

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12696 OF 2017

Elegant Industries Pvt.Ltd.

... Petitioner

v/s

Natinal Stock Exchange of India Ltd.

And anr.

... Respondents

Mr Dileep B. Nevatia, Petitioner in person present.

Mr Birendra Saraf with Mr Nimay Dave, Mr Sachin Chandarana, Mr Vijayendra Purohit I/b M/s Manilal Kher Ambalal for Respondent No.1.

Mr A.R. Matkari, AGP for Respondent No.2.

.

CORAM : B.P. COLABAWALLA J.

DATE : 30TH NOVEMBER, 2018.

P.C. :-

1. This Writ Petition has been filed seeking to challenge the orders dated 4th March 2017 and 10th August 2017.

2. By the impugned order dated 4th March 2017, the City Civil Court, Mumbai was considering the application preferred by Dileep Nevatia, claiming himself the Director of the Defendant Company. He claimed that he has been authorized by the Board of

Directors to appear on behalf of the Defendant Company and to represent the Company. He preferred an application for seeking continuation of the alleged leave granted under section 32 of the Advocates' Act 1961 to appear, plead and represent the Defendant Company in the Suit before the Trial Court. The Trial Court heard Mr Nevatia at length and has passed a detailed order running into 25 pages. It would be appropriate to reproduce paragraph 31 of the impugned order which reads thus :-

31. Considering the facts of the present case and the observations in the recorded cases relied upon by both the sides and the arguments advanced at bar by them, I am summing up the following points which have been borne in mind while disposing of this application and the plea of the applicant Dileep Nevatia that,

i. the applicant has not produced on record any copy of resolution by the Board of Directors of the defendant company, whereby he has been authorized to represent the company and to plead as well as argue in its behalf in this suit.

ii. that, the applicant is not enrolled as an Advocate with Bar Council of Maharashtra and Goa or any other Bar Council in the country. At least he has not produced on record any document in support thereof nor has he claimed that he is so registered.

iii. that, the records relied upon by the Advocate for the plaintiff from the proceedings in Company Law Board, Mumbai bench and Court of Small Causes, Gr. Mumbai, it appears that applicant has made submission before the Court that he has no further authority to represent Elegant Industries Private Limited (the defendant in Suit No.6814 of 2003) and that he has

challenged his capacity as a Director of the said company and the meetings of the Board of Directors therein have been stayed by the Company Law Board.

iv. that, the applicant did not make any application under Section 32 of the Advocates Act, 1961 in either of the proceedings for seeking leave of the Court for allowing him to plead and argue for the defendant in this case and defend in other suit nor has been any application under Section 32 of the Act moved by the defendant company in this case or by plaintiff in Suit No.1790 of 20106 seeking leave to allow the application to plead and argue on their behalf.

v. The applicant has been convicted for contempt of Court by Hon. High Court of Bombay in Contempt Petition No. 37 of 2009 in Notice of Motion No.182 of 1997 in Suit No. 3598 of 1996 for having misled the Court and that he was punished also. The applicant has been seeking interlocutory proceeding and even for transfer of the proceedings or suit to the other court on the ground that there is reasonable apprehension on the part of the plaintiff (Elegant Industries Private Limited in Suit No. 2395 of 2011) that it may not get fair trial and justice from the learned Judge, presiding over C.R. No. 32. But that said transfer application stood dismissed for having failed to make out any case of such reasonable apprehension.

vi. that, even in the Suit No. 3598 of 1996 pending before the Hon. High Court of Bombay in its Ordinary Original Civil Jurisdiction while passing order dt. 7.4.2014, though it was observed by His Hon. Lordship that large part of the affidavit in lieu of examination-in-chief filed by him on 27.8.2010 in the said suit under O. XVIII and XIX of C.P.C., was ex-facie, augmentative and conjectural. Many portions of it were found in nature of inadmissible and hearsay evidence. So also some portion purported to be oral testimony of document already marked as exhibits, though His Hon. Lordship advised in the interest of the applicant that said affidavit be replaced with one in conformity with law, however, given the choice he elected to stay with his affidavit at his peril, since cross-examination would not be curtailed on that

count. Several paragraphs of the said affidavit in lieu of examination-in-chief of the applicant Dileep Nevatia filed in the said suit were allowed to be ignored by the adversaries without risk of adverse inference or other consequences and without cross-examining him on the facts mentioned therein.

vii. Further in Suit No. 3598 of 1996 when pending before the Hon. High Court of Bombay again orders were required to be passed on 30.10.2014 by His Hon. Lordship for clarifying the situation which had occurred due to the filing of affidavit in lieu of examination-in-chief by applicant Dileep Nevatia while being examined as a witness wherein considering the length and contentions of the affidavit, liberty was granted to the Advocate for the defendant No.5 as well as to the Advocate for plaintiffs by holding that it would not be necessary for them to take the witness (i.e. Dileep Nevatia as defendant No.1 therein) through every line of his evidence affidavit or pleadings and to suggest to him that each of these is incorrect.

viii. that, in the present case while applicant being examined and cross-examined as DW-1 in this suit, the applicant Dileep Nevatia did try to raise questions and doubts about the integrity on erstwhile learned Presiding Officer of this Court when he tried to regulate the recording of evidence, which has caused embarrassment.

ix. that, since no specific application had been ever moved by the applicant Dileep Nevatia at any point of time for seeking leave under Section 32 of the Advocates Act, 1961, no question of granting it had ever arisen. The power of Attorney which he is seeking to rely has been accepted for allowing him to appear in person and does not confer any right upon him to further proceed to argue and plead in the matter.”

3. Considering the facts and circumstances of the case, as sum up by the Trial Court and reproduced by me earlier, the Trial

Court in the impugned order came to the conclusion that the Defendant Company, having not applied for leave under section 32 of the Advocate's Act 1961, to allow Mr Dileep Nevatia to plead and argue on behalf of the Defendant company, the said Mr Nevatia could not now claim that the same was granted and therefore further pray to continue the same. In other words, the finding of the Trial Court was that leave was never granted under section 32 and therefore, the question of continuing the same did not arise. The Trial Court further held that the Defendant Company being a Company incorporated under the Companies Act 1956 would be required to be represented by some Advocate and/or Legal officer and not by a party / another person. Mr Nevatia (Applicant) may, at the most, examine himself as a witness on behalf of the Defendant Company. Looking to all the facts and circumstances of the case, the Trial Court thereafter held that it appears that allowing Mr Nevatia to represent the Defendant Company and that too without any resolution being passed in his favour authorizing him to do so would cause embarrassment and delay the proceedings. It was in these circumstances that the Trial Court rejected the application.

4. I have heard Mr Nevatia, Petitioner in person at some

length. I have also perused the orders, record and proceedings in this Petition. I have gone through the orders and all aspects of the matter. The Trial Court has exercised its discretion and did not grant leave under section 32 of the Advocates' Act 1961 to Mr Nevatia to appear on behalf of the Defendant Company. It was in these circumstances that the application (Exh.8) was rejected by the Trial Court.

5. On going through the impugned order very carefully, I do not find that this order suffers from any perversity or is vitiated by any error apparent on the face of the record that would require my interference under Article 227 of the Constitution of India. The impugned orders are well reasoned and have been passed after appropriate application of mind.

6. In view of the foregoing discussion, Writ Petition is dismissed. Under normal circumstances, I would have granted very heavy costs but considering that Mr Nevatia is appearing in person I have declined to do so.

(B.P. COLABAWALLA J.)