

(1992) 08 AP CK 0002

Andhra Pradesh High Court

Case No: C.M.A. No. 738 of 1992

Nizamabad Corn Products (P)
Ltd. by its Director and Others

APPELLANT

Vs

Vasudev Dalia

RESPONDENT

Date of Decision: Aug. 28, 1992

Acts Referred:

- Companies Act, 1956 - Section 10, 10(1), 283(2)

Citation: (1992) 3 ALT 303 : (1992) 3 ALT 302 : (1992) 2 APLJ 206

Hon'ble Judges: Immaneni Panduranga Rao, J

Bench: Single Bench

Advocate: S. Ravi, R. Raghunandan Rao and A. Sanjay Kishore, for the Appellant; V.S. Raju and P.V. Rama Raju, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Immaneni Panduranga Rao, J.

This is an appeal preferred by the defendants aggrieved by the order of temporary injunction restraining them from giving effect to the resolutions passed at the 4th Annual General Meeting and the Board Meeting held on 30-4-1992 removing the respondent-plaintiff from the director-ship of the 1st defendant company.

2. The suit is filed for a declaration that the resolutions removing the respondent-plaintiff as a director of the 1st defendant company and the other resolutions passed in the 4th Annual General Meeting and the Board of Directors meeting held on 30-4-92 are illegal and void and for a permanent injunction restraining the defendants from interfering with the rights of the plaintiff as a director of the first defendant-company and other reliefs.

3. The learned counsel for the appellants argued that the Company was incorporated in November 1987; that the plaintiff was one of the Directors of the company; that by reason of his being absent for five consecutive meetings of the Board of Directors by virtue of Section 283(1)(g) of the Companies Act (hereinafter referred to as an "Act") the office of the Director has fallen vacant and by means of resolution passed in the Annual General Meeting held on 30-4-92 that fact was communicated to the plaintiff. He further argued that the learned Additional District Judge acting as the Vacation Civil Judge has passed the impugned order mis-interpreting the provisions of Section 283(1)(g) of the Act and that there is no need for passing any resolution removing the plaintiff as a director of the company.

4. The learned counsel for the respondent on the other hand argued that the plaintiff was recognized by the Andhra Pradesh State Finance Corporation as the chief promotor of the Company; that Andhra Pradesh Industrial Development Corporation agreed to sanction a loan of Rs. 38.30 lakhs; that Andhra Pradesh State Finance Corporation sanctioned a loan of Rs. 15.30 lakhs; and that as per the conditions imposed while sanctioning the loans, it is specifically stipulated that re-constitution of the company or change of Management shall not take place without the prior written consent of the Corporation.

5. The learned counsel for the appellants challenged the order of the lower court on three grounds viz., (1) the Civil Court has no jurisdiction to entertain the suit; (2) even otherwise when mischief complained of by the plaintiff has already been done there is no scope for granting a temporary injunction pending disposal of the suit and (3) at any rate the temporary injunction granted in very wide terms resulting in complete cessation of the Company's business, is not at all in the interests of the Company.

6. The learned counsel for the respondent relying upon the decision of our High Court in *Avanthi Explosives v. Principal Subordinate judge* (1987) 63 Com Cases 301 argued that the Civil Court has jurisdiction where the jurisdiction is not excluded specifically or by implication by the Act and that the suit to declare that the plaintiff was not disqualified to be Director or Managing Director is maintainable.

7. The learned counsel for the appellants on the other hand relying upon *V.N. Patil v. Maharashtra Seeds Corporation Limited* (1990) 68 Com Cases 608 argued that the jurisdiction of the Civil Court must be explicitly conferred by the Central Government; that u/s 10 of the Companies Act, essentially it is 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 powers have been conferred on the District Court by the Central Government; that Section 283 of the Act is not one of the Sections in respect of which jurisdiction has been conferred on the Civil Court and that the Civil Court has no jurisdiction to entertain the dispute arising u/s 283 of the Act.

8. The learned Judge of our High Court who decided Avanthi Explosives case, (1987) 63 Company Cases 301 has not taken into consideration this particular aspect of the case that Section 283 of the Act is not one of the Sections in respect of which jurisdiction has been conferred on Civil Court. The view that merely because Section 10 of the Act confers jurisdiction on the High Court the jurisdiction of the Civil Court has not been taken away cannot be correct in view of the specific direction contained in Section viz., "except to the extent to which jurisdiction has been conferred on any District Court in pursuance of Sub-section (2)". Sub-section (2) reveals that Section 283 is not one of the Sections in respect of which jurisdiction has been conferred on Civil Courts.

9. Following therefore the decision in V.N. Patil's case, (1990) 68 Company Cases 608 I hold that the Civil Court has no jurisdiction to entertain the suit.

10. In respect of the second objection the learned counsel for the Appellants has relied upon a Division Bench decision of our High Court in M/s. Golden Wine Agencies v. M/s. Venedela Distilleries (P) Limited AIR 1984 A.P. 274 in which it is held that the relief in the form of temporary mandatory injunction cannot be granted unless the plaintiff shows a clear right and a case of necessity and of extreme hardship and that the Court should exercise its jurisdiction of granting temporary mandatory injunction with greatest possible care and in cases where the remedy of damages is inadequate in the interests of justice.

11. The third objection is on the ground that the temporary injunction granted is very wide in its terms so as to completely prevent the defendants from transacting any business which is not permissible. The impugned order in effect prohibits the first defendant from making any production or to transact any business, which is not in the interests of the Company.

12. For all these reasons I allow the Appeal and set aside the temporary injunction granted by the lower court. I further direct each party to bear its own costs in the Appeal.