



C.M.A.No.288 of 2003

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

C.M.A.No.288 of 2003

&

C.M.P.No.16457 of 2005 & V.C.M.P.No.8 of 2008

Harikumar Rajah

.. Appellant

Vs.

1. The Sovereign Dairy Industries Limited
Having its Registered Office at
No.7, Noombal Village
Chennai 600 077.

2. U.K.Rajah
3. Surendra Manilal Mehta (Died)
4. Ashok R. Thakkar
5. Dr.G.Arjun Das
6. S.Badrinath
7. A.Shriprakash (Died)

8. A.S.Shipping Agencies Private Limited
No.55, Armenian Street
Chennai 600 001.



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9. Abhey Mehta

10. Rajrani Devi Shriprakash

11. Bul Bul Gupta

12. Thangavel Johnson

13. Sachin Kumar Agrwal

14. Trishla A Vaishnav

.. Respondents

[R10 & R11 brought on record as LR's of R7 vide order dated 14.06.2019 in CMP Nos.9713, 9715 & 9720/19]

[R9 and R14 brought on record as LR's of R3 vide order dated 14.06.2019 in CMP Nos.9707 & 12053/19]

[R12 and R13 impleaded vide order dated 14.06.2019 in CMP Nos.9707 & 12053/19]

Prayer : Appeal under Section 10F of the Indian Companies Act, 1956 against the order dated 01.01.2001 passed in C.P.No.81 of 1998 on the file of Company Law Board, Principal Bench, Chennai.

For Appellant : Mr.T.R.Rajagopalan
Senior Counsel
For Mr.V.Venkadasalam

For Respondents : Mr.AL. Somayaji
Senior Counsel
For Mr.V.Perumal for R1

Mr.R.Sankaranarayanan
Senior Counsel
For Mr.Pramodh Kumar for R8
For Ms.Harshini for R12



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Mr.C.Mohan
For Mr.S.Sandeep for R10 & R11

Mr.K.Kamaraju
For Mr.A.Govindaswamy for R13

No appearance – R2, R4 to R6, R9 &
R14

R3 & R7 - Died

JUDGMENT

(Judgment of the Court was delivered
by the Hon'ble Chief Justice)

This is an appeal filed under Section 10F of the Companies Act, 1956
(the Act) assailing an order passed by the Company Law Board on
01.01.2001.

2. The substantial questions of law proposed read as under:

Whether the order appealed against in C.P.No.81
of 1998 is barred by the principle of *res judicata* for the
following reasons, namely,

- (a) The genuineness of the allotment of shares in
1979 was not in fact in issue in C.P.No.49 of 1987;
and



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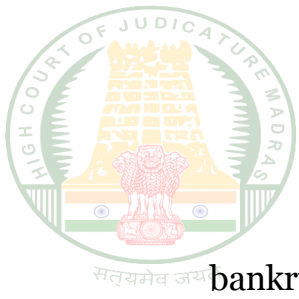


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(b) The genuineness of the 1979 allotment have been made a ground of attack in C.P.No.49 of 1987.”

3. Appellant held 34% of paid-up share capital of respondent-1 Sovereign Dairy Industries Ltd. and had filed a petition under Section 397/398 of the Act alleging various acts of oppression in the affairs of the company. Respondent No.2 is the brother of appellant and others were either shareholders or purchasers of properties of the company. The dispute primarily is between two siblings, appellant and respondent No.2.

4. The company was incorporated in July 1974 with the main object of carrying on all kinds of dairy business. Company ceased to carry on any business or commercial activities since 1979. The Company had neither filed balance sheets nor annual reports with the Registrar of Companies or had even called Annual General Meeting for several years. The company had allotted 30250 shares in favour of respondent No.3 and one Surendra Manilal Mehta and two others in the year 1979, by virtue of which, respondent No.3 became majority shareholder of the company with 39% of the share capital. It was stated that the company became unviable and



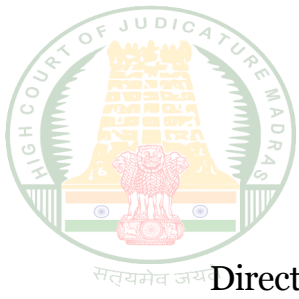
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bankrupt on account of the mismanagement by second respondent. It was also alleged that the plant and machinery were found missing. The company became indebted to Bank of Madura Limited. The rentals of the godown sheds of the company were misappropriated by second and third respondents, etc.

5. In an Extraordinary General Body Meeting held on 31.03.1986, second respondent sought authorisation to sell some 45 acres of land belonging to the company in order to repay the debt of Bank of Madura. Appellant obtained an order of stay in the civil Court. It was subsequently dismissed as not pressed.

6. At the Extraordinary General Meeting held on 27.03.1987, second respondent claimed to own 10000 shares and his wife 50000 shares. Appellant challenged these allotments in C.P.No.49 of 1987 before the High Court of Madras as acts of oppression and mismanagement under the provisions of Section 397/398 of the Act. The allotments were ultimately set aside by the High Court and second respondent was removed from the



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Directorship of the company for not holding qualifying shares as per the Articles of Association of the company.

7. The 10000 shares allotted to second respondent and 50000 shares allotted to the wife of second respondent were allegedly against repayment of loan given by those two individuals to the company. As there were no records maintained and these alleged loans were made in cash, the High Court was pleased to set aside those allotments. The Articles of Association provides for minimum qualifying shares of 100, but as second respondent had only 10 shares in his name, even when the Extraordinary General Meeting was convened by him, second respondent was removed from the Directorship.

8. The High Court by its order dated 28.08.1998 appointed an Advocate Receiver to conduct an Extraordinary General Meeting to elect a fresh Board of Directors and to hand over charge of the company to the new Board of Directors. The Advocate Receiver convened an Extraordinary General Meeting on 20.06.1998 and second respondent and his group were



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once again elected as Directors of the company.

9. The new Board of Directors thereafter convened another Extraordinary General Meeting on 25.11.1998 and a resolution was passed for raising the capital of the company in spite of protests by appellant. Appellant had also, in fact, received a letter of offer from the company offering 60000 shares out of 177345 shares on right basis for raising capital of the company. Appellant protested because according to him, there was absolutely no need to increase the share capital when the company is not doing any business. The stand taken by appellant was that allotment was meant to dilute appellant's shareholding from 34% to merely 8%. Since a resolution was passed in the Extraordinary General Meeting despite protest by appellant, appellant filed another petition before the Company Law Board under Sections 397/398 of the Act. The same came to be disposed vide the impugned order dated 01.01.2001.

10. According to Company Law Board, the main acts of oppression, mismanagement relate to non-filing of statutory returns, non-filing of the



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accounts of the company, misuse of the property and misappropriation of funds of the company, unlawful alienation of the properties of the company and allotment of shares in 1986 and several allotment of shares in 1988 and all these issues have been raised and considered by the High Court and appropriate orders passed. The Company Law Board felt that the same issues have been raised in the petition before it and hence, declared that it was not inclined to go into those acts of oppression and mismanagement alleged by appellant in the affairs of the company related prior to November, 1988.

11. The only issue that remains to be considered regarding November 1988 is the call of the company for the Extraordinary General Meeting that was held on 25.11.1988, at which meeting, in spite of opposition from appellant, the item relating to increase in the paid-up capital of the company was approved by the shareholders. The Company Law Board found that the main contention of appellant was that the company was not in need of funds and increase in the capital proposed was only with a view to reduce the percentage holding of appellant. The Company Law Board



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found that the new Board of Directors, in their wisdom, decided taking into consideration the financial needs of the company, whether to issue further shares, that too on a right basis. It rejected appellant's submissions that issue of shares on right basis would create a new majority because the right issues was also offered to appellant and if appellant had subscribed to the rights issue, certainly appellant's shareholding would have remained intact. We would go on to say that if some part of the rights were not subscribed by other shareholders, certainly, the unsubscribed parts also would be available to all other shareholders and at that stage, appellant also could have proportionately subscribed to the surplus (unsubscribed) shares offered. Therefore, we agree with the Company Law Board that it is not possible to say that increase in paid-up capital by issuing shares on right basis would create a new majority.

12. In the grounds of appeal raised, this has not been assailed. In the grounds of appeal and in the questions of law, what is assailed is a new point, i.e. genuineness of allotment of shares in 1979.



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13. Shri. Rajagopalan, in fairness, agreed that this is the first time in this appeal that the allotment of shares in 1979 is being assailed. With reference to 1979 allotment of shares in the petition before Company Law Board. Shri Rajagopalan clarified it relates to 1986 and mention of 1979 is not correct.

14. Admittedly, it was not raised in C.P.No.49 of 1987 that was filed in the High Court. The genuineness of allotment of shares in 1979, admittedly, was also not raised in the petition that was filed before the Company Law Board which came to be disposed by the impugned order.

15. We are afraid we cannot permit that. The scope of Section 10F of the Companies Act, reads as under:

“10F. APPEALS AGAINST THE ORDERS OF THE COMPANY LAW BOARD:

Any person aggrieved by any decision or order of the Company Law Board 2 [made before the commencement of the Companies (Second Amendment) Act, 2002] may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him **on any question of law arising out of such order.**” (emphasis supplied)



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16. It says any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court on any question of law “*arising out of such order*”. Section 10F of the Act engrafts the requirement of the existence of question of law arising from the decision of Company Law Board as an essential pre-condition for the maintainability of an appeal thereunder. A question of law as is comprehended in Section 10F would arise if a decision which is foundation thereof suffers from perversity following a patent error on the fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non germane determinants. A point that has not been raised before the Company Law Board and consequently, the Company Law Board not having given a decision or order on that point, the question of law arising out of such order would not satisfy essential pre-condition for maintainability of the appeal.

17. We find support from the judgment of the Apex Court in ***Purnima Manthena and another v. Renuka Datla & others [(2016) 1 SCC 237]*** where paragraphs 43, 49 and 50 read as under:



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“43. The expression “decision or order” and “any question of law arising out of such order” persuasively command for an inquest, to appropriately address the issue in hand. The right to appeal under Section 10F of the Act unambiguously being one conferred by a statute, the aspect of circumscription, if any, of the contours of the enquiry by the appellate forum, would be of formidable significance. The precedential guidelines available offer the direction.

...

49. The unequivocal legal propositions as judicially ordained, to ascertain the emergence and existence of a question of law, the scope of examination thereof by a court of appellate jurisdiction and the balancing of the competing factors in the grant of interlocutory remedy, hallowed by time, indeed are well settled. A question of law, as is comprehended in Section 10F of the Act, would arise indubitably, if a decision which is the foundation thereof, suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants. A decision however, on the issues raised, is a sine qua non for a question of law to exist. A decision logically per-supposes an adjudication on the facets of the controversy involved and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a question of law to be appealed from. However, an omission to record a finding even on a conscious scrutiny of the materials bearing on the issues involved in a given case, may be termed to be one. Be that as it may, in any view of the matter, the appellate forum though exercising a jurisdiction which otherwise may be co-ordinate with that of the lower forum, ought to confine its judicial audit within the layout of the adjudgment undertaken by the forum of lower tier. This is imperative, more particularly in the exercise of the appellate jurisdiction qua a decision on discretion rendered at an introductory stage of any proceeding, otherwise awaiting final adjudication on merits following a full contest. It is settled that no adjudication at the preliminary stage of a proceeding in a court of law ought to have the attributes of



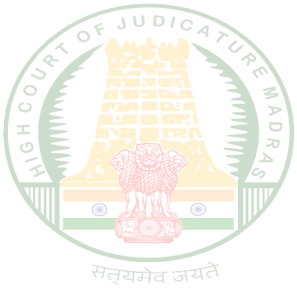
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a final verdict so as to prejudice the issues at that stage, thereby rendering the principal determination otiose or redundant. This is more so, if the pleadings of the parties are incomplete at the threshold stage and the lower forum concerned seeks only to ensure a working arrangement vis-a-vis the dissension and postpone fuller and consummate appreciation of the rival assertions and the recorded facts and the documents at a later stage.

50. Section 10F of the Act engrafts the requirement of the existence of a question of law arising from the decision of the CLB as an essential pre-condition for the maintainability of an appeal thereunder. While the language applied therein evinces that all orders, whether final or interlocutory, can be the subject-matter of appeal, if it occasions a question of law, in our comprehension, the Section per se defines the perimeters of inquisition by the appellate forum conditioned by the type of the order under scrutiny. The nature and purport of the order i.e., interlocutory or final, would thus logically present varying canvases to traverse and analyse. These too would define the limits of adjudication qua the appellate forum. Whereas in an appeal under Section 10F from an order granting or refusing interim relief, being essentially in the exercise of judicial discretion and based on equity is an appeal on principle and no interference is merited unless the same suffers from the vice of perversity and arbitrariness, such constrictions may not necessarily regulate and/or restrict the domain of examination in a regular appeal on facts and law. Section 10F, thus, statutorily demarcates the contours of the jurisdictional exercise by an appellate forum depending on the nature of the order impugned i.e. interlocutory or final and both cannot be equated, lest the pending proceeding before the lower forum, if the order impugned is purely of interlocutory nature, and does not decide any issue on a consideration of the rival assertions on merits, stands aborted and is rendered superfluous for all intents and purposes.”



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18. In the circumstances, appeal is dismissed. Since dispute is between two siblings, we are not inclined to impose any cost. Consequently, the interim applications also stand dismissed.

(K.R.SHRIRAM, CJ)

(MOHAMMED SHAFFIQ.J.)

21.02.2025

Index : Yes
Neutral Citation : Yes

kpl

To

The Company Law Board
Principal Bench
Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ.J.

(kpl)

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