Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2935-36 of 2015
(Arising out of Special Leave Petition (C) Nos.6513-6514 of 2015)

Jyoti Limited & Others ... Appellants

Versus

Bharat J. Patel & Others ...Respondents

J U D G M E N T

Chelameswar, J.

1. Leave granted. Heard Mr. Dushyant Dave and Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the appellants and the respondents respectively.

2. Aggrieved by an order dated 19.02.2015 of the High Court of Gujarat in Civil Application No.14367 of 2014 in Appeal From Order No.548 of 2014 and Civil Application No.222 of 2015 in Appeal From Order No. 548 of 2014, the respondents therein preferred the instant appeals.

3. The respondents herein preferred the above mentioned AFO No.548 of 2014. They were the plaintiffs in Civil Suit No. 652 of

2014. Alongwith the Civil Suit, they filed an interim application seeking certain interim reliefs. The prayer in the interim application is as follows:-

> "i) restraining defendant Nos.2 to 9 by an order and injunction from convening and/or holding and/or attending any meeting of the Board of Directors of the defendant company, and/or from voting threat and/or pass any resolution by Circulation, so as to frustrate and/or prevent the holding of EGM requisition by the plaintiffs pursuant to the Notice dated 18th December, 2014 (Ext. H and I hereto).
>
> ii) to order and direct the defendants by themselves, their servant, agents, officers and subordinates by an order and injunction to take all steps and do all things necessary and required under the provision of the Company's Act, 2013, including for furnishing list of shareholders as requested by the plaintiffs in their requisition notice dated 18.12.2014, so as to ensure, effectuate and facilitate the holding of EGM in accordance with law and as envisaged under the provisions of the Companies Act, 2013 pursuant to the requisition of the plaintiffs dated 18th December, 2014 (Exh. H and I)"

4. From the order dated 29.10.2014 passed by the trial Court on the said application, it appears that the respondents sought an order restraining the appellants herein from attending and voting at a meeting of the Board of Directors scheduled on 13th October, 2014. The trial Court declined to grant the interim relief as sought for. The operative portion of the order reads as follows:

> "…….. Therefore, above referred judgments are not applicable in my humble opinion to the present case and therefore, there is no prima-facie case in favour of the plaintiff hence, there is no prima-facie case there is no question of balance of convenience and irreparable loss caused to the plaintiff and hence, further as per law laid down by the Apex Court relied upon by the defendants Ld. Advocate Dr. N.P. Parmar reported in 2009(0) GLHEL-SC-47882 in case of Dilipsing v. State of U.P. Considering the facts that the plaintiff has challenged the issuance of the notice below mark 4/1 and therefore, this suit is itself is premature. Hence, even on this count also the plaintiff is not entitled for equitable relief and therefore, Points No.1 to 3 are accordingly

answered in to negative and pass following other for deciding Point No.4.

ORDER

This application Exh.5 is hereby rejected."

5. Aggrieved by the same, AFO 548 of 2014 came to be filed by the respondents herein before the High Court. The appellants herein took a definite stand both before the trial Court as well as before the High Court that the suit itself is not maintainable and the remedy, if any, to the respondents herein is to approach the Company Law Board under Section 186 of the Companies Act, 1956.

6. The High Court recorded a conclusion that the respondents would not be able to maintain the proceedings before the Company Law Board.

"4.6 On conjoint reading of the above quoted provisions of law and the objection taken by the respondents, including the one that the voting right is already suspended by the Company qua the said share holding, asking the plaintiffs to move the Company Law Board would be meaningless because their (plaintiffs') lack of voting right as contended by the respondents would make the proceedings before the Company Law Board as well, not maintainable. This is over and above an additional aspect that, the provision of Section 186 of the Companies Act, *prima facie* cannot be read to be meant for the circumstances like the present one, however no final opinion needs to be expressed with regard to the scope and ambit of the said section, since that is not the controversy before this Court."

On the question of the maintainability of the suit, the High Court recorded as follows:

"Suffice it to hold that, in the facts of this case, considering the material

> on record and the chequered history between the contesting parties, and the chronology of the actions taken by the respondents, as borne out from record, the suit in question cannot be termed to be not maintainable. The suit is therefore held to be maintainable. The contention of the respondents in this regard is rejected. "

7. The maintainability of a suit is question of law. Though, by virtue of declaration under Section 9 of the Code of Civil Procedure, 1908, all suits of civil nature are maintainable unless barred either by an express provision or by implication of law. In the case on hand, when a specific stand is taken that in view of the provisions of Companies Act the suit is not maintainable, "the checkered history between the contesting parties and the chronology of the actions taken by the respondents", in our opinion, do not decide the maintainability of the suit. We find the conclusion recorded by the High Court to be highly unsatisfactory.

8. On the question whether the plaintiffs have a prima facie case, the High Court recorded a cryptic conclusion without recording any reasons (at para 7.2) that they have a strong prima facie case. On the question of the balance of convenience also, the order of the High Court is very equivocal. But the High Court went on to issue certain directions:

9. The High Court at para 7.4 held that in view of the fact that from 31.12.2014 orders of status quo existed, the same is directed to be continued to be considered on the next date of hearing, i.e. 16.03.2015. In the interregnum, the High Court directed the

appellants herein as follows:

> "7.2 The respondents/original defendants, more particularly the respondent Company (original defendant No.1), are directed to consider the requisition notice in question dated 18.12.2014 given by the plaintiffs, and comply with the provisions of Rule 17(7) of the Companies (Management and Administration) Rules, 2014, within a period of one week from today. On receipt of such list of members as per rules, from the company, it would be open to the appellants, to take further actions in accordance with law, to convene the Extraordinary General Meeting of the Company, within the time stipulated under law. For this purpose, the time taken by the respondents in supplying the list of the members, as required under law, to the requisitionists (the plaintiffs), beyond what is permissible under Rule 17(7) of the Rules, shall not count against the plaintiffs.
>
> 7.3 It is directed that, any decision that may be taken, or the resolution that may be passed in the said Extraordinary General Meeting, shall not be given effect to, without prior permission of this Court, and further that, any business transacted at the said meeting and/or any outcome thereof shall be subject to further orders that may be passed by this Court."

10. Hence, these appeals by special leave.

11. We are of the opinion that the directions in paras 7.2 and 7.3 are inconsistent with the directions in para 7.4. Apart from that, the fact that the orders of status quo were granted by the Chamber Judge during vacation, which have been continued from time to time without further consideration regarding the tenability of such orders, is no ground for continuing such orders. In the circumstances, we deem it appropriate to set aside the impugned order. Having regard to the various contentions raised by the parties, it is better that the appeal before the High Court itself is disposed of on merits expeditiously.

SUPREME COURT OF INDIA
JUDGMENT

12. Appeals are, accordingly, allowed.

.....**J**.
(J. Chelameswar)

.....**J**.
(R.K. Agrawal)

New Delhi;
March 17, 2015

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT