

(2006) 11 KAR CK 0087

Karnataka High Court

Case No: Regular First Appeal No's. 1106, 1149 and 1324 of 2004

Wasava Tyres

APPELLANT

Vs

The Printers (Mysore)

Ltd.
 N.K.

Pranesh Vs The

Printers (Mysore)

Private Limited

RESPONDENT

Thomas Sudhakar

Ponnuraj Vs The

Printers (Mysore)

Limited

Date of Decision: Nov. 20, 2006

Acts Referred:

- Companies Act, 1956 - Section 21, 23
- Transfer of Property Act, 1882 - Section 106, 3 (1) (iii)

Citation: (2007) 139 CompCas 446 : (2007) 3 KCCR 1637 : (2008) 86 SCL 171

Hon'ble Judges: K. Sreedhar Rao, J

Bench: Single Bench

Advocate: Ravi B Naik and S.V. Shastri, for RFA No. 1106 of 2004, for the Appellant;

Sundaraswamy Ramdas and Anand, for the Respondent

Judgement

K. Sreedhar Rao, J.

All these Appeals project common question of law and facts, hence heard together for common disposal.

2. The respondent/plaintiff filed the suit against the appellant-tenants for possession and seek damages/mesne profits for the period after termination of the tenancy. The plaintiff before filing suit terminated the tenancy by issuing notice u/s 106 of T.P. Act.

3. The trial court allowed the suit granted decree directing the tenants to vacate and deliver vacant possession of the tenanted premises. The court also directed payment of damages at the rate varying between Rs. 5/- to Rs. 8/- per square feet payable by each of the tenant for use and occupation of the premises from the date of termination of tenancy. The trial court further granted interest in the rate of 12% on the damages if paid within the certain time and in default to pay enhanced interest at 18%.

4. The material facts disclose that the plaintiff/tenant is a private limited company. The provisions of Section 43-A(1A) are extracted hereunder for convenient reference:

[(1A) Without prejudice to the provisions of Sub-section (1), where the average annual turn over of a private company, whether in existence at the commencement of the companies (Amendment) Act 1974, or incorporated thereafter, is not, during the relevant period, [less than such amount as may be prescribed], the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the average annual turn over, a public company by virtue of this sub-section:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in Clause (iii) or Sub-section (1) of Section 3 and the number of its members may be, or may at any time be reduced, below seven.

5. The provisions of Section 21 and 23 of the Company's Act are extracted hereunder:

21. Change of name by company.- A company may, by special resolution and with the approval of the Central Government signified in writing, change its name:

[Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.]

23. Registration of change of name and effect thereof.-(1) Where as company changes its name in pursuance of Section 21 or 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 herein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not effect any rights or obligations, of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

6. The appellant filed Application to produce additional documents to prove that the turn over of the plaintiff's company has exceeded Rs. 1 crore, therefore it had become a public limited company by legal fiction in view of the provisions contained in Section 43A. The documentary material produced are the genuine and authentic material. Hence with the consent of the respondent counsel the documents are received as additional evidence which conclusively establish that the plaintiff company had become a public limited company by legal fiction on account of the provisions contained in Section 43A.

7. The consequences of plaintiff's company becoming a public limited company is of No. consequence in so far as the rights and obligations of the company nor render defective any legal proceedings by or against it, by virtue of the provisions in Section 23(3). Therefore the contention that the suit should fail since the company has become public limited company is untenable.

8. The Counsel for the appellant strenuously urged that the Managing Director who has filed the suit has no proper authorisation from the Board of Directors. The provisions of Order 29 CPC enables the Secretary, any of the Directors or the principal officer of the Corporation who is able to depose to the facts is competent to verify and sign the pleadings.

9. The Counsel for the appellant argued that a person to file a suit on behalf of the Company should have the necessary authorisation from the Board to institute the suit in order to bind the Company. In the absence of proper authorisation the suit filed on behalf of the Company is bad in law. In this regard relied on the ruling of the Calcutta High Court in [Al-Amin Seatrans Ltd. Vs. Owners and Party interested in Vessel M.V. "Loyal Bird"](#), . In the said decision it is laid down that a suit filed by Managing Director seeking various reliefs was not competent since there was no authorisation from the Board of Directors.

10. The facts in the cited case disclose that there was a dispute between the two groups in the Board of Directors. One group headed by Managing Director had filed the suit based on Articles of Association of the Company. In view of the dispute between the two rival groups of Directors it was held that the Managing Director had no complete representative capacity to file a suit on behalf of the company. In the instant case the facts stand on a different footing. There is no material to show that there is disagreement amongst the Directors for filing of the suit in question. On the other hand the suit is obviously filed for the benefit of the company. Hence the decision cited has no application to the facts of the case.

11. That apart, the provisions of Section 2(26) of the Companies Act defines the word Managing Director thus:

(26) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with (substantial powers of management) which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

(Provided that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management.

(Emphasis supplied)

Provided further that a managing director of a company shall exercise the powers subject to the superintendence, control and direction of its Board of Directors.

12. The words "substantial powers of management" specifically excludes certain acts from its preview. Therefore except the excluded acts the managing director has power and privilege of conducting the business of company in accordance with the Memorandum and Articles of Association of the company. The institution of the suit on behalf of the company by the managing director is deemed to be within the meaning of "substantial powers of management" since such a power is necessary and incidental for managing the day-to-day affairs and business of the company. Therefore, by virtue of provisions of Section 26 the suit instituted by the Managing Director is deemed to be within his power and authority. The suit is obviously filed for the benefit of the company. In that view of the matter, the contention that the Managing Director had no authority to file a suit is untenable and the same is rejected.

13. The Counsel for the appellant submitted that the appellant-tenants would find it difficult to get immediate alternate accommodation, therefore submitted that some reasonable time be granted for vacating the premises.

14. In view of the reasons and discussions made above, the order of eviction granted in all these appeals is confirmed. The appellant-tenants are granted time till the end of March 2008.

15. The damages in all the appeals for use and occupation is fixed at Rs. 5/- per square feet and shall be payable from the date of suit till the delivery of vacant possession. The arrears of damages shall be payable within five months from the date of this order failing which, the time granted for vacation shall stand forfeited and the

eviction order shall become executable, forthwith. The appellant-tenants shall pay monthly damages regularly on or before 10th of every month. In the event of default of payment of damages for any one month, the time extended for eviction shall stand forfeited. The order of eviction shall become forth-with executable.