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

COMPANY APPLICATION (LODGING) NO.3 OF 2019
IN
REVIEW PETITION (LODGING) NO.2 OF 2017
IN
CLB COMPANY APPEAL NO.74 OF 2015
IN
COMPANY PETITION NO.13 OF 2014

Neelesh Kanade ...Applicant

IN THE MATTER BETWEEN :

Neelesh Kanade ...Petitioner

V/s.

Edifice Properties Pvt. Ltd. & Ors. ...Respondents

Mr.P.G. Chavan with Mr.Rajesh Jadhav for the Applicant / Petitioner.

Mr.Sharan Jagtiani with Ms.Jennifer Michael I/b Mr.Raman Misra for
the Respondent Nos.1, 3, 4 and 5 and 13.

CORAM : R.D. DHANUKA, J.
DATE : 8TH MARCH, 2019.

P.C. :-

1. By this company application, the applicant (original review petitioner) in Review Petition (Lodging) No.2 of 2017 and the original petitioner in Company Petition No.13 of 2014 seeks an amendment to the Review Petition (Lodging) No.2 of 2017.

2. Learned counsel appearing for the applicant invited my

attention to the averments made in the affidavit in support of the company application and also the schedule appended thereto and would submit that the applicant seeks to produce certain additional grounds on record and to add certain documents which would be relevant for the purpose of deciding the review petition and thus this Court shall permit the applicant to carry out the amendment to the review petition.

3. Mr.Jagtiani, learned counsel appearing for the respondent nos.1, 3, 4, 5 and 13 on the other hand invited my attention to the affidavit in support of the company application and the schedule appended to the company application. He submits that none of the grounds set out in the schedule appended to the company application and proposed to be brought on record by amendment have been referred in the affidavit in support of the company application. He submits that the entire basis of the company application for seeking amendment is that the Disciplinary Committee of the Institute of Company Secretary of India had passed an interim as well as final order against the respondent no.12 in his capacity of as Company Secretary of the respondent no.1. He submits that prima-facie observations came to be made by the Disciplinary Committee of the Institute of Company Secretary of India against the respondent no.12 in the order dated 11th December, 2015.

4. It is submitted that when the Company Petition filed by the applicant under section 10-F of the Companies Act, 1956 was pending before this Court, the applicant right did not apply for leave to amend the grounds of the said company petition since the said *prima-facie* order passed by the Disciplinary Committee of the Institute of Company Secretary of India was not relevant. He also invited my attention to the final order passed by he Disciplinary Committee of the Institute of Company Secretary of India on 20th August, 2018 and would submit that the said order though not at all relevant for the purpose of deciding the review petition would also clearly indicate that the Disciplinary Committee of the Institute of Company Secretary of India had considered the alleged non-compliance on the part of the respondent no.12 as a Company Secretary of the respondent no.1 for the financial year ending 31st March, 2007. It is submitted that the issue which was the subject matter of the company petition before the Company Law Board filed by the applicant herein was for subsequent period and thus even though the said final order was passed on 28th August, 2018, it would not assist the case of the applicant for the purpose of seeking amendment to the review petition.

5. A perusal of the company application for seeking amendment to the review petition clearly indicates that the schedule

appended to the company application and the affidavit in support of the company application cannot be reconciled. The proceedings before the Disciplinary Committee of the Institute of Company Secretary of India, initiated on the complaint filed by the applicant against the respondent no.12 as a Company Secretary of the respondent no.1 at the first instance would be of no relevance at all to either decide the review petition filed by the applicant before this Court or even earlier proceedings filed under sections 237, 397, 398 and other relevant provisions of the Companies Act, 1956 or even to decide the company petition filed under section 10-F of the Companies Act, 1956 before this Court.

6. Be that as it may, a perusal of these orders which are annexed to the company application for seeking amendment would clearly indicate that *prima-facie* observations, if any, made by the Disciplinary Committee of the Institute of Company Secretary of India were made in the year 2015. The applicant never applied for any amendment to the grounds of the company petition filed before this Court which was admittedly pending on the date of such *prima-facie* observations made by the Disciplinary Committee of the Institute of Company Secretary of India. Insofar as the final order dated 20th August, 2018 passed by the Disciplinary Committee of the Institute of Company Secretary of India is concerned, the said order indicates

that the said order was passed *ex-parte* however, after considering the written submissions filed by the respondent. A perusal of the said order further indicates that the allegations made by the applicant who was the complainant before the Disciplinary Committee of the Institute of Company Secretary of India were for the period ending 31st March, 2007 relating to transfer of shares during the financial year, appointment of Additional Director during the financial year in the report and delay in filing of forms with the requisite authorities. In my view, none of these allegations forming part of the complaint against the respondent no.12 in the capacity of the Company Secretary of the respondent no.1 would be relevant for the purpose of deciding the petition filed under sections 397, 398 and various other provisions of the Companies Act, 1956 nor the company petition filed under section 10-F of the Companies Act, 1956 before this Court.

7. Be that as it may, the allegations which are the subject matter of the petition before the Company Law Board are of the subsequent year and thus the said order would not assist the case of the applicant. By the said *ex-parte* order, the Disciplinary Committee of the Institute of Company Secretary of India had imposed a fine of Rs.10,000/- against the respondent no.12. In my view, none of these orders sought to be relied upon and sought to be inserted by way of

amendment would assist the case of the applicant. The company application is thoroughly misconceived and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)