



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.02.2017

Delivered on : 24.03.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

C.R.P. (MD) No. 2593 of 2016 (PD) &

C.M.P. (MD) Nos. 12246 of 2016 & 1349 & 1350 of 2017

and

C.R.P. (MD) No. 2594 of 2016 (PD) &

C.M.P. (MD) Nos. 12247 of 2016 & 1351 of 2017

Yennarkay R. Rajarathinam

S/o. Late. Yennarkay Ravindran

.. Revision Petitioner
in both the C.R.Ps.

Vs.

1. M/s. Selvarathnam Matches Private Limited,

Having its Registered Office at

48/3C, Chairman A.R. Arunachalam Road,

Sivakasi - 626 123,

Virudhunagar District,

Rep. by its Director,

Mr. Yennarkay R. Chiranjeevirathnam.

2. Yennarkay R. Chiranjeevirathnam

S/o. Late. Yennarkay Ravindran

3. M/s. Standard Fire Works Private Limited,

Having its Registered Office at

1/3, Thiruthangal Road,

Sivakasi - 626 123,

Tamil Nadu.

4. P. Jaisankar

5. S. Maheswaran

6. A. Tenzing

7. C. Vijaysingh

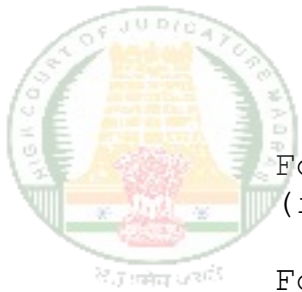
8. Dilip Dhanasingh

9. C. Rajendrasingh

.. Respondents in both the C.R.Ps.

Prayer in C.R.P. (MD) No. 2593 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the entire records relating to proceedings in Company Petition filed in C.P. No. 14 of 2016 on the file of the National Company Law Tribunal, Chennai Bench, Chennai and strike off the same.

Prayer in C.R.P. (MD) No. 2594 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, made in T.C.P. No. of 2016 in C.P. No. 14 of 2016, on the file of the National Company Law Tribunal, Chennai Bench, Chennai.



For Petitioner : Mr.VR.Shanmuganathan
(in both the C.R.Ps.)

For R1 and R2 : Mr.M.Ravindran
(in both the C.R.Ps.) Senior Counsel
for Mr.H.Arumugam

For R3, R4 & R6 : Mr.P.Thiagarajan
(in both the C.R.Ps.)

For R5 & R8 : Mr.D.Pandiarajan
(in both the C.R.Ps.)

For R7 & R9 : Mr.G.Prabhu Rajadurai
(in both the C.R.Ps.) for Mr.S.Satheeshkumar

COMMON ORDER

C.R.P.(MD)No.2593 of 2016 has been filed to call for the entire records relating to proceedings in Company Petition filed in C.P.No.14 of 2016 on the file of the National Company Law Tribunal, Chennai Bench, Chennai and strike off the same.

2.C.R.P.(MD)No.2594 of 2016 has been filed against the order, dated 16.12.2016, made in T.C.P.No.... of 2016 in C.P.No.14 of 2016 on the file of the National Company Law Tribunal, Chennai Bench, Chennai.

3.Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

4.The petitioner in both the Civil Revision Petitions is the second respondent in C.P.No.14 of 2016 on the file of the National Company Law Tribunal, Chennai Bench, Chennai. The respondents 1 and 2 filed the above Company Petition and T.C.P.No. ... of 2016 for interim orders. According to the respondents 1 and 2, the third respondent Company [hereinafter referred to as 'the Company'] was started by Yennarkay R.Rajarathnam, as a Partnership Firm, in the year 1939. He died in the year 1956. Subsequently, the Firm was made a Private Limited Company. The Company was owned by following three families with the shares mentioned therein.

- | | | |
|----------------------------------|---|------------|
| (i) Yennarkay R.Ravindran Family | - | 34% shares |
| (ii) Pioneer Group of Companies | - | 33% shares |
| (iii) Bell Group of Companies | - | 33% shares |

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5.The first family Yennarkay R.Ravindran started three Private Limited Match Industries in the name of his three sons, namely,

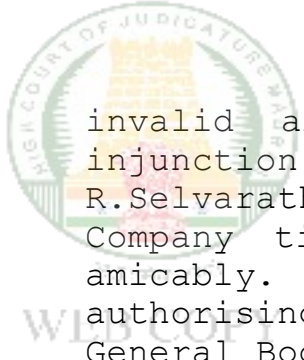


Yennarkay R.Rajaratnam, Yennarkay R.Chiranjeevirathnam and Yennarkay R.Selvarathnam, viz., M/s.Rajaratnam Matches (P) Ltd., M/s.Chiranjeevi Rathnam Matches (P) Ltd. and M/s.Selvarathnam Matches (P) Ltd. Each Company holds 11.09% of shares in M/s.Standard Fireworks Private Limited.

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6.According to the respondents 1 and 2, the Company flourished during 1970 and 1990 and subsequently, the business of the Company is reduced to various factors. A C.E.O. was appointed to improve the business. In spite of the same, there was no improvement in the Company. At that stage, Yennarkay R.Selvarathnam, Director of the first respondent Company wrote a Letter, dated 01.07.2016 with regard to the business of the Company to the C.E.O. A meeting was held between the C.E.O. of the Company and Yennarkay R.Selvarathnam and particulars of meeting was reduced into writing. It was circulated to all the Directors. The petitioner and other respondents are not taking any interest in the affairs of the Company. Only the petitioner and the fifth respondent herein were making all the decisions and other Directors simply agreed for the same. The shareholders of the Company are family members and all the shareholders have shares in the running of business. The petitioner and the fifth respondent rejected the suggestion made by Yennarkay R.Selvarathnam. The intention of the petitioner and the respondents 4 and 5 are to retain the control over the Company and to run the same as their own Company. In the circumstances, the first respondent issued a Letter dated 19.08.2016 for convening Extraordinary General Body Meeting of the Company for removal of the petitioner and the fifth respondent herein from the Company and to appoint R.Selvarathnam as Director of the Company.

7.The petitioner instead of convening Extraordinary General Body Meeting, as requested by the first respondent, instigated his henchmen to file O.S.No.188 of 2016 before the District Munsif Court, Sivakasi and sought for an order of injunction restraining the Directors appointed in the Annual General Body Meeting of the first respondent, held on 30.09.2016, as illegal and null and void. They also sought for permanent injunction restraining the third respondent Company from conducting the Extraordinary General Body Meeting / Annual General Body Meeting based on the request made by Yennarkay R.Selvarathnam, dated 27.09.2016. An order of injunction was granted. The petitioner did not convene any Extraordinary General Body Meeting, but stated by the Letter, dated 19.09.2016 that the first respondent was not authorised to convene the Extraordinary General Body Meeting. The first respondent issued a notice, dated 08.10.2016 to convene Extraordinary General Body Meeting of the Company. The third respondent Company herein filed O.S.No.199 of 2016 before the District Munsif Court, Sivakasi, to declare the notice, dated 08.10.2016, issued by the respondents 1 and 2, calling for an Extraordinary General Body Meeting on 09.11.2016, is illegal,

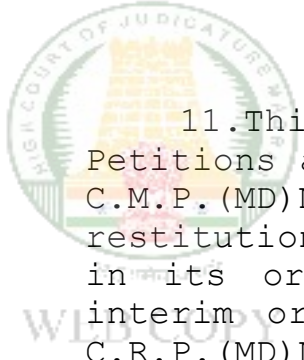


invalid and not binding on the Company and for permanent injunction restraining the first respondent and Yennarkay R.Selvarathnam from conducting any General Body Meeting of the Company till the dispute of the first respondent is settled amicably. The respondents 1 and 2 furnished details of resolution authorising the first respondent to call for the Extraordinary General Body Meeting of the Company.

8. According to the respondents 1 and 2, the petitioner and the respondents 4 and 5 and other Directors are present shareholders and are preventing the shareholders from exercising their rights to vote and to appoint Directors of the Company. The respondents 1 and 2 stated that the petitioner and others have initiated various litigations to prevent the respondents 1 and 2 and other shareholders from expressing their views and exercising their rights in appointment of Directors, who retired by rotation. Therefore, the respondents 1 and 2 filed C.P.No.14 of 2016 for various reliefs. They have prayed for among other reliefs, to declare the acts of the petitioner and the respondents 4 to 9 are oppressive and prejudicial to the interest of the Company. They also prayed for number of interim reliefs. The fourth relief is for injunction restraining the respondents therein from altering the issued and paid up share capital of the Company.

9. According to the respondents 1 and 2, they have 11.09% of shares in the Company, i.e., more than 10% required for filing Company Petition for the relief sought for. The matter was taken by the National Company Law Tribunal, Chennai Bench, Chennai, on 16.12.2016. At that time, the learned counsel for the respondents 1 and 2, the learned counsel for the respondents 3, 4 and 6, the learned counsel for the petitioner and the learned counsel for the fifth respondent were present. The learned counsel for the third respondent filed interim counter. The Tribunal held that the first respondent is having 11.1% of the shares in the third respondent Company and admitted the petition stating that the respondents 1 and 2 have made out a prima facie case. The Tribunal directed the Registry to issue notice to the respondents 7 to 9. The Tribunal heard the submissions made by the learned counsel for the parties and held that whether the Directors would be acting in good faith in taking decision to issue right shares has to be considered by the Tribunal and if decision is taken to issue right share, the same shall not be implemented without the leave of the Tribunal and adjourned the matter to 23.01.2017.

10. The petitioner filed C.R.P.(MD)No.2593 of 2016 to strike off C.P.No.14 of 2016, pending on the file of the National Company Law Tribunal, Chennai Bench, Chennai. The petitioner also filed C.R.P.(MD)No.2594 of 2016 to set aside the interim order, dated 16.12.2016.



11. This Court ordered notice in both the Civil Revision Petitions and granted interim stay. The respondents 1 and 2 filed C.M.P.(MD)No.1349 of 2017 in C.R.P.(MD)No.2593 of 2016, for restitution of rights and place the position of the shareholders in its original state, which was modified in pursuant to the interim order of stay granted in C.M.P.(MD)No.12246 of 2016 in C.R.P.(MD)No.2593 of 2016, dated 21.12.2016; C.M.P.(MD)No.1350 of 2017 in C.R.P.(MD)No.2593 of 2016, to vacate the stay granted in C.M.P.(MD)No.12246 of 2016 in C.R.P.(MD)No.2593 of 2016, dated 21.12.2016; and C.M.P.(MD)No.1351 of 2017 in C.R.P.(MD)No.2594 of 2016 to vacate the stay granted in C.M.P.(MD)No.12247 of 2016 in C.R.P.(MD)No.2594 of 2016, dated 21.12.2016.

C.R.P.(MD)No.2593 of 2016:-

12. The learned counsel for the petitioner contended that the respondents 1 and 2 have suppressed the material fact and filed C.P.No.14 of 2016. The second respondent is having only 0.01% share in the third respondent Company. The first respondent did not authorise the second respondent to file Company Petition. The resolution alleged to have been passed by Circulation was not circulated to all the Directors, especially, to Mrs. Padma and Rajiv Mukilan. The respondents 1 and 2 have not followed Clause 6.2 of the Secretarial Standard on Meetings of the Board of Directors. There was no meeting on 09.12.2016. Therefore, the Company Petition is not maintainable, as the second respondent is not possessing 1/10th share of the third respondent Company to file the Company Petition. The respondents 1 and 2 claimed that the Annual General Body Meeting of the third respondent Company does not disclose the reason for increasing the authorised capital. The Agenda for Annual General Body Meeting includes Annexure, clearly shows the reason for increase of authorised capital for the benefit of the third respondent. The interim relief sought for and granted by the National Company Law Tribunal, Chennai Bench, Chennai, is beyond the scope of main prayer in the Company Petition and the Hon'ble Apex Court held that no relief should be granted in interlocutory proceedings beyond the scope of the suit. The Directors have absolute power to issue right share, provided, they are acting in good faith and the Courts cannot interfere in the internal affairs of the Company.

13. The learned counsel for the petitioner relied on the following judgments:

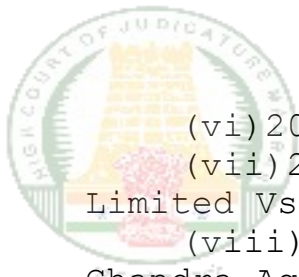
(i) 1997 (3) SCC 261 [L. Chandra Kumar Vs. Union of India and others]

(ii) 2004 (6) SCC 254 [Kusum Ingots & Alloys Ltd. Vs. Union of India and another]

(iii) 2008 (3) SCC 363 [V. S. Krishnan and others Vs. West-Fort Hi-Tech Hospital Ltd. and others]

(iv) 2007 (6) MLJ 755 [Sanjos Jewellers Vs. Syndicate Bank]

(v) 2012 (4) CTC 113 [B. Stalin Vs. The Registrar, Supreme Court of India and others]



- (vi) 2008 (7) MLJ 1012 [E.Mary Oliviya Vs. E.Jsohua Milton]
(vii) 2010 (4) CTC 690 [Southern and Rajamani Transport Private Limited Vs. R.Srinivasan and others]
(viii) AIR 2003 SC 2696 [Dwarka Prasad Agarwal Vs. Ramesh Chandra Agarwala and others]
(ix) AIR 2006 Mad 83 : 2005 (5) CTC 721 : 2006 (1) LW 56 : 2006 (1) MLJ 54 [Bhanu Construction Co. Pvt. Ltd. and others Vs. Andhra Bank and State Bank of India]
(x) 2014 (2) MLJ 316 [Vijayalakshmi Shanmugam and another Vs. Secretary to Government of India, Ministry of Environment and Forests, New Delhi and others]

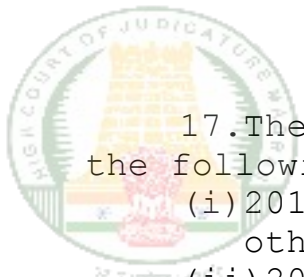
14. Per contra, the learned Senior Counsel appearing for the respondents 1 and 2 contended that this Court has no territorial jurisdiction to entertain the Civil Revision Petition. The Company Petition is pending before the National Company Law Tribunal, Chennai Bench, Chennai and interim order was passed only by the said Tribunal and therefore, if at all, the petitioner has any right they can agitate the same only before the Principal Bench of this Court. The issue is whether the first respondent passed a valid resolution, dated 09.12.2016, for initiating and authorising the second respondent to file the Company Petition or not. The said question of fact cannot be decided in summary proceedings under Article 227 of the Constitution of India. The respondents 1 and 2 have made out a prima facie case with regard to maintainability of Company Petition and only being satisfied with the prima facie case, with regard to maintainability, the Tribunal had admitted the Company Petition. The Tribunal has passed interim order on 16.12.2016 after holding that whether the Directors are bona fide in deciding to issue right shares or not, can be decided only after detailed submission by parties. The Tribunal did not pass any interim order restraining the petitioner and others from considering the resolution, but has stated that any decision taken in this regard, shall not be implemented without the leave of the Tribunal. Therefore, the Civil Revision Petitions are not maintainable and are devoid of merits.

15. In view of the interim stay granted by this Court, the third respondent passed Resolution to issue right shares to the existing shareholders trying to implement the said resolution. In the said circumstances, the learned Senior Counsel for the respondents 1 and 2 prayed for dismissal of both the Civil Revision Petitions.

16. In support of his submissions, the learned Senior Counsel relied on the following judgments.

- (i) 2016 (1) SCC 411 [Citibank N.A. Vs. Hiten P. Dalal and others]

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17.The learned counsel for the respondents 7 and 9 relied on the following judgments:

(i) 2012 (2) LW 193 [K.Ponnamal and others Vs. V.Thayanban and others]

(ii) 2012 (3) ChLT 381 : 2012 (O) Supreme (Mad) 2857

[A.Gurunathan Vs. K.Natarajan]

(iii) 2014 (O) Supreme (Mad) 2505 [Virudhunagar Hindu Nadargal Abiviruthi Panchukadai Mahamai, Rep. by its Secretary and others Vs. V.M.A.R.T. Ramesh and others]

18.Both the learned counsel for the petitioner and the learned Senior Counsel appearing for the respondents 1 and 2 argued elaborately and relied on various judgments.

19.I have heard the learned counsel appearing for the parties and perused the materials available on record.

20.The learned Senior Counsel appearing for the respondents 1 and 2 argued that the Civil Revision Petitions can be maintained only in the Principal Bench of this Court and the Madurai Bench has no territorial jurisdiction. The said contention is not tenable. On the other hand, the contention of the learned counsel for the petitioner that when cause of action has arisen in Sivakasi, where the Company is situated and the business is being carried on, this Court has jurisdiction to entertain the Civil Revision Petitions, even though the National Company Law Tribunal, Chennai Bench, Chennai, has passed interim order. The learned counsel for the petitioner relied on the judgment of the Division Bench of this Court reported in 2008 (7) MLJ 102 [cited supra]. In the said judgment, the Division Bench of this Court has held that a petition can be filed before either Bench depending upon the cause of action and convenience of parties. In the present case, the petitioner and the respondents are residing and carrying on business within the territorial jurisdiction of this Court and therefore, the Civil Revision Petitions are maintainable before this Court.

21.As far as C.R.P.(MD)No.2593 of 2016 is concerned, the petitioner is praying to strike off the Company Petition by exercising the power under Article 227 of the Constitution of India. The learned counsel for the petitioner submitted that the Company Petition filed by the respondents 1 and 2 is abuse of process of law and it is not maintainable, as the second respondent does not possess share to maintain the Company Petition. In order to maintain the Company Petition, the second respondent stated that the first respondent has passed a resolution, dated 09.12.2016 to file Company Petition. According to the respondents 1 and 2, the said resolution was passed by circulation. The fact remains that the respondents did not follow the procedure for passing resolution by circulation in the Board meeting held on 09.12.2016. Further, the respondents 1 and 2 are



seeking interim order without there being any main relief for the said relief.

22.The learned counsel for the petitioner relied on number of judgments. I am not extracting the relevant portions of the judgments, as it is well settled under what circumstances, this Court can exercise power under Article 227 of the Constitution of India. The said power is discretionary power, which can be exercised only under the following circumstances.

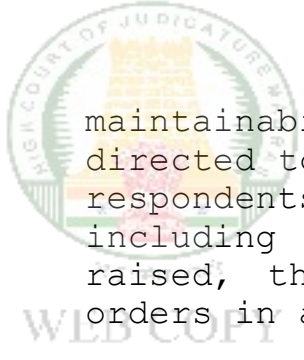
- (i)to prevent abuse of process of law;
- (ii)to prevent miscarriage of justice;
- (iii)to prevent grave injustice;
- (iv)to establish both administrative as well as judicial power of High Court; and
- (v)the issue can be decided only by averments in the plaint or petition as the case may be.

23.Subsequently, in the judgment reported in 2012 (2) LW 193 [cited supra], wherein it has been held that the Court can exercise jurisdiction under Article 227 of the Constitution of India in a summary manner. Therefore, the only averments made in the petition in the present case can be taken into account while deciding to strike out the petition or not. The various contentions and counter filed by the petitioner herein cannot be considered at this stage. It is not disputed that the first respondent has 11.09% of shares in the third respondent Company. The petitioner is disputing the Resolution, dated 09.12.2016. According to the petitioner, no such resolution was passed. In any event, it is an invalid resolution. Whether the first respondent has passed a valid resolution, dated 09.12.2016 or not is a question of fact, which cannot be decided in summary proceedings. In the circumstances, applying the principles laid down by the various judgments relied on by the learned counsel for the petitioner, I hold that this is not a fit case to exercise extraordinary jurisdiction under Article 227 of the Constitution of India to strike off the Company Petition.

24.As far as C.R.P.(MD)No.2594 of 2016 is concerned, the petitioner is challenging the interim order, dated 16.12.2016. In the said interim order, the Tribunal did not restrain the third respondent from considering the issue of right shares. The Tribunal has not held that the Directors have no power to decide the issue of right shares. On the other hand, the Tribunal has held that whether the intention of the third respondent to issue right share is bona fide one, can be decided only after hearing both the parties. The Tribunal has only restrained the third respondent from implementing the resolution without obtaining prior permission from the Tribunal.

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25.The learned counsel for the petitioner submitted that liberty may be given to the petitioner to raise issue of



maintainability as preliminary issue and the Tribunal may be directed to decide the same. It is open to the petitioner and the respondents to raise all their objections before the Tribunal including the issue of maintainability. If any such issue is raised, the Tribunal shall decide the same on merits and pass orders in accordance with law.

26. The learned Senior Counsel appearing for the respondents 1 and 2 submitted that after interim stay granted by this Court, the petitioner and the Company proceeded with issue of right shares and altered the position of shareholders. The learned Senior Counsel submitted that the parties must be restored the position before the interim stay granted by this Court. The learned counsel for the petitioner submitted that the respondents 1 and 2 participated in the right issue. The respondents 1 and 2 applied for right issue and issued a cheque which was dishonoured. Therefore, the parties are not entitled to be restored to the position before interim stay granted by this Court. In view of this rival contentions, it is open to the parties to raise this issue before the Tribunal and all the contentions raised by the parties shall be decided by the Tribunal on merits and in accordance with law. Till that time, status quo as on today to be maintained by the parties.

27. In the result, C.R.P.(MD)No.2593 of 2016 is dismissed. C.R.P.(MD)No.2594 of 2016 is disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The National Company Law Tribunal, Chennai Bench, Chennai.

+2CC to M/S.V.R.Shanmuganathan, Advocate, SR.No. 8511, 8512

+1CC to M/S.H.Arumugam, Advocate, SR.No.17693

Common order in

C.R.P. (MD)No.2593 of 2016 (PD) &
C.M.P. (MD)Nos.12246 of 2016 & 1349 & 1350 of 2017
and

C.R.P. (MD)No.2594 of 2016 (PD) &
C.M.P. (MD)Nos.12247 of 2016 & 1351 of 2017
24.03.2017