second defendant has manipulated the signature of the first plaintiff and had created records as if the 5th defendant-Mrs.Pallavi has been inducted as Director of the first defendant company namely, M/s Rajarathnam Matches Private Limited. The fifth defendant, in turn, has co-opted six persons as the Directors of the first defendant company. Expressing their apprehension that with manipulated records, If any Extraordinary General Body Meeting/Annual General Body is called in M/s Standard Fireworks Private Limited, either the representative of the 2nd defendant or the proxy, will be selected by Board of Directors.

5. Hence, the suit for declaration declaring the appointment/co-option of the defendants 2 to 8 as Directors of the first defendant company (M/s Rajarathnam Matches Private Limited) as illegal and void for violating the mandatory legal procedures and the procedures of the said company. To grant permanent injunction restraining them from any manner functioning as Directors of that Company and interfere with the functioning of the plaintiffs and further injunction restraining the 9th



defendant company (M/s Standard Fireworks Private Limited) from conducting any Extraordinary General Body Meeting/ Annual General Body Meeting.

6. The trial Court has taken the plaint on file assigned suit number as O.S.No.188/2016 and has summoned the defendants. On receipt of the suit summons, the revision petitioners herein/defendants 2,3,4,6 and 7 in the suit in O.S. No. 188/2016 have filed an application in I.A.No.1015 of 2016 under Order VII, Rule 11 of C.P.C. to reject the plaint on the ground that the Civil Court jurisdiction is ousted under Section 430 of Companies Act, 2013 (in short "the Act"). The averments and relief sought for in the suit are matters, where the National Company Law Tribunal has exclusive jurisdiction and empowered to determine. Hence, even as per Section 9 of Code of Civil Procedure, Civil Court has no jurisdiction. The trial Court not convinced with the said submission dismissed the application in I.A.No.1015 of 2016 for the following reasons:-

"(i) on a bare perusal of this provision, it is clear that Section 430 of the Act, does not completely bar the jurisdiction of Civil Courts in respect of the matter relating to Companies. (ii) 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. (iii) Apart from that the respondents/plaintiffs are not members of the Company and hence, they cannot approach the Tribunal in case of oppression and mis-management."

7. The said dismissal order of the trial Court in the interlocutory application is under challenge in this revision petition.

8. The learned counsel for the revision petitioners submitted that, the new Companies Act, 2013 has consolidated the laws governing the affairs of Companies in India,. It is a comprehensive legislation, taking note of the courts delay and has constituted National Company Law Tribunal and National Company Law Appellate Tribunal, which are the heirarchical forums for redressal. The Companies Act 2013 has created rights and liabilities and has provided Tribunal for determination of such right and liability. The constitutional validity of ouster of civil court jurisdiction and vesting the power with tribunal has already been tested before the Hon'ble Supreme Court and the Court has upheld the constitutional validity of the Act. The reading of the provision in hand, the remedy sought falls within the purview of the rights determined by the statute. What is sought to be protected is not a common law right. Therefore, the civil court is ousted of



its jurisdiction to entertain the plaint. However, the trial Court without proper appreciation of the law and fact, has dismissed the interlocutory applications, instead of allowing the same and rejecting the plaint.

9. Per contra, the learned Senior Counsel for the respondents submitted that, the Civil Court jurisdiction is plenary in nature. Unless the same is ousted expressly (or) by a statute (or) by necessary implication, the Civil Court has jurisdiction to try all types of cases. Further, Section 430 of the Act also does not oust the jurisdiction of the Civil Court completely. It is restricted to the matters for which, the Tribunal is empowered to determine. The right to approach the Tribunal under Section 241 of the Act is conferred to the members of the company and not to non-members. The plaintiffs in the suit being non-members, the doors of Tribunal are not open to them. The plain reading of Section 241 of the Act, clearly indicates, it is a right for the members of the company, who have any complaint regarding the affairs of the company to approach the Tribunal. For a non-member, the Civil Court jurisdiction is neither ousted expressly nor by necessary implications. A causus ommissus cannot be supplied by the Court to oust jurisdiction of the Court.

10. The relevant provisions of law and judgements relied by the respective counsel are taken into consideration and they are referred and cited at the appropriate places in the course of the discussion.

11. Primarily, before proceeding further, it will be appropriate to record the law and dictum, which governs the law of "ouster of civil court jurisdiction" in the light of Section 9 of the Civil Procedure Code. The bedrock judgment, on this point is, judgment of the Hon'ble Supreme Court rendered in Dhulabai vs. State of M.P reported in AIR 1969 SC 78, wherein the Hon'ble Supreme Court laid down the following principles:

"(1) Whether the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particulars Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy of the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court.



Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. "

12. Applying the above principles, several judgments have been rendered by the courts in India. Some of the judgments cited by the learned counsel for the respondents are as follows:

(i) 2005 (10) SCC 51 (Swamy Atmananda and others -vs- Sri Ramakrishna Tapovanam and others)

(ii) 2009 (8) SCC 646 (Nahar Industrial Enterprises Ltd -vs- Hong Kong and Shanghai Banking Corporation)

(iii) 2017(1) SCC 622 (Robust Hotels Private Limited and others -vs- Eih Limited and others)

13. One point, which is made clear, in all the above judgments is that, whether it is Section 53 A of the Tamil Nadu Recognised Private Schools (Regulation Act) 1973 or Section 34 of the SARFASI Act, or any other legislation for that matter, whenever a provision ousting, the Civil Court jurisdiction (partially or totally) is incorporated in a Statute, whether such ouster is complete, either expressly or by necessary implication can be decided on applying the maxim '*Ubi jus ibi remedium*' (there is no wrong without a remedy).

14. At this juncture, it is also appropriate to cite the following observation made by the Hon'ble Supreme Court in *Raja Ram Kumar Bhargava (dead) by LRs., v. Union of India* reported in AIR 1988 SCC 752:

"The question turns on the scope of the exclusionary clause in the statute. The effect of clauses excluding the civil courts; jurisdiction are considered in several pronouncements of the Judicial Committee and of this Court (See *Secy. of State v. Mask & Co.* :AIR 1949 PC 105; *K.S.Venkataraman & Co., v. State of Madras*, (1966) 2 SCR 229: (AIR 1966 SC 1089); *Dhulabhai v. State of Madhya Pradesh*, (1968) 3



SCR 662: (AIR 1969 SC 78). *The premier Automobiles Ltd. v. Kamlakar Shantaram*, AIR 1975 SC 2238. Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts' jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts' jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the civil courts' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai's case."

15. Therefore, the point for determination is, whether the relief sought is based on the common law right (or) right conferred under any Statute? and whether the said Statute oust the jurisdiction of the Civil Court for redressal of that right by providing alternate redressal mechanism?

16. The relief sought and cause of action as pleaded are related to the indoor management of a Private Limited Company. The plaintiffs, at one breath, say that they are non-members. If so, they cannot have any locus standi to question the internal affairs of the company. As an individual, if they have any grievance under common law, their right to seek remedy before civil court is not taken away. But, neither the pleadings nor the cause of action disclose any infringement of civil right vested on them as individual. The allegations are all related to the company's management alleging oppression and coup to take-over the management of the company and violation of procedures in convening Extraordinary General Body Meeting (EGM). All these allegations can have relevancy to the plaintiffs only in their status as Directors of the first defendant's company and not as individual.

<https://hcservices.ecourts.gov.in/hcservices/>

17. If we read the provisions of the Companies Act 2013, Section 2 (34) defines Directors as under:



"Section 2(34)- Director means a Director appointed to the Board of a Company."

18. Any right whatsoever claimed to be vested with the plaintiffs is only as a Director of the first defendant company. Therefore, the right is a statutory right and not a common law right. Section 430 of the Companies Act, 2013, which ousts the civil court jurisdiction reads as under:-

"Section 430- Civil Court not to have jurisdiction- No Civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force by the Tribunal or the Appellate Tribunal".

19. The word employed in Section 430 of the Act is matter, which Tribunal or Appellate Tribunal is empowered to determine by or under this Act. Thus, it is "matter" in dispute to be taken into consideration and not the "men" in dispute. Therefore, to decide whether the ouster clause applies or not, one has to unmask the plaintiffs and find out the matter in dispute. Obviously, the matter in dispute is regarding affairs of the company alleged to be conducted prejudicial to the interest of the company, there is a matter which the Tribunal is empowered to determine. The subject matter squarely falls within the ambit of Section 242 and 242(2)(c)(h) of the Companies Act, 2013.

20. Section 242 -Power of Tribunal reads as under:

(1) If, on any application made under Section 241, the Tribunal is of the opinion-

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company, and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.



(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for-

(a) the regulation of conduct of affairs of the company in future.

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d)

(e)

(f)

(g)

(h) removal of the managing director, manager or any of the directors of the company"

21. Thus, in the case in hand, National Company Law Tribunal alone is empowered to consider complaints of oppression or conduct of the Company found to be prejudicial to the interest of the company or to public and redress the same.

22. It is contended by the learned Senior Counsel appearing for the respondents that under Section 242 of the Act only application made under Section 241 of the Act can be entertained and determined by the Tribunal. Whereas, only member of a company can give complaint under Section 241 of the Act. So, the combined reading of Sections 241, 242 and 430 of the Act, will clearly indicate for non-members, Civil Court is the Forum available to redress the grievance and not the Tribunal. The said submission is not appealing to this Court, in the light of the facts and law referred below.

23. Section 241 of the Companies Act, 2013 reads as under:

241-Application to Tribunal for relief in cases of oppression, etc.- (1) Any member of a company, who complains that-

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other



manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members may apply to the Tribunal, provided such member has a right to apply under Section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the tribunal for an order under this Chapter.

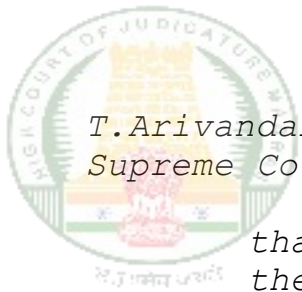
24. The right to approach tribunal is given to the members, because none-else can have any cause of action or complaint against the indoor-management of the company. Whether the Company calls for Extraordinary General Body Meeting (EGM) is legal (or) whether or not its Directors are elected following the mandate of the procedure contemplated in the statute or the bye laws of the respective company are all matters of concern only to members of the Company and not for outsiders/non-members.

25. In the light of the facts and circumstances of this case, this Court is of the opinion that the word "member" employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law, as it is found in this case. Hence, it is essential to apply the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful. The golden Rule of statutory construction is that the words and phrases or sentences should be interpreted according to the intent of the legislature that passed the Act. Section 241 and 242 should be read together. If the words of the statutes raises doubt, it is inevitable to call in aid the ground and cause of making the statute and the mischiefs, which the Act intends to redress. Under the new Companies Act, 2013, the intention of the legislature is to vest the power of adjudication the matters referred in Section 242 to the Tribunal.

26. On applying the Doctrine of Reading Down, an internal aid to construe the word in a statute to give reasonable meaning, so as to give the supposed purpose the word "member" referred in Section 241 of the Act, should not be read in isolation or in strict meaning. The word should be read down along with Section 242 of the Act. Therefore, the phrase 'member of the company' in Section 241 mean and include person not only member of the company in strict sense but, also person who "bears the character of a member" or "have substantial interest in the internal affairs of the company".

<https://hcservices.ecourts.gov.in/hcservices/>

27. In the given context, the following two judgments of the Hon'ble Supreme Court are very relevant to refer (i)



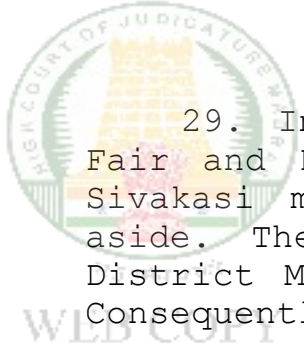
T.Arivandandam v. V.Satyapal and another reported in AIR 1977 Supreme Court 2421, wherein, para 5 reads as follows:

"5.The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R.11, C.P.C taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage".

(ii) In *V.M.Rao and others v. Rajeswari Ramakrishnan and others* reported in 1987 *Company Cases Vol.61*, page N.20, Division of our High Court was confronted with a case, which is almost similar to the case in hand wherein a winding up petition was filed for oppression and mis-management of company, which was closely held by family members. In the said case, after considering various judgments arising out of English Law and Indian Law, our Court has capsulized the position of law in the following words:-

"(1)that the oppression complained of must affect a person in his capacity or character as a member of the company; harsh or unfair treatment in any other capacity, e.g., as a director or a creditor is outside the purview of the section; (2)there must be continuous acts constituting oppression up to the date of the petition; (3) the events have to be considered not in isolation but as a part of a continuous story."

28. If the plaintiffs claim status as non-member, the disclosed cause of action in the plaint is illusion and irrelevant for third parties, since they have no locus standi to interfere with the affairs of the indoor-management of a Private Limited Company. If they claim status as Directors of the Company, they carry all trappings/characters of a member of the Company. So, to protect the interest of the Company, the remedy for them is under Section 242 of the Companies Act, 2013. Either way the Civil Court has no jurisdiction to entertain the subject matter of the suit. In the light of Section 430 of the Companies Act, 2013 and the redressal forums being adequately provided under the Act, the plaint is not maintainable.



29. In the result, *the Civil Revision Petition is allowed.* Fair and Decretal Order passed by the learned District Munsif, Sivakasi made in I.A.No.1015 of 2016, dated 19.12.2016 is set aside. The Plaint in O.S.No.188 of 2016 on the file of the District Munsif, Sivakasi, is rejected. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

/True Copy/

Sd/-
Assistant Registrar(T&P)

Sub-Assistant Registrar

To

The District Munsif Court,
Sivakasi.

+One cc to Mr.B.Saravanan, Advocate, SR.No.66456

ari
RL/3C/11P/MR/KKR/SAR1/31/7/2017

order made in

C.R.P. (PD) (MD) No.870 of 2017

19.07.2017