

A. Brahmaraj Vs. Sivakumar Spinning Mills (P) Ltd. and ors.

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Court : Chennai

Decided On : Apr-13-1983

Reported in : (1984)1MLJ376

Appellant : A. Brahmaraj

Respondent : Sivakumar Spinning Mills (P) Ltd. and ors.

Advocate for Pet/Ap. : Mr. T. Dulip Singh

Judgement :

Nainar Sundaram, J.

1. The third petitioner in C. P. No. 48 of 1978 is the appellant in these two original Side Appeals. Respondents 1 to 5 herein are the respondents in the Company petition and respondents 6 to 8 herein are the parties sought to to be impleaded as co-respondents in the company petition. The petitioners in the company petition are 8 in number, including the present appellant. For convenience sake. we shall refer to the parties as they stand arrayed in the company petition, and we shall refer to respondents 6 to 8 in these appeals as third parties since they have not yet been impleaded in the company petition. C. P. No. 48 of 1978 is a petition by the petitioners under Section 398 of the Companies Act I of 1956, and if occasion comes, it will hereinafter be referred to as the Act. The petitioners are shareholders of Sivakumar Spinning Mills (P) Ltd., hereinafter referred to as the Company. The prayers projected in the company petition run as follows:

(a) That the resolutions alleged to have been passed on 17th May, 1978, be declared as illegal and void;

(b) That Mr. D. Kandaiah be continued as Managing Director of the Company for a period of 5 years as per terms and conditions of the agreement dated 6th October, 1977 and the resolution dated 29th October, 1977;

(c) Respondents 2 and 3 be restrained from interfering with the duties and functions of Mr. D Kandaiah as Managing Director;

(d) That the appointment of respondents 4 and 5 be set aside;

(e) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

The respondents are hotly contesting the case of the petitioners and the relief which they seek for in the company petition. We do not find it absolutely necessary to set out in detail the entire gamut of the controversy between the parties. Suffice it to point out that the petitioners attack the resolutions alleged to have been passed on 17th May, 1978 and they farther want implementation of the agreement dated 6th October, 1977 and the resolutions dated 29th October, 1977. There are other controversies existing in which the parties and their partisans are involved and they are C. P. Nos. 33 of 1978 and 10 of 1979. All the company petitions were enquired into, evidence was taken and the matters were posted for arguments after the close of the evidence, spread over ninety days, and at that stage, the petitioners filed two applications, C. A. No. 673 of 1982 for amendment of the Company petition and C. A. No. 674 of 1982 to implead the third parties as parties to the company petition. We shall presently refer to the aspect of the amendment sought for as well as the plea for adding on the third parties as parties to the Company petition.

While dealing with the merits of these appeals, Shanmukham, J., by a common order dated 8th December, 1982, considered these pleas of the petitioners and found no warrant to countenance them and the applications were dismissed. These appeals are directed against the common order of the learned Judge.

2. One salient principle that cannot be lost sight of is that amendment cannot be claimed as a matter of right and in all circumstances, and it will depend upon the facts, and circumstances of each individual case. The amendments sought for in the present case are elaborate indeed, though they centre round the resolutions alleged to have been passed by the respondents at the meeting of the Directors of the Company stated to have taken place on 30th July, 1978. That was admittedly an event which had come to pass after the filing of the company petition. There are five resolutions stated to have been passed in the meeting on 30th July, 1978, and they run as follows:

Resolved that the balance of Rs. 5 per share remaining unpaid on the 62,500 Equity shares bearing distinctive numbers from 4501 to 70,000 be called upon and that the said call be payable on or before the expiry of 15 days from this date.

2. Resolved that Equity Shares be issued at par to the following persons whose names are set out herein and that the respective amounts payable to the shares be transferred to the share capital account from their existing deposits.

List (Omitted).

(The allottees were not only existing shareholders but also third parties).

3. It is further resolved that a Bank Account of the Company be opened with Indian Overseas Bank, Sankaranagar, and that the Bank be and is hereby authorised to honour all cheques and bills of exchange Promissory Notes and other orders drawn, accepted, endorsed, or made on behalf of the Company by Shri N.E.S. Eswaramoorthy or E. Sankaransubbu Directors of the Company and to act on any instructions so given relating to the account whether the account be in credit or overdrawn.

4. Resolved that Sri. N.E.S. Eswara moorthy and E. Sankarasubbu, Directors of the Company be and are hereby authorised to sign all returns statements and other statutory forms etc., to be submitted to the Central Excise Department, Sales Tax Department and all other Departments.

5. Resolved that the authorisation given to Shri K. Deivanayagam to sign the returns, statements and other statutory forms be submitted to the Excise Authorities be cancelled immediately and be removed from the post of Administrative Manager of the Company with immediate effect.

The petitioners wanted declarations that the above resolutions are illegal and non est in law and the purported allotment of shares is illegal and non est in law, and for a consequential permanent injunction restraining respondent 2 to 5 and the third parties from acting upon, taking advantage of, or implementing the alleged resolutions and in particular, from exercising any voting rights in respect of the impugned allotment at any general meeting of the Company. In support of the above prayers sought to be introduced by way of amendment, elaborate allegations have been made in the affidavit filed in support of the applications and the petitioners wanted paragraphs 8 to 19 in the said affidavit to be brought in as paragraphs 22-A to 22-L in the company petition, by way of amendment. Consequently, the petitioners also wanted the third parties to be impleaded as parties to the Company petition. There had been opposition to these prayers and, as stated above, they have been upheld by Shanmukham, J.

3. The major hurdle that is coming in the way of the petitioners when they seek the amendments and the addition of third parties to the company petition is the well accepted principle that a distinct, separate and independent new case even arising out of a subsequent event cannot be brought in by way of amendment. There is no gain saying that the Court can take note of the sub sequent events to mould the relief already asked for in the light of the subsequent events. The following passage occurring in the judgment of the Supreme Court in *M. Laxmi and Company v. A. R. Deshpande* : [1973]2SCR172 , is elucidative on the point:

It is true that the Court can take notice of subsequent events. These cases are where the Court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation Where the original relief has become inappropriate by subsequent events the Court can take notice of such changes. If the Court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the

Court finds that the matter is no longer in controversy the Court also takes notice of such event. If the property which is the subject-matter of suit is no longer of available the Court will take notice of such event. The Court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice.

4. We are not facing a case of devolution of interest subsequently so as to necessitate applying the principle of shortening litigation. It cannot be stated that the original relief has become inappropriate by virtue of subsequent events. The petitioners very much want the original reliefs asked for. It cannot be stated that the judgment of this Court, if it is going to be in favour of the petitioners in the company petition, cannot be carried into effect because of the subsequent events. We put a pointed question to Mr. Dulip Singh, learned Counsel appearing 'or the third petitioner, the appellant in these appeals, as to whether the reliefs which have been already asked for in the company petition will fall to the ground on account of the subsequent events and the learned Counsel answered that it cannot be said so. This is not a case where it could be stated that the matters in controversy in the company petition have ceased to be so on account of subsequent events.

5. There is no question of the property which is the subject-matter of the litigation being no longer available so as to oblige the Court to take note of the subsequent events. Here is a case where we find the reliefs and the bases for the reliefs which are being sought to be introduced stand totally distinct from the prayers in the company petition and the allegations put forth in support of such original prayers. It can be said that there is a nexus between the two, the parties being same and the company being same. But that could not be the sole criterion. It is not a case of any additional relief being asked for on the same set of facts already alleged in the company petition. The amendments sought for do not constitute an additional approach to the same facts. This is not a case of any relief ancillary to the reliefs already asked for being brought in by way of amendments. The reliefs asked for and the bases put forth in support of the reliefs are totally different from and unconnected with the reliefs originally asked for in the company petition. A new assertion, a fresh cause of action and a fresh grievance, though arising out of the parties being at loggerheads, need not be brought in the pending litigation for

adjudication therein because that would amount to changing the complexion which the litigation wears and the rule well accepted by the Courts discountenances the same.

6. Copies of the company petition, the resolutions alleged to have been passed on 17th May, 1978, the agreement dated 6th October, 1971 and the resolution dated 29th October, 1977, have been furnished to us and we have carefully gone through them and we have also considered the contents of the resolutions alleged to have been passed on 30th July, 1978 as they stand extracted in the affidavit filed in support of the applications, the allegations advanced in the said affidavit and the prayers now sought to be introduced by way of amendments and we are convinced that the amendments do form a new case requiring a separate and independent testing and consideration.

7. One of the salient considerations which should weigh with the Court in an application for amendments is how far the proposed amendments are necessary to determine the 'real controversy' that is the subject-matter in issue in the pending litigation. If that test is not satisfied, then the amendments should not be allowed. Convenience to the party seeking the amendments and lack of prejudice to the other side are not the criteria. The 'real controversy' is not all and every controversy that existed, is existing and is likely to come into existence in future between the parties. The 'real controversy' is the controversy that is really existing between the parties in the pending litigation. It is not possible for the Court to take note of all the ills which parties faced, are facing, and are likely to face in future. The Court is concerned only with that controversy which the party who approached the Court raised seeking a particular relief or reliefs. A question or controversy arising after the institution of the proceeding need not necessarily be lugged in with the proceeding already initiated when it could be tested and considered independently and separately. The principle of shortening of litigation cannot be extended beyond its real scope to bring in new controversies and new cases in the pending litigation. The rule permitting to take note of subsequent events has got its own limitations and the contingencies have been very succinctly set out in the passage occurring in the judgment of the Supreme Court referred to above. Mr. T. Dulip Singh, learned Counsel for the petitioner, appellant in these

appeals, was very much in strain to bring to our notice profuse case law on the subject. But we are clear in our mind that the authorities have not departed from the well-accepted principles discussed by us above and hence we do not feel obliged to refer to them.

8. Mr. T. Dulip Singh, learned Counsel for the third petitioner, appellant in these appeals, urged that laches on the part of the petitioners need not be put against them because case law countenanced permissibility of amendments even at a belated stage if the ends of justice did require and warrant them. It is true that where the application for leave to amend was made at a very late stage of the proceedings and the grant of the leave would necessitate, practically, trial the whole case over again, leave should be refused. But that will depend upon the facts of the case. We are not putting laches and negligence alone against the petitioners for discountenancing their claims for amendments and addition of parties. If the other tests stand sufficiently satisfied, we would have hastened to permit the amendments and addition of parties, of course applying the famous dictum of Bowen, L.J. in *Cropper v. Smith* (1884) 26 Ch.D.700, that there is one panacea which heals every sore in litigation and that is costs. Only when we find that the primary factors that justify the introduction of amendments is guilty of laches and negligence, the dictum that such laches and negligence must bear the burden of costs, which will prove a panacea to the other side could be applied. We have found that none of the well-accepted tests to permit even amendments and addition of parties, taking note of the subsequent events, does stand satisfied on the facts and circumstances of the present case. The avoidance of multiplicity of proceedings, as pointed out by the learned single Judge, has no meaning in the instant case because each grievance that has cropped up between the parties is independent and separate though existing between them and in respect of the affairs of the same company and the parties have been rightly resorting to independent proceedings to vindicate their grievances and secure their rights. It will be a different matter if the Court adjudicating the controversy existing in the company petition exercised the powers conferred upon it by the Act for any of the contingencies which the facts of the case warrant. But here we are concerned with the principle governing introduction of amendments and addition of parties. An assessment and application of the principles, on the facts and circumstances of

the present case, only persuade us to concur with the decision rendered by the learned single Judge. This obliges us to dismiss the appeals and accordingly, the appeals are dismissed. There will be no order as to costs.

9. A doubt was felt by us as to the maintainability of the appeals but we have refrained from going into the question since, on merits, we have found that the appeals deserve dismissal.

10. After we pronounced the judgment Mr. T. Dulip Singh, learned Counsel for the appellant seeks oral leave of us to appeal to the Supreme Court. The matter concerns amendment of pleadings and addition of parties It has been dealt with by the learned single Judge of this Court applying the well accepted norms in this regard. We have also considered the matter and on the facts of the case we have found no warrant to take a view different from that of the learned Judge. In our opinion the matter does not involve any substantial question of law of general importance which requires decision by the Supreme Court. Hence, leave is refused.