
**M/s. R.R. Spinning Mills Limited, Kapparathampatty, Jalakantapuram,
Salem and another Vs R.Govindarajan and 4 others**

C.M.A. No"s. 410 and 411 of 1998 and C.M.P.Nos. 3761 and 3762 of 1998

Court: Madras High Court

Date of Decision: June 8, 1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 23 Rule 1#Companies Act, 1956 â€” Section 397, 398, 402, 406#Partition Act, 1893 â€” Section 2, 3(1), 5

Citation: (1998) 3 CTC 69

Hon'ble Judges: S.M. Abdul Wahab, J

Bench: Single Bench

Advocate: Mr. C. Harikrishnan, for Mr. T.K. Seshadri, for the Appellant; Mr. P. Subba Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. C.M.A.No.410 of 1998 is against the order of the Company Law Board, Southern Region Bench at Chennai, in Unnumbered Petition (Under

File No.5/8/97-CLB (PB), dated 12.2.1998.

2. C.M.A.No.411 of 1998 is against the order dated 12.2.1998 by the Company. Law Board, Southern Region Bench, Chennai, in C.P.No.25

of 1995.

3. C.P.No.25 of 1995 was filed before the Company Law Board by two groups of shareholders, each group holding about 22% of shares in M/s.

R.R. Spinning Mills (P) Ltd., alleging acts of oppression and mismanagement and seeking direction against the respondents 2 and 3 to purchase the

shares held by the petitioners at the market value to be arrived at. The unnumbered petition was filed by another group holding 22% of shares in

the same company, seeking direction against the very same respondents, viz., V. Rangaswamy and R. Govindarajan to sell their shares to the

petitioners. After filing the petition, the petitioners filed memos seeking permission to withdraw the petitions. The petitions were ordered by a

common order dated 12.2.1998. Hence, the third respondent in both the petitions, R. Palaniswamy, has filed the two appeals.

4. A few facts to dispose of the two appeals are as follows: The first petition C.P.No.25 of 1995 was filed with a view to put an end to the dispute

among the shareholders and the petitioners offered to sell their shares constituting roughly about 44% collectively in the company to the

respondents at a fair value to be determined by a valuer to be appointed by the Board. The respondents were agreeable for the same. Hence, on

13.2.1997 an order was passed, appointing one Rudra Kumar, Chartered Accountant, to value the shares. The shares of the company were

valued at Rs.885 per share as on 31.3.1995 and Rs.862 per share as on 31.3.1997. As the two petitions were filed, one in the year 1995 and

another in 1997, the two valuations were made corresponding to the year of the petition. On 19.12.1997, when the claim was taken up by the

Board, the counsel for the petitioners represented that their clients were reluctant to accept the valuation report, they wanted to sell the shares to

higher price offered by outsiders. Thereupon, the Board suggested their value of the share at Rs.873 and directed the petitioners to accept the

same and the matter was adjourned to 9.1.1998. On 9.1.1998, the petitioners submitted an application for withdrawal of the petitions. In view of

certain developments that have taken place, the petitioners wanted to withdraw the petitions. It was mainly alleged that the respondents 2 and 3 in

the petitions against whom allegations were made, were together all along. But the second respondent refused to keep peace with the family joined

the petitioners group. Hence, the petitioners group had become majority. Therefore, there was no necessity for the sale of the shares.

5. The third respondent, the appellant herein, resisted the withdrawal contending that the Regulation 35 of the Company Law Board and under

Order 23, Rule 1 of Civil Procedure Code, leave of the Board is necessary before the petitions were withdrawn. Already on 12.2.1997 the Board

had passed the order. The order has become final and binding. The order was a consent order, therefore, a right has accrued in favour of the third

respondent. In substance, a vested right has been created in favour of the third respondent to purchase the shares. Therefore, the withdrawal was

not possible.

6. After considering the arguments on both sides, the Company Law Board allowed the withdrawal. According to the Company Law Board, there

was no final implementable order passed by the Board and hence there was no vested right created in the third respondent. The Board ordered

payment of Rs.5,000 as costs by the petitioners in each petition to the credit of the Legal Aid Cell of this Court.

7. The appeals were admitted on 16.3.1998 and Mr. P. Subba Reddy, counsel for the respondents took notice. When the stay petitions came up

for hearing on 23.4.1998, the counsel on both sides requested the Court to dispose of the appeals themselves, since the argument in the stay

petition would be on the grounds raised in the appeals themselves. Hence, they advanced arguments on the appeals. Therefore, the appeals were

taken up for disposal.

8. The main contention urged by the learned counsel for the appellants is that the order dated 12.2.1998 indicates that the petitioners were

agreeable to sell the shares to the respondents and the respondents were agreeable to that proposal. Therefore, there was a final order of the

Company Law Board. Pursuant to the final order, the valuer was also appointed on 13.2.1997. Therefore, the order has become final and

conclusive and it is binding on the respondents. The course open to the respondents is only to have it set aside in appeal. Secondly, it is contended

that a valuable right has accrued to the appellants. Therefore, the respondents cannot go back upon the agreement, thereby deprive the right of the

appellants.

9. The counsel for the appellants proceeds on the presumption that there was an unconditional acceptance on the part of the respondents to sell

their shares and a final and conclusive order was passed by the Company Law Board. Now, let us see whether these two ingredients, which are

the basis for the argument of the counsel for the appellants, are present in this case.

10. The order dated 12.2.1997, reads as follows:

The petitioner in the intended petition holding 22% of shares in the company as well as the petitioners in the another company. Petition filed before

the Company Law Board. Principal Bench on 7.2.1997 holding 22% of shares in the Company are agreeable to sell their shares to the

Respondents Group at the fair value to be determined by a valuer appointed by us. The respondents are agreeable to that proposition. In view of

the general agreement among the parties, we shall appoint a valuer in the next few days. The company will pay the remuneration for the Valuer. Till

the valuation is done, the Company shall not allot the rights shares which has been accepted by the Company.

The words ""are agreeable to sell their shares to the respondents Group at the fair value to be determined by a valuer appointed by us."" indicates

that the petitioner was agreeable to sell their shares to the respondents group at the fair value. It is an offer to sell at the fair value, that means, the

petitioners were agreeable for the value to be determined by a valuer appointed by the Company Law Board provided it was fair to them.

11. There is no indication that they were agreeable to sell their shares for the value to be determined by a valuer appointed by the Company Law

Board: Even if the Valuer determines the value, the value of the share must be fair. Whether the value determined by the valuer appointed by the

Company Law Board is fair or not has to be determined by the petitioners. They have not given that right to the Company Law Board.

12. On 13.2.1997 the valuer was appointed. On 19.12.1997 when the valuer report was taken up for consideration by the Company Law Board,

the counsel for the petitioners submitted that the value computed by the valuer was much lower than the price of the shares offered by some

outsiders. Therefore, the respondents were reluctant to accept the valuation report. Further, the respondents sought permission to sell the shares to

non-members of the company at a higher price offered by them. Thereafter, the Company Law Board passed the order on 19.12.1997 to

consider the valuation report as well as the suggested price of Rs.873 per share, and the counsel should report on 9.1.1998. Immediately

thereafter, the respondents filed the petition on the memo for withdrawing the Company Petition No.25 of 1995 and the unnumbered petition.

From the aforesaid circumstances, it is to be seen that the respondents offered to sell their shares for a fair price and that the price fixed by the

valuer and also the price suggested by the Company Law Board was not fair and as there was higher value from outsiders, the respondents

withdrew their option. What should be noticed is whether the respondents having agreed to sell their shares for a price to be fixed by the valuer or

by the Company Law Board or they were agreeable to sell their shares for a price which is fair in their opinion. Agreeable for a fair price indicates

that the price must be fair in their estimate.

13. Another aspect that has to be noted is whether there is any final order passed by the Company Law Board on 12.2.1997. The order dated

12.2.1997 records the offer of the petitioners agreeing to sell their shares at a fair price and the respondent's agreement for the same. The order

does not indicate that the petitioner agreed to sell and the respondents agreed to purchase and what was left was only to fix the price fixed by the

valuer. If there was a final or concluded order on 12.2.1997, on 19.12.1997 the Board could have stated in the order that the petitioners should

sell their shares for the price determined by the valuer or atleast for the price suggested by them. There was no necessity for giving them time for

consideration of the valuation report and the price suggested by the Board.

14. The Board itself when passing the final order permitting the withdrawal of the petitions, has conceded that there was no final order passed on

12.2.1997. The following observation of the Board indicates this position.

A reading of the orders dated 12.2.1997 and 13.2.1997 would indicate there has been no finality in that order. The second para of our order

dated 13.2.1997 makes it clear that the matter would be considered after receipt of valuation report. A consent order becomes final when all

terms including the price per share, the terms of payment etc., have been specifically incorporated.

15. From the discussions above, we have to come to the conclusion that there was no unconditional offer or proposal to sell and the order dated

12.2.1997, is not a final order. In the order dated 12.2.1997, there is no direction to sell to the petitioners or a direction to the purchasers to

purchase. It indicates only an initial step taken by the Board to pass a final order after the determination of the price and the acceptance of the

same as fair by the petitioners as well as respondents. One more important aspect that has to be taken note of is that the appellant has not suffered

any detriment pursuant to the offer made by the respondents and the order passed by the Company Law Board on 12.2.1997.

16. In view of the aforesaid conclusion, it is not possible for this court to agree with the contention of the appellant counsel that the order passed

on 12.2.1997 is final, conclusive and binding on the petitioners and the remedy available to them was only to set aside in appeal.

17. The decision cited by the learned counsel for the appellants, namely, Re. New Standard Coal Co., Private Ltd., Provash Kumar Basu

(Member) v. Special Officer and Others, 1964 (II) Comp.L.J. 184 is not helpful to the appellants. In the said case, on 7.2.1964 a consent order

was passed and by the said order, leave was given to the Special Officer to enter into an agreement, the draft of which was produced by the

Special Officer. The draft was approved and the Special Officer was directed to execute the lease deed. At that stage, the order was challenged.

Hence, the learned single Judge of the Calcutta High Court held that the order was completed, perfected and filed and acted upon by the parties.

Hence, the order cannot be revoked at the instance of one of the parties. Here, there was no final order passed by the Court.

18. The learned counsel for the appellants cited the following authorities and contended that after the right has vested with the appellant, the

respondents cannot be allowed to withdraw the petition.

(1) Tukaram Mahadu Tandel Vs. Ramchandra Mahadu Tandel, ; (2) Hasan Badsha by his Father and next Friend K. Mahomed Ghose Saheb

Vs. Sultan Raziah Begum by her Father and Guardian-ab-litem, Fathauddin Saheb, Atma Ram v. Chitra Production Co., AIR 1952 Pun. 103;

(4) R. Ramamurthi Iyer Vs. Raja V. Rajeswara Rao, .

19. Tukaram Mahadu Tandel Vs. Ramchandra Mahadu Tandel, . In the said case, a compromise was effected in a suit for partition. By the

compromise, the plaintiff acquired rights, which otherwise could not have existed. Hence, it was held that the plaintiff, who consented to the

compromise cannot annul its effect by withdrawing the suit

20. Hasan Badsha by his Father and next Friend K. Mahomed Ghose Saheb Vs. Sultan Raziah Begum by her Father and Guardian-ab-litem,

Fathauddin Saheb, . In the said case, the plaintiff filed a suit for partition admitting that the property was incapable of division by metes and

bounds. The defendant applied for purchase of the same u/s 3 of the Partition Act. The said case is helpful to the respondents. The observation of

the Court is as follows:

I would be inclined to agree with this contention if the Court had made a Valuation and made an order that the half share of the plaintiff should be

conveyed to the defendant on the valuation determined by the Court. The stage now reached in this litigation is that the defendant has applied u/s

3(1), Partition Act, for the appointment of a Commissioner for determining the valuation. The commissioner has not yet determined the value. It

may be that when the Commissioner determines the value, the defendant may find the valuation so high that he cannot purchase the share of the

plaintiff. It may also be that having regard to the fact that the defendant is a minor, the court may not, u/s 5 of the Partition Act, sanction the

purchase. It is no doubt true that an advantage has secured to the defendant by reason of the admission made before the Court as regards the

impracticability of dividing the property. That, however, does not clothe the defendant with any enforceable right and does not prevent the plaintiff

from exercising the right of a suitor to withdraw his suit.

21. *Atma Ram v. Chitra Production Co.*, AIR 1952 Pun. 103. The said case relates to a vested right. The definition is given in the following terms

in the said case:

A right is said to be vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as

a present interest, independent of a contingency. It is a right which cannot be taken away without the consent of the owner. Vested rights can arise

from contracts, from statutes and from operation of law.

From the facts of the present case, as I have found earlier, no right has come to be vested with the appellant at all.

22. *R. Ramamurthi Iyer Vs. Raja V. Rajeswara Rao*, . This is also a case of vested right. In the said case, the plaintiff wanted to withdraw the suit

after the shareholder applies for leave to buy the share of a party u/s 3 of the Partition Act in a suit for partition. It has been observed as follows:

As soon as a shareholder applies for leave to buy at a valuation the share of the party asking for a sale u/s 3 of the Partition Act he obtains an

advantage in that the court is bound thereafter to order a valuation and after getting the same done to offer to sell the same to such shareholder at

the valuation so made.

This advantage or privilege of buying the share which the Court confers on the shareholders, cannot be deprived of by allowing the plaintiff to

withdraw the suit. The Partition Act confers upon the shareholder a right to purchase u/s 3 of the Partition Act. Therefore, clearly a right has

accrued to the party who applies for leave to buy. That right becomes available, when the other party applying to the Court to sell the property u/s

2 of the Partition Act, instead of partitioning it. Here, no right has accrued to the appellant. Therefore, the said case is also not helpful to the

appellant:

23. In *Syed Md. Ali v. Sundaramoorthy*, AIR 1958 Mad. 587 a Bench of this Court has held that proceedings u/s 397 and 398 of the Companies

Act are not like suits between private parties which could be compromised in any manner they choose. The interests of the company are

paramount. u/s 406, there is jurisdiction in Court to assess damages against delinquent directors. The Bench goes to the extent of saying that

interests of the Company are of paramount importance and the proceedings should not be conceived as a mere dispute between individual"s. Any

compromise suggested should be acceptable to the Court whose powers are set out in Section 402. A compromise which has not been agreed to

by the shareholder, (one of those represented in the petition) cannot be used to stifle the enquiry of the petition in the absence of a finding that the

compromise was entered into bona fide in the interests of the company as a whole. From the above, it is clear that even a compromise between the

parties should be acceptable to the Court in the interest of the company, then only the compromise can be accepted.

24. In Jacob Cherian v. K.N. Cherian and others 1973 C.C. 235 also a learned single Judge of this Court has held as follows:

In an ordinary suit all that the Court is concerned, in considering the question of compromise, is to see, whether to the satisfaction of the Court the

suit has been adjusted wholly or in part by any lawful agreement or compromise or whether the defendant satisfies the plaintiff in respect of the

whole or any part of the subject matter of the suit. If this condition is satisfied, the court is enjoined with a duty to order such agreement,

compromise or satisfaction to be recorded. But in the case of a compromise in a proceeding under Sections 397 and 398 of the Companies Act,

the Court is not merely required to record or embody the terms agreed upon between the parties to the proceeding but should see that the interest

of the company which is the primary consideration is safeguarded.

25. In the light of the aforesaid two decisions, when we consider the petition for withdrawal, the permission granted for withdrawal is in the

interest of the company, otherwise the majority of shareholders will be compelled to sell their shares to the minority shareholders. One important

fact that we have to take notice in this case is that the second respondent in both the company petitions has categorically asserted that he did not

want to purchase the shares and a wrong statement was made on his behalf by the third respondent, as if he was willing to purchase the shares of

the petitioners in the two company petitions alongwith the third respondent (Appellant). In the reply statement filed on behalf of the second

respondent in C.P.No.25 of 1995, in paragraph 2, it is stated as follows:

It has been mentioned in the counter that the respondents group are interested to buy the shares of the petitioners. This respondent and his group

of shareholders are not interested to buy the shares of the petitioners. The counter statement has been filed by the third respondent without

obtaining consent from this respondent and his group of shareholders.

In the reply statement of the second respondent S.Rangaswamy, it is also stated that his intention is that his brothers and his brothers children are

brought to the company in order to run the company effectively and in the larger interest of the majority of the shareholders and also in the interest

of the company, the petitioners may be permitted to withdraw. There is also an allegation against the appellant in the said reply statement that the

third respondent has made a false statement in the affidavit filed before this Court. In such circumstances, if the respondents are to sell their shares,

they have to sell it only to the second appellant, it will lead to complications. That apart, as already seen, the respondents did not offer to sell their

shares unconditionally and their offer was to sell for a fair price and according to them, the price fixed by the valuer was not fair and it was lower

than the offers made by the outsiders.

26. Considering all the aspects of the case, I am of the view that the withdrawal of the two company petitions are in the paramount interests of the

company. Therefore, I do not find any reason to interfere with the order passed by the Company Law Board. Hence, the appeals are dismissed.

However, there will be no order as to costs. Consequently, C.M.P.Nos.3761 and 3762 of 1998 are dismissed.