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Court : Chennai

Decided On : Jul-11-1996

Reported in : [1998]91CompCas31(Mad)

Judge : R. Jayasimha Babu, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9; [Companies Act, 1956](#) - Sections 2(11), 10 and 283

Appeal No. : Company Petition No. 1 of 1996 and Company Application No. 47 of 1996

Appellant : K. Radhakrishnan

Respondent : Thirumani Asphalts and Felts Pvt. Ltd. and Others

Judgement :

Jayasimha Babu, J.

1. The petitioner has sought a declaration that he has not vacated the office of the director of the respondent company. The petitioner's case is that he has not absented himself from three consecutive meetings of the board of directors or of all meetings of the board of directors for a continuous period of three months as no notice of the meetings was given to the petitioner. The removal of the petitioner from his office as director by the respondent company on the ground of absence

from three consecutive meetings of the board under section 283(1)(g) of the Companies Act is, therefore, said to be illegal.

2. Learned counsel for the petitioner submitted that the court as the company court under section 10 read with section 2(11) of the Companies Act is the only court competent to grant the relief as the registered office of the company is within the jurisdiction of this court. The action of the respondent company in depriving the petitioner of his status as director is, according to the petitioner illegal and is contrary to the provisions of section 283 of the Act.

3. Counsel for the company raised a preliminary objection regarding the maintainability of the petition and submitted that though the High Court is the company court, this petition is not maintainable as the jurisdiction in respect of matters covered by section 283 of the Act has not been specifically conferred on this Court.

4. Counsel referred to several other provisions of the Act including sections 433, 391, 394, 633, 100 and 235 of the Act in support of this submission that wherever Parliament intended to confer power on the court referred to in section 10 in relation to the matters dealt with in several provisions of the Act, it has taken care to state so specifically. Counsel also referred to the Companies (Court) Rules framed by the Supreme Court in exercise of its powers under section 643 of the Act more particularly rules 10 and 11 pointed out that section 283 is not of the provisions referred to in any of the sub-clauses of rule 11(a).

5. Learned counsel for the petitioner, on the other hand, contended that under the scheme of the Companies Act, jurisdiction is conferred on the company court, the Central Government and the Company Law Board. Jurisdiction in respect of matters enumerated in section 11(2) can be delegated to District Courts. The matters covered under section 283 are not specified as falling within the jurisdiction of the Central Government or the Company Law Board nor delegated to the District Courts. Counsel, therefore, submits that it is this court alone which can have jurisdiction in relation to all matters covered by various provisions of the Companies Act in relation to companies except to the extent such jurisdiction has been conferred on the Central Government and the Company Law Board or

delegated to the District Court.

6. Learned counsel for the petitioner submitted that the civil courts do not have jurisdiction to entertain disputes of the nature now brought before the court by the petitioner. According to him, the civil court's jurisdiction is curtailed by reason of the provision of the Companies Act, which is a special enactment, and which has created a special forum for the adjudication of disputes concerning companies.

7. In support of his submissions, learned counsel for the petitioner referred to the decision rendered by a learned single judge of the High Court at Bombay, in the case of *Vitthalrao Narayanrao Patil v. Maharashtra State Seeds Corporation Ltd.* [1990] 68 Comp Cas 608. That case came up before the court by way of a revision petition against an order of the civil court, which had entertained a suit in relation to a matter dealt with by section 283 of the Companies Act. The learned judge took the view that it is essentially the jurisdiction of the High Court to entertain any dispute in respect of the affairs of the company, except such disputes in respect of which, power has explicitly been conferred on the District Court by the Central Government. Learned counsel also relied upon another judgment rendered by a learned single judge of the High Court at Andhra Pradesh, in the case of *Nizambad Corn Products (P.) Ltd. v. Vasudev Dalia* : 1992(3)ALT303 . That again was a case which came up before the court, not by way of any proceedings initiated in the company court, but by way of an appeal preferred against an order of temporary injunction granted by a civil court in relation to the resolutions passed at the general body meeting of a company. The court therein relied upon section 10(1)(a) of the Act, for its conclusion that since section 283 of the Act is not one of the sections in respect of which jurisdiction has been conferred on the civil court, the civil court has no jurisdiction to entertain a suit with regard to removal of directors be resolutions passed at the annual general meeting.

8. With respect, I am unable to agree with the reasoning contained in these two decisions relied upon by learned counsel for the petitioner. The view taken therein that the jurisdiction of the civil court is curtailed in relation to all matters concerning companies, solely because the High Court is constituted the company court, is not supportable by any of the statutory provisions either in the Companies Act or in the

Code of Civil Procedure.

9. Section 9 of the Code of Civil Procedure is couched in the widest possible terms; that section reads thus :

'Courts to try all civil suits unless barred. - The courts shall (subject to the provisions herein contained) have jurisdiction to the all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.'

10. The enactment of a special statute like the Companies Act does not have the effect of barring the jurisdiction of the civil court unless the statute expressly prohibits the jurisdiction of the civil court in relation to all matters arising under the statute or the scheme of the statute is such that such prohibition is necessarily to be implied. There is no provision in the Act expressly barring the jurisdiction of the civil court with respect to all matters arising under the Act. The bar of jurisdiction is implied and is in respect of some matters only.

11. 'Court' is defined in 2(11) of the Act as meaning, -

'(a) with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(b) with respect to any offence against this Act, the court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence.'

12. 'Jurisdiction of court' is dealt with in section 10 :

'(1) The court having jurisdiction under this Act shall be : (a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and

(b) where jurisdiction has been so conferred the District Court in regard to matters falling within the scope of the jurisdiction conferred in respect of companies having

their registered offices in the district.'

13. The jurisdiction of the civil court is impliedly barred by the conferring of exclusive jurisdiction on the court as defined in the Act, only in respect of certain matters relating to the company. The jurisdiction vested in the company court is to be ascertained from the specific substantive provisions of the Act. Section 2(11) defines the court while section 10 specified the court. Neither of these provisions creates jurisdiction with respect to all matters arising under the Act concerning a company whose registered office is located within the jurisdiction of the company court. The jurisdiction of the court is to be ascertained from the other substantive provisions of the Act. That is also evident from section 10(2) which refers to 'jurisdiction conferred ... (a) by section 237, 391 ... (b) by Part VII (section 425 to 560) and the other provisions of this Act'.

14. The exclusive jurisdiction of the company court is therefore limited to matters which are required by the other provisions of the Act to be dealt with by the 'court'.

15. Section 283 only sets out the circumstances on the occurrences of which the office of the director shall become vacant. The section does not contemplate any application being made to the company court either to declare that the office has been vacated or to declare that the office has not been vacated. The company court cannot, therefore, entertain a petition to declare that the petitioner continues to be a director and that he has not vacated the office.

16. It may well be desirable to vest exclusive jurisdiction in the company court in respect of all matters arising under the Act except matters made subject to the jurisdiction of the Company Law Board, the Central Government and the Magistrate. The Act as it now stands, however, does not bar the jurisdiction of the civil courts in respect of matters which are not expressly made subject to the jurisdiction of the company court, the Company Law Board, the Magistrate or the Central Government.

17. Similar is the view taken by this and some of the other High Courts in *Mylavarapu Ramakrishna Rao v. Mothey Krishna Rao* [1947] 17 Comp Cas 63 (Mad); *Thiruvalluvar Velanmai Kazhagam (P.) Ltd. v. M. K. Seethai Achi* :

(1987)IIMLJ363 ; R. Prakasam v. Sree Narayana Dharma Paripalana Yogam [1980] 50 Comp Cas 611 (Ker) : Rajendran Menon v. Cochin Stock Exchange [1965] 1 Comp LJ 573; Prakash Roadlines Ltd. v. Vijaya Kumar Narang : 1992(3)KarLJ557 ; Avanthi Explosives P. Ltd. v. Principal Subordinate Judge, Tirupathi and Maharaja Exports v. Apparels Exports Promotion Council .

18. Reserving liberty to the petitioner to approach the civil court for redressal of his grievance, this company petition is dismissed. Company Application No. 47 of 1996 is also dismissed.

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