A.No.1829 of 2022
in C.S.No.368 of 2021

Reserved on	***12.08.2022***
Delivered on	***17 .10.2022***

KRISHNAN RAMASAMY, J.

This application has been filed seeking to grant leave to the applicant to amend the plaint filed in the suit as detailed in the Schedule of amendment and consequently permit the applicants to carry out the amendment in the respective places of the plaint and to pay the Court fee thereof.

2. According to the applicants, being legal heirs, they are entitled to succeed the company shares, that were holding by their father, namely Sivaji Ganesan, who passed away on 21.07.2001 and their mother who died on 02.11.2007. According to the applicants, their parents were holding nearly 700 shares in the sixth respondent company. After the demise of their parents, the petitioners are entitled to 2/5th share in the total 700 shares in the company. It was the further contention of the applicants that the parents died intestate without any Will or deed of settlement. The above suit has been filed

for partition of the suit properties and for permanent injunction.

3. The learned counsel appearing for the applicants would submit that without any Board Meeting on 23.01.2015, the respondents 1 and 2, who were the Directors of the Company entered into Joint Development Agreement on 02.03.2015 in favour of the second defendant to develop the suit schedule property and further on the same day, a Power of Attorney, dated 02.03.2015 was registered in the Office of the Sub-Registrar, Triplicane.

4. According to the learned counsel for the applicants, there was no Board Meeting held on 23.01.2015. In this regard, he referred to the Annual Returns for the year 2014 – 15 wherein, it has not been mentioned anything about the meeting said to have been held on 23.01.2015. Hence, he submits that without conducting a Board meeting, a document was forged and Power of Attorney as well as the Joint Development Agreement were executed on 02.03.2015. Further, on 30.03.2017 also a Power of Attorney was executed along with the supplementary agreement by the sixth respondent with the

seventh respondent. Even thereafter, one more supplementary agreement was also executed on 25.02.2021. All these acts were performed by the Directors without any authority of law.

5. The learned counsel appearing for the applicants further submitted that one of the Directors of the sixth respondent company, got disqualified in terms of Section 164 (2) of the Companies Act 2013 and he got vacated his office for five year term with effect from 01.11.2016 to 30.10.2001. Therefore, after 01.11.2016 there was no quarrel that no new Board Meeting was held since no new Director was appointed. Hence, the Supplemental agreement entered on 30.03.2017 as well as the Power of Attorney are null and void. Therefore, he would submit that all along the respondents 1 and 2 have acted as if they have authority and entered into joint development agreement with the second respondent, pursuant to the same, even the second respondent demolished the entire building and completed the reconstruction. However, as regards the allotment of the shares, there was a fraud committed by the respondents and caused huge loss to the company. That apart, the respondents 1 and 2 have also siphoned off the funds of the company.

6. The learned counsel would further submit that the sale of the property was in violation of the interest of the company as to return the refundable deposit and that the payments of Rs.12 Crores received as refundable advance, siphoned off to the related party, a defunct company in violation of the provisions of the Companies Act, 2013 despite the fact that the net worth of the first respondent company has eroded in full.

6A. The learned counsel further submitted that in terms of Clause – 35 of Memorandum of Association and Article 28 of Articles of Association of the first respondent company, the petitioners are entitled for distribution of assets of the company among the shareholders in the event of dissolution after settling the dues of the creditors. Therefore, being share holders, the applicants are entitled to raise the issue even before the dissolution of the company and question the illegal action of the respondents in regard to the mismanagement of the company, siphoning of the deposits and causing loss to the shareholders. The learned counsel pointed out that this is the appropriate Court to deal with the said matters since this Court is deciding about the inheritance of the applicants in respect of 700 shares held by their deceased parents. Hence this Court has every right to decide the present issue with regard to the oppression and mismanagement of the affairs of the 6th respondent company and about the siphoning of the amounts said to have been committed by the respondents 1 and 2.

7. The learned counsel appearing for the applicants would submit that certain facts, which came to the knowledge of the applicants only subsequent to the filing of the present Suit, by way of averments contained in the counter filed by the respondents in some of the applications. Immediately after the applicants having come to the knowledge with regard to certain facts relating to siphoning off the funds by the first and second respondents and the personal gains obtained by them due to joint development agreement and erosion of net worth of the company in a manner prejudicial to the interest of the applicants and there are possibilities for the company to become defunct in few years.

8. Therefore, he would submit that in the above stated circumstances, it is necessitated to file the present application for amendment of pleadings in

the plaint and also prayers thereof. He would further submit that under Order VI Rule 17 of CPC, the parties can be permitted to amend their pleadings for the purpose of determining the real issues involved in the suit and the proposed amendment sought for in the present application would not any way alter the basic structure of the suit and only with regard to the new prayer alone, certain facts are sought to be amended. Hence, he prayed this Court to permit the applicants to amend the plaint as regards the pleadings and prayers and to pay the Court fee thereof.

9. Per contra, the learned Senior Counsel appearing for the respondents would submit that the present amendment cannot be permitted for the simple reason that the pleadings and the additional prayer which are going to be incorporated by way of amendment are not maintainable and not relevant for deciding the suit claim between the parties and the alleged acts complained are relating to oppression of mismanagement of the company. There were set of acts have been complained of and all these cannot be adjudicated in the present suit as Section 430 of the Companies Act, 2013, expressly bars jurisdiction of Civil Courts in matters where the specialized Tribunal is

empowered to adjudicate these issues. Therefore, the learned Senior Counsel appearing for the respondents submitted that the present amendment application cannot be entertained due to the specific bar under Section 430 of the Companies Act. Hence, the learned counsel prays for dismissal of the application.

10. I have given my anxious consideration to the submissions made by the learned Counsel appearing for the applicants and also the learned Senior counsel appearing for the respondents and perused the materials available on record.

11. Upon perusal of the documents, it appears that the amendment is sought for by the applicants based on certain facts, which according to the applicants, they came to know only subsequent to the filing of the suit that too after filing of the counters by the respondents in some of the applications.

12. It is relevant to extract herein the alleged acts that have been complained of against the respondents 1 and 2 by the applicants, which prompted them to bring the same by virtue of the proposed amendments in

the present plaint, which read as under:

(i) that the power of Attorney dated 30.03.2017, registered on the file of the Sub Registrar, Triplicane executed by the 6th respondent in favour of 7th respondent in super-session of the Power Attorney dated 02.03.2015 and the Supplementary Agreement-II, dated 30.03.2017 entered into between the 6th and 7th respondents are neither legally valid nor enforceable as the same were signed and executed by the incompetent person. The first respondent, as a Director of 6th respondent has executed the said Power of Attorney dated 30.03.2017, when he ceased of to be the Director of all the Companies by virtue of operation of law;

(ii) that even after the development and completion of development of the properties of the 6th respondent, the net worth of the sixth defendant continued to be eroded and it is shown in the balance sheet filed for the financial years commencing from 2014-15 to 2019-20 that the net worth of the 6th defendant is Rs.5,33,62,631/-

(iii) Reduction of the profits subsequent to the entering into the joint development of agreement in the property carrying on the business by the respondents 1 and 2 in the capacity as Director which are prejudicial to the interest of the company. Erosion of the net worth of the company and fixing the liabilities than of its assets thereafter the company shows the negative net worth incorporating the loss of several years.

(iv) Entering the Joint Venture Agreement on behalf the 6th defendant by the first and second defendants solely for their personal benefit depriving the rights of the other members of the company. The first and second defendants alone were benefitted under the Joint Development Agreement by which, the rights of the other members of the 6th defendant have been prejudicially effected. By virtue of the Joint Development Agreement, 6th defendant is not going to be effected and the same would affect the rights of the shareholders in the 6th defendant.

(v) The property of the 6th defendant was sold in a clandestine manner which is prejudicial to the interest of the shareholders and the plaintiffs and 6th defendant would be put into serious hardship and there are possibilities for the company to become defunct in few years.

(vi) Entering the Joint Development Agreement is detrimental to the interest of the 6th defendant and its shareholders and received a sum of Rs.10 crores from the seventh defendant under the said Joint Development Agreement during the accounting year 2014-15 and on receipt of such amount, despite the fact that the net worth of the 6th defendant company got eroded fully, the first and second defendants, diverted a sum of Rs.9.88 crores to another company, namely, Sivaji Films Pvt.Limited, to which, the first and second defendants were the directors and it was struck off by the Registrar of Companies and in such view of the matter, an amendment was also sought in the prayer by adding a new prayer, to declare the Power of Attorney dated 30.03.2017 as null and void.

13. The series of above alleged acts are complained of by the applicants against the Directors of the Company which according to the applicants, the first and second respondents, in the capacity of Directors acted contrary to the interest of the applicants and other shareholders and also

contrary to the interest of the sixth respondent company. The alleged serious acts constitutes oppression and mismanagement of the affairs said to have been committed by the first and second respondents as against the applicants but not a single act, which cannot be adjudicated before the Civil Court. On the other hand, all these issues can be adjudicated before the NCLT which empowers to deal with these issues.

14. Having heard the learned counsel appearing for both parties and on going through the entire materials placed on record, this Court finds that the applicants have raised the issue of oppression of mismanagement of the 6th respondent company, alleging that the respondents, without getting the consent of the applicants, mismanaged the affairs of the company siphoned off the fund, diversion of the fund illegally and transferred the shares/properties of the company and not distributed the company shares to the applicants to which they are entitled to. In this regard, it is worthwhile to extract Section 430 of the Companies Act, which reads as under:

> *"**430. Civil Court not to have jurisdiction**. - No civil Court shall have jurisdiction to entertain any suit or proceeding 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 to any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

15. A simple reading of the above section is clear that no Civil Court has jurisdiction to entertain any suit or proceedings in matters the Tribunal or Appellate Tribunal is empowered to determine or under this Act.

16. The Hon'ble Supreme Court of India in ***"Shashi Prakash Khemka V. NEPC Micon & Others"*** reported in (2019) SCC Online 223, while determining the question as to whether an issue relating to transfer of shares should be adjudicated by Civil Courts or by the Company Law Board, held that the matters in which power has been conferred on the National Company Law Tribunal, the jurisdiction of the Civil Courts is completely barred. In the

said case, it was alleged that the dispute that was in question was the title of shares and therefore the Civil Courts should have the power to adjudicate the matter. The Hon'ble Supreme Court, while, setting aside the judgment given by this Court, observed that relegating the parties to the civil suit would not be an appropriate remedy since Section 430 of the Companies Act, 2013 is widely worded.

17. Further, the proposed amendments would primarily indicate the oppression and mismanagement of the affairs of the sixth respondent company alleged to have been indulged by the respondents 1 and 2. It is relevant to the extract Section 241 of the Act, hereunder:

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

(3) Where in the opinion of the Central Government there exist circumstances suggesting that -

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been

conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

(e)the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3) -

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 for the signature and verification of a plaint in a suit by the Central Government."

18. From a reading of the above provision, it is explicit that this provision of the Act, 2013 authorizes any member of the company to complain under the provision of oppression & mismanagement. Similarly section 242 of the Act, 2013 gives power to the "NCLT" to deal and opine that the company affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members and also on other aspects and further deals with the matter involving regulation of conduct of affairs of the Company. The sets of acts complained against 1st and 2nd respondent are pertaining to oppression and mismanagements of the affairs of the sixth respondent company which cannot be dealt with by the Civil Court but by the NCLT under section 241 and 242 of the Companies Act,2013.

19. Therefore, in view of the above factual background of the case involving the suit and the proposed amendments vis-a-vis prayers made

thereof which exclusively complained of regarding oppression and mismanagement of the affairs of the sixth respondent company and keeping in view the prohibition under section 430 of the Companies Act, 2013 this Court is not inclined to entertain the present application.

20. Accordingly, this petition stands dismissed. The applicants are at liberty to approach, agitate and get adjudicated by the NCLT concerned. No costs.

17.10.2022

suk/pns

<u>KRISHNAN RAMASAMY.J.,</u>

suk/pns

Pre delivery Order in
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