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CRP No.3623 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

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

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

CRP No.3623 of 2009

Harikumar Rajah

: Petitioner

versus

1.ICICI Bank Ltd

Anna Nagar Branch,
A-78, Plot No.3211 D,
Third Avenue, Anna Nagar,
Chennai 600 102

2.M/s.Sovereign Dairy Industries Ltd.,

rep. By its Directors,
having office at No.7, ECL Home Town,
Numbal 600 077

: Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 23.05.2008 passed by the Chairperson, DRAT, Chennai, in MA No.131 of 2007.



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For Petitioner : Mr.T.R.Rajagopalan,
Senior Counsel
for Mr.V.Venkadasalam

For Respondent No.1 : Mr.AR.Karthik Lakshmanan
for Mr.L.Palanimuthu

For Respondent No.2 : Mr.R.Sankaranarayanan,
Senior Counsel,
for Mr.V.Perumal

ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

Petitioner is aggrieved by an order dated 23.05.2008 passed by the
Debt Recovery Appellate Tribunal, Chennai.

2. Petitioner had approached the Debts Recovery Tribunal, Chennai
for three reliefs, viz.,

(a) to implead petitioner as one of the
parties in the original application that was filed by
respondent No.1 against respondent No.2;

(b) to set aside the sale certificate dated
10.11.2003; and



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(c) to restrain one M/s.A.S.Shipping Agencies Pvt. Ltd from alienating or encumbering the property purchased until the applications were disposed of.

3. DRT, by an order dated 27 April 2007, dismissed the application. DRT held that petitioner cannot utilise the proceedings before DRT to adjudicate certain corporate and/or civil rights. DRT further held that the proceedings in the case before DRT have come to an end and claim has already been adjudicated. DRT held it has no jurisdiction and petitioner may approach the appropriate forum under the Companies Act.

4. Against this order, an appeal was filed before the DRAT which was dismissed by order dated 23 May 2008, impugned in this petition. DRAT also added that petitioner had no *locus*.

Assailing this order, the present petition is filed.

5. Petitioner is a shareholder of respondent No.2. Petitioner is



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aggrieved by the fact that respondent No.2 sold a land to A.S.Shipping Agencies Pvt. Ltd, at a throwaway price, which according to petitioner was very valuable. According to petitioner, land ad-measuring, approximately, 20.36 acres was sold by a private treaty for a paltry sum of Rs.65 lakhs, when the land could have fetched in excess of Rs.5.65 crores. It was also petitioner's case that he has filed CMA No.288 of 2003 before this Court against an order passed by the Company Law Board and if petitioner succeeds in the said CMA, the Board of Directors will be replaced and hence, the Directors who agreed for sale of the land, would not have had any power to act on behalf of the company or to alienate any property of the company.

6. The said CMA No.288 of 2003 has been dismissed by us in a separate order passed today.

7. It is settled law that rights of a shareholder are:

- (a) to elect directors and thus to participate in the management through them;
- (b) to vote on resolutions at meetings of the



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company;

(c) to enjoy the profits of the company in the shape of dividends;

(d) to apply to the Court for relief in the case of oppression;

(e) to apply to the Court for relief in the case of mismanagement;

(f) to apply to the Court for winding up of the company; and

(g) to share in the surplus on winding up.

(Life Insurance Corporation Of India vs Escorts Ltd. & Ors)¹.

8. Whether a shareholder buys a share of the assets of a company proportionate to the number of shares he has purchased, came up for consideration about 70 years ago in ***Bacha F. Guzdar vs Commissioner Of Income-Tax, Bombay²***. The Court held that the company is a juristic person and is distinct from the shareholders, and it is the company that owns the property and not the shareholders. The Court went on to hold that there is

¹ 1986 (1) SCC 264, 326

² AIR 1955 SC 74



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nothing in the Indian law to warrant an assumption that a shareholder who buys shares, buys any interest in the property of the company, which is a juristic person entirely distinct from the shareholders.

Paragraph 7 of *Bacha F. Guzdar* reads as under:

“7. It was argued by Mr. Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest(1), that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the case of Chiranjitlal Chowdhuri v. The Union of India and Others(1). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have (1) (1924) 8 T.C. 704,710., (2)



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[1950] S.C.R. 869, 904. The, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is



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that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up, but not in the assets as a whole as Lord Anderson puts it.”
(emphasis supplied)

9. This judgment was relied upon by the Apex Court in a recent matter in ***BRS Ventures Ltd vs. SREI Infrastructure Finance Ltd and another***³, where paragraph 21 reads as under:

“21. ... Perhaps the reason for including these two provisions is that it is well-settled that a shareholder has no interest in the company's assets. This view has been taken by this Court in paragraph 10 of its decision in the case of Bacha F. Guzdar v. Commissioner of Income Tax, Bombay¹⁶, which reads thus:

“10. The interest of a shareholder vis-à-vis the company was explained in Charanjit Lal Chowdhury v. Union of India [Charanjit Lal Chowdhury v. Union of India, 1950 SCC 833 at p. 862 : 1950 SCR 869 at p. 904]. That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of

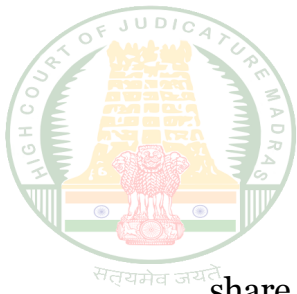
³ 2024 SCC OnLine SC 1767



the company and are entitled, as provided by the articles of association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the (1955) 1 SCR 876 company as liable to be distributed among the shareholders.” (emphasis added)

A holding company and its subsidiary are always distinct legal entities. The holding company would own shares of the subsidiary company. That does not make the holding company the owner of the subsidiary's assets. In the case of Vodafone International Holdings BV6, this Court took the view that if a subsidiary company is wound up, its assets do not belong to the holding company but to the liquidator. As mentioned in the decision, the reason is that a company is a separate legal persona and the fact that the parent company owns all its share has nothing to do with its separate legal existence. Therefore, the assets of the subsidiary company of the corporate debtor cannot be part of the resolution plan of the corporate debtor. ...”
(emphasis supplied)

10. Shri Rajagopalan submitted that it is not petitioner's case that he has a share in the assets of the company but the company, by selling-off a



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share for a paltry sum much lower than the market value, has acted against the interest of the company.

11. If that is his case, perhaps petitioner should apply to the appropriate forum for relief, alleging oppression or mismanagement against the company or its Board of Directors. The route taken by petitioner was not correct. Of course, this should not be construed as if we are advising petitioner.

12. Therefore, the view taken by the Debt Recovery Appellate Tribunal, Chennai, cannot be faulted with. Petition stands dismissed. Since the dispute is between two siblings, we are not inclined to impose any cost.

(K.R.SHRIRAM, CJ.)

(MOHAMMED SHAFFIQ, J.)

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To
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Debt Recovery Appellate Tribunal,
Chennai

- 2.ICICI Bank Ltd
Anna Nagar Branch,
A-78, Plot No.3211 D,
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