

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No. 94/2023
(IA No.1191/2023)

IN THE MATTER OF:

**1. Mr. Tajinder Singh Bhathal, Adult,
Indian Inhabitant, Bunglow No. 25,
Konarkvilla, Talera Park co.
Housing society, opp. Dr. Erin Nagarwala High
School, Kalyani Nagar Pune – 411006,
Maharashtra, India**

... Appellant

Versus

**1. MRF Limited, a Company incorporated
under the Companies Act, 1956
having its Registered office at
New No.114 (Old No.124), Greams Road,
Chennai-600006, Tamil Nadu, India**

... Respondent No. 1

**2. K. B. Munivenkata Reddy, Adult,
Indian Inhabitant, No. 1, Konena
Agrahara, H.A.L.P.O, Bangalore-
560017, Karnataka, India**

... Respondent No. 2

**3. Kumar V Jahgirdar, Adult, Indian
Inhabitant, #78, 1st Floor, Osborne
Road, Bengaluru-560042,
Karnataka, India and/or Flat No. 3,
Natasha Penta, Infantry Road Cross,
Bangalore - 560001.**

... Respondent No. 3

Present:

For Appellant : Mr. Agam H Maloo & Mr. Prakar Tandon, Advocates

For Respondents : Mr. M.Vijayan, Advocate for King & Partridge For R1

Ms. Chinna Abraham for

Ms. Prapti Mehta, Advocates for R2

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

Precisely, in order to clarify the facts, we are required to deal with, the minor issues, which were the subject matter for consideration in the company petition which was adjudicated, by the Ld. NCLT, Chennai Bench, in a proceeding being **Company Petition No. 106/(CHE)/2021**, which ultimately stood rejected by the Impugned Order dated 10.08.2022.

The facts that are relevant for this Company Appeal, are that, as back as in the year 1987, Late Shri. Iqbal Singh Bhathal is said to have purchased 100 equity shares of MRF limited having a face value of Rs.10/- each, bearing Folio No. B02990, in the name of his son, the Appellant Shri. Tejinder Singh Bhathal and Late Smt. Satwant Kaur Bhathal, mother of the Appellant. The Appellant contends that he was not aware of the investments thus made by his father in his name, by virtue of the purchase of the aforesaid equity shares with effect from 27.02.1987, but however he was made conscious of the aforesaid transaction/purchase of the shares only when on 16.10.2018, he was called upon for the purposes of collecting the information, as to whether he happens to be the

holder of 100 equity shares of MRF company, since they have been transferred to the Investor Education and Protection Fund (IEPF). It is upon the said information being imparted to the Appellant, he had written to the Respondent, for issuing of Duplicate Share Certificates, of the said shares in lieu of, the share certificate, which have been lost bearing Share Certificate No. 168061 and 168062. Thereafter, in response to the communication made on 16.10.2018, the MRF is said to have written a reply on 15.11.2018, reiterating the earlier reply given by them way back on 03.06.1996, and had also enclosed the letter dated 03.06.1996. In the letter of 03.06.1996, it was mentioned by MRF Company that the original share certificates that were claimed to be lost by the Appellant, are available and they are with M/s. Fair Growth Investments Limited Mumbai, requiring for rectification of the deficiencies along with the transfer deed. The MRF also stated therein that they had denied to issue the Duplicate Share Certificates to the Appellant against the Original Share Certificates Bearing No. 168061 & 168062 claimed to have been lost since the original share certificates are still available. On receipt of the letter dt. 15.11.2018 from MRF, the Appellant filed a First Information Report bearing FIR No. LR02053122018 on 06.12.2018, with the Crime Branch of Pune, Maharashtra for loss/theft of the said 100 shares and besides the registration of the FIR, he has also written to the MRF for intimation, enclosing therewith the copy of the FIR and praying for, necessary guidance on the appropriate procedure to be adopted, for the purposes of issuance of the Duplicate Share Certificate. He further submitted that, if the Appellant did

not receive the letter in response to the aforesaid communication, he will have to resort to the appropriate remedies available to them under law.

While this dispute was being pursued, as against one another apparently by various correspondences, which has been brought on record, during the intervening period the ultimate controversy, which emerged was that, when the Appellant made the request for deletion of the name of Mrs. Satwant Kaur Bathal (his mother) in the share certificate and also re-affirmed that the shares have never been sold, mortgaged, pledged or otherwise encumbered or disposed of, by him and that, the said share certificates were either been lost/misplaced or had been destroyed, MRF intimated him that they have received an objection from Mr.K.Munivenkata Reddy (R-2), the lodger of the transfer documents stating that he is the owner of the said 100 shares and no duplicate share be issued without his consent.

Ultimately, the controversy resulted into the institution of a civil suit, which was filed by Respondent No. 02, being O.S. No. 7586/2019, which was instituted before the court of the Hon'ble Civil Judge, Bengaluru, claiming a relief by way of a title over the 100 equity shares of the MRF, which were owned by the Appellant jointly with his deceased mother.

In the light of the provisions contained under Section 430 of the Companies Act, in matters falling under the jurisdictions of NCLT/NCLAT civil suits shall not be entertained, and therefore a civil suit with regards to the aforesaid controversy was not maintainable. Still the Appellant filed a civil suit on

24.01.2020 in Civil Court Senior Division, Pune in RCS 123/2020 wherein, the Appellant has claimed his title over the 100 equity shares of the MRF, which were owned by the Appellant jointly, with his deceased mother. The said suit remained pending and during its pendency, the Appellant instituted the proceedings, by way of a company petition being Company Petition No.106 (CHE)/3/2021, preferred before the Ld. Adjudicating Authority on 28.07.2021.

When the proceedings of the company petition was being conducted, it was found that in the proceedings instituted by the Appellant under Section 59 of the Companies Act, the Appellant has sought multi-fold reliefs, the cognizance of which has been taken by the Ld. Adjudicating Authority in the Impugned Order. But we at this stage are refraining ourselves to venture into the propriety of the reliefs sought for, because the reliefs thus claimed by the Appellant are yet to be adjudicated on merits and any finding if recorded by us, on merits of the issue may have an adverse bearing on the proceedings of the company petition itself. When the petition dated 28.07.2021 was filed before Ld. NCLT, Chennai, the petitioner made a statement before the Ld. Tribunal with regard to the pendency of the suits, and the relevant extract of Para 42 and 43 of the said petition has been extracted by the Ld. Tribunal, while passing the Impugned Order, observing thereof that, owing to the bar created under Section 430 of the Companies Act, 2013, the civil suit ought not to have been instituted or if instituted already, should not have at all been carried parallel to the proceedings of the company petition.

During the pendency of the company petition, the Appellant undertook, that he would withdraw the suit, which was filed by him before the Ld. Civil Court, Senior Division, Pune. Further, by an order of 16.02.2022, the Ld. Adjudicating Authority specifically directed the Appellant to file a memo giving the details with regards to the other connected matters pending in various other forums, which has been preferred by the Appellant, and in compliance, thereto, the memo was filed bearing SR No. 2846, it stood as preferred on 27.04.2022.

In giving the details of the pending matters, the Appellant has also referred to the pendency of a civil suit being Civil Suit No. R.C.S. 123/2020, which was shown to be pending before the Hon'ble Civil Court, Senior Division, Pune, as well as the details of other suits, which were preferred by the Respondent and other affected persons, qua the controversy pertaining to the transfer of shares.

In the memo dated 27.04.2022 pursuant to the order of 16.02.2022, as it was rendered in the company petition, the facts reveal that the Appellant was unable to comply with the undertaking which was given on 28.07.2021 in para 42 and 43 of the petition with regards to the pendency of the suit and its withdrawal. Thus, based on the contents of the memo submitted by the Appellant, the Ld. Adjudicating Authority came to the conclusion that, since only a memorandum has been preferred, the civil suit is still shown to be pending and no documents have been filed by the Appellant to prove that he has filed an application for the purpose of withdrawal of the Civil Suit No. R.C.S. 123/2020, and since there is no document of the civil court on record to prove the withdrawal

of the suit, it is to be held that the Appellant has not complied with the earlier conditions/undertaking, given in the Company Petition in Para 42 and 43, to the effect that, he would be withdrawing the suit, and accordingly proceeded to pass the impugned order, dismissing the petition of the Appellant on the ground that the Appellant cannot be permitted to resort to two parallel remedies simultaneously for the redressal of his grievance, which is of a like nature based on the same subject matter and the cause of action too.

The Ld. Counsel for the Appellant has submitted that, though admittedly they undertook to withdraw the suit and they had also filed a memo in that regard before the Ld. Civil Court, but no orders were passed on the same, and the said suit was, as per his submission, dismissed as withdrawn only on 13.08.2022, after passing of the Impugned Order and thus the embargo which was created by Section 430 of the Companies Act, now stood eradicated because of subsequent dismissal of suit, and therefore the proceedings initiated by him by way of company petition under Section 59 of the companies Act, ought to have been decided on its merits.

The dismissal of the Company Petition on 10.08.2022, cannot be legally faulted, because admittedly on that date the Appellant was pursuing two simultaneous remedies, one by way of the Company Petition and the other, by way of a civil suit, which was pending despite of the undertaking given by the Appellant to withdraw the same. Though the withdrawal memo was filed, but no orders were passed till the Company Petition was taken up by the Ld. Tribunal

on 10.08.2022 and orders were passed dismissing the company petition, on the ground that civil suit is being simultaneously pursued.

But we cannot be oblivious of the fact, and ignore it, that when the civil suit was placed before the Lok Adalat, for hearing on 13.08.2022, on the withdrawal memo preferred by the Appellant, the ‘Civil suit’ being RCS/123/2020 was permitted to be ‘dismissed’ as ‘withdrawn’. Since the dismissal of the suit happened on 13.08.2022, 3 days later than the date of dismissal of Company Petition, a very peculiar situation has emerged that, on one hand, the company petition under Section 59 was dismissed on 10.08.2022 because of the reason of the pendency of the civil suit, which was undertaken by the Appellant to be withdrawn and for which the Appellant has already filed a withdrawal application and on the other hand, the civil suit is RCS/123/2020 got dismissed as withdrawn on 13.08.2022 an application of the Appellant. Thus, the Appellant has been deprived of pursuing any of the remedies because of the dismissal of the company petition by the impugned order of 10.08.2022 and because of the civil suit being dismissed on 13.08.2022 as withdrawn.

It is a settled preposition of law constitutionally mandated, that a right to judicial remedies is a right which is safeguarded by Article 21 of the Constitution of India, and under this right, nobody could be deprived of availing the judicial remedies before the competent Court of Law for redressal of his grievances, which in the instant case falls to be within an ambit of Section 59 of the Companies Act. But the same was denied by the Ld. Adjudicating Authority on

account of the pendency of the civil suit, but we cannot ignore the fact which has been brought on record, that when this company appeal was being considered, it is a fact which is not denied, that on the withdrawal memo was filed in the civil suit except that the Lok Adalat dismissed the suit as withdrawn only on 13.08.2022 after the Company Petition got dismissed. If that be the case, a scenario has emerged where the Appellant has, lost both of his legal remedies to pursue the matter. A right to judicial remedy, is a right envisaged under the Constitution, which cannot be deprived of, merely because of a minor procedural error or procedural technicalities and because of the fact that, the application for withdrawal of the suit was considered subsequently, by the Hon'ble Civil Court on 13.08.2022 for which the Appellant cannot be held responsible. We will have to bear in mind that even the subsequent order passed in the suit on the withdrawal application, will too have a similar effect of overriding the restrictions contained under Section 430 of the Companies Act. As of now, when we are considering this appeal there is no pending suit as such. If that be the situation the Appellant ought to be permitted to resort to the process of redressal of his grievances permissible by way of a process known to law and that would be by way of the preferring of the company petition under Section 59 of the Companies Act.

Hence, we are of the view that owing to the implications of the order passed on 13.08.2022, since in the light of the undertaking given by the Appellant before the Ld. Adjudicating Authority to withdraw the suit, the same has been withdrawn though marginally at a later stage, in that eventuality, minor procedural

technicalities should not create any hurdle as such against the Appellant for, depriving him for all times to come, from resorting to his judicial remedies. Therefore, as the suit has been withdrawn on 13.08.2022, the Company Petition No. 106(CHE)/2021, as preferred by the Appellant under Section 59 of the Companies Act, ought to have been considered on its merit.

Be that as it may, the dismissal of the Company Petition cannot be faulted, but then we have to balance the equities, and while doing so, we feel it apt that the Impugned Order of dismissing the company petition on the ground that there was a pending civil suit being Civil Suit No. R.C.S. 123/2020 which was not withdrawn at the relevant time despite of the undertaking given in Para 42 and 43 of the application dated 28.07.2021 needs to be set aside as it is very much apparent from the records that the Appellant did show his bonafide by filing an application for withdrawal of the suit, which was later on considered and the suit stood withdrawn on 13.08.2022. In that eventuality, in order to carve out an exception, to enable the Appellant to resort to the appropriate legal remedies available to him under law, the Impugned Order would stand quashed and as a consequence of the order of dismissal of Civil Suit No. R.C.S. 123/2020 by the Hon'ble Civil Court, Senior Judge, Pune, the proceedings of the Company Petition No.106(CHE)/2021 as preferred before the Special Bench of Ld. NCLT Chennai, would revive back to be decided on merits.

But considering the fact that, the three Respondents have been forced, for unnecessarily, to engage themselves in litigation due to the procedural

discrepancy on the part of the Appellant, they could be compensated by the Appellant with the cost of Rs.5000/- each (Ten Thousand Only) which is to be remitted by the Appellant to the Respondent within a period of two weeks from the date of receipt of the certified copy of this Judgment, and it is only upon, placing the proof of remittance of the cost, the proceedings of the Company Petition No. 106(CHE)/2021, would revive back and the same would be decided exclusively on merits in accordance with law.

Subject to the aforesaid the ‘Company Petition’ stands ‘allowed’ and the ‘Impugned Order’ under challenge would stand ‘quashed’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

24/12/2024
SN/TM/MS