
(2009) 12 MAD CK 0041

Madras High Court

Case No: Criminal.O.P. No. 14139 of 2009 and M.P. No"s. 1 and 2 of 2009

C.L. Muthiah

APPELLANT

Vs

Power Soaps P. Ltd.

RESPONDENT

Date of Decision: Dec. 2, 2009

Acts Referred:

- Companies Act, 1913 - Section 11(6)
- Companies Act, 1956 - Section 21, 22, 23, 23(1), 23(3)
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Citation: (2010) 154 CompCas 137 : (2010) 102 SCL 85

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: V.M.G. Ramakannan, for the Appellant; G.M. Ramasubramanian, for G.R. Hari, for Ram and Ram, for the Respondent

Final Decision: Dismissed

Judgement

C.T. Selvam, J.

This petition seeks to quash the proceedings pending for offences u/s 138 read with Section 142 of the Negotiable

Instruments Act, 1881, in C.C. No. 516 of 2008 on the file of the Judicial Magistrate No. I, Pondicherry.

2. Heard M/s. V.M.G. Ramakannan, learned Counsel for the petitioner and Mr. G.M. Ramasubramanian for Mr. G.R. Hari for Ram & Ram,

learned Counsel for the respondent.

3. Primarily there are two contentions which arise in support of the petition. The first is that the cheques were drawn on March 15, 2008, in the

name of M/s. Narmada Chemicals P. Ltd., and on the date of cheque, such company was not in existence as the company had undergone a

change of name to M/s. Power Soaps P. Ltd., with effect from February 1, 2008 and was again converted to M/s. Power Soaps Ltd., with effect

from March 4, 2008, as notified by the Registrar of Companies. The contention is that the cheques have been drawn in the name of a non-entity

and therefore, they were not valid under the Negotiable Instruments Act, 1881, enforceable in law. This contention is met by the respondent by

placing reliance on the judgment of the Calcutta High Court Pioneer Protective Glass Fibre P. Ltd. v. Fibre Glass Pilkington Ltd. reported in

[1985] CDJ 2 : [1986] 60 Comp Cas 707. In such case it had been contended that (page 709):

...the suit was not maintainable inasmuch as Fibre Glass Pilkington Ltd. was not an existing company on the date the suit was filed. A new

company, viz., F.G.P. Ltd., having been incorporated with effect from April 15, 1982, it was contended that Fibre Glass Pilkington Ltd., stood

dissolved and there was no company by that name on the date when the suit was filed. It was contended that the suit should be dismissed with

costs.

4. The contention that the suit was instituted in the name of a non-existing person was met by the contention that the change of the name of a

company did not bring into existence a new entity, the company remained the same and continued under the new name. Several decisions including

that of a Division Bench of this Court have been referred to and discussed by the Calcutta High Court. It would be useful to refer to some of the

discussions thereunder (pages 711, 715 and 716 of 60 Comp Cas):

A Division Bench of the Madras High Court considered Section 11(6) of the Indian Companies Act, 1913, which is more or less similar to Section

23 of the later statute of 1956, and held that the object of the said section was to provide that notwithstanding the change in the name, there would

be no alteration in the legal status of the company as its incorporation was not in any manner affected by the mere change of name. It continued to

possess the same rights and remained subject to the same obligations as before the change....

On a revision, a Division Bench of this Court affirmed the amendment and observed as follows *Kalipada Sinha Vs. Mahalaxmi Bank Ltd.*, :

Section 21 enables a company to change its name by a given method, viz., by a special resolution and with the approval of the Central Government

signified in writing. It does not provide for altering the entity but only the name. This is also made quite clear by the provisions of Section 23. Sub-

section (1) of Section 23 states that where a company changes its name in pursuance of Section 21 or Section 22, the Registrar shall enter the new

name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied

therein and the change of name shall be complete and effective only on the issue of such a certificate....

20. The question before us is whether the suit in the instant case is by an entity which is not in existence or by an entity in existence which has been

misdescribed in the plaint.

21. On a consideration of the relevant Sections of the Companies Act, 1956, relating to change of name of existing companies, noted earlier, it

does not appear to us that a change of the name of the company results in its dissolution and incorporation of a new company under a new name.

Section 21 of the statute permits a company to change its name in the manner as prescribed and nothing else. Ex-facie, the section indicates that

the company continues in a new name.

22. Section 23 of the Act appears mainly to be a ministerial section and lays down the procedure for recording of the change of name. A fresh

certificate of incorporation is no doubt issued, but the same is only for the purpose of recording the alteration in the name. The effect of the issue of

the new certificate as provided in Sub-section (1) of Section 23 is to render the change of name complete and effective and nothing more. The

section does not provide or imply that on the issue of the new certificate, the company as it existed will stand dissolved and a new company will

come into existence.

23. Sub-section (3) of Section 23 provides that change of name will not affect any right or obligation of the company and that legal proceedings in

the old name will not be rendered defective but will be continued by or against the company in its new name. The expression used in the Section is

"the company" and not "old company", or "new company", or "dissolved company". There are further indications that in spite of a, change of

name, the entity continues.

24. For the above reasons, we hold that on a change of its name, a company does not stand dissolved nor any new company comes into

existence. It follows that after change of its name, if any legal proceeding is commenced or instituted by a company in its old name, it would be a

case of mere misdescription and not a case of initiation of a proceeding by a person not in existence.

25. A Division Bench of this Court in Economic Investment Corporation Ltd. Vs. The Commissioner of Income Tax, W.B. and Others, held:...

It is clear from Sub-section (3) that by the change of name, the constitution of the old company is not changed. The only thing that is changed is its

name and all the rights and obligations under the law of the old company pass to the new company. It is not similar to the reconstitution of a

partnership, which, in law, means the creation of a new legal entity altogether.

5. In the ultimate analysis it was found that the suit filed in the wrong name would be a case of mis-description and not a suit by a non-existing

person. The rationale of the said decision squarely would apply and answer the contention of the petitioner.

6. The other contention raised is that the complaint was not filed within 30 days from the date of the endorsement on the postal cover as ""I.D.-

intimation delivered"". Admittedly, the statutory notice sent by the respondent was returned un-delivered in this case. The contention of the

petitioner is that the RPAD cover containing the statutory notice bore the endorsement I.D. (intimation of delivery) dated April 22, 2008.

According to counsel for the petitioner the notice period of 15 days should be calculated from such date and the complaint ought to have been filed

within one month of the expiry of the notice period. If so calculated the complaint ought to have been filed on or before June 5, 2008. Hence, the

complaint, which in this case has been filed on June 12, 2008, is not maintainable.

7. On the other hand, the contention of learned Counsel for the respondent is that the complainant had awaited repayment for the period of 15

days from the date it had intimation of the return of the statutory notice and had filed the complaint within 30 days from the expiry of such period

and hence the same was filed in time. The manner of calculation of the statutory notice period and the time within which the complaint is to be filed,

the reasons for the receipt or non-receipt of the notice, etc., are matters which would fall within the realm of consideration of the lower court. This

Court is of the view that such contentions should rightly be raised before the lower court and not herein before.

8. Thus, finding both contentions against the petitioner, this Court dismisses the petition. Accordingly, the petition is dismissed. No costs.

Consequently, the connected miscellaneous petitions are also closed.