

Caveat. No. 122 of 2014

In CRP No. 16 of 2014

10-7-2014

HON'BLE THE CHIEF JUSTICE

Mr. K.Ch. Gautam, Advocate, present for the caveator.

Since the learned counsel for the applicant and respondent have been heard in CRP application No. 16 of 2014, as such, this Caveat application No. 122 of 2014 stands discharged.

S.Rynjah

CHIEF JUSTICE

Cont.Cas(C). No. 12 of 2014

10-7-2014

HON'BLE THE CHIEF JUSTICE

Mr. S. Chakravarty, Advocate, present for the petitioner.

By means of this contempt application, the petitioner has complained disobedience of order dated 17-12-2012 passed In WP(C) No. (SH) 56 of 2009, whereby reinstatement of the writ petitioner was directed.

Issue notices to respondent No.1, Mukul Jeishi and respondent No.2, Nicholas Khyriem, who may file their responses within a period of 4(four) weeks.

List after 4(four) weeks.

S.Rynjah

CHIEF JUSTICE

Cont.Cas(C). No. 30 of 2013

10-7-2014

HON'BLE THE CHIEF JUSTICE

None present for the applicant/petitioner.

Mr. R. Deb Nath, Advocate, present for the respondents.

1. Heard.
2. By means of this contempt petition, the applicants/writ petitioners have complained disobedience of order dated 20-9-2012 passed in WP(C) No. 174 (SH) of 2012.
3. In response to the notices issued by this Court, it has been stated by the respondent No. 2 that the direction issued by the Court in aforesaid writ petition was to construct a water reservoir for which the writ petitioner had to provide the land. It is further stated that answering respondent is ready to make the water reservoir if the petitioners identify the land or provide relevant documents of specific location.
4. In the response affidavit filed on behalf of respondent No.1, B.Lyngkhoi, it has been stated that the writ petitioners have suppressed the material facts. It is further stated that in fact, the respondent has already complied with the order, and the reservoir could not be constructed as the writ petitioner failed to locate the land for the same.
5. No rejoinder affidavit has been filed to the above mentioned responses by the petitioners, even after opportunities given.
6. I have perused the operative portion of the order dated 20-9-2012 passed in WP(C) No. 174 (SH) of 2012 which clearly indicates that it is the petitioners who should identify the land for the purpose of giving effect to resolution relating to construction of the reservoir.
7. In the above circumstances, there does not appear to be wilful disobedience on the part of the respondents.

8. Therefore, the contempt petition No. 30 of 2013 is dismissed. Notices stand discharged.

S.Rynjah

(Prafulla C.Pant)
CHIEF JUSTICE

THE HIGH COURT OF MEGHALAYA

CRP No. 16 of 2014

1. **Sri. Laxmi Narayan Sogani**, son of Late Danmal Sogani, resident of Bargola Complex, 2nd Floor, Chaigali, Fancy Bazar, Guwahati – 781001, District – Kamrup (M), Assam.
2. **Sri. Sumit Sogani**, son of Sri Laxmi Narayan Sogani, resident of Bargola Complex, 2nd Floor, Chaigali, Fancy Bazar, Guwahati – 781001, District – Kamrup (M), Assam.

.....Petitioners

-Versus-

1. **Balaji Candles Private Limited**, a Company incorporated under the Companies Act, 1956, having its Registered Office at Pahamkmiedum, 8th Mile, Baridua, Ri-Bhoi District, Meghalaya – 793101.

...Respondent

2. **Smti Lucy Sawkmie**, Resident of 8th Mile, Baridua, Myllem Syiemship, Ri-Bhoi District, Meghalaya – 793101.

...Proforma Respondent

Mr. D.Saikia, Advocate, Mr. R.Barpujari, Advocate, Mr. KK Dutta, Advocate, Mr. H. Abraham, Advocate, present for the appellants.

Mr K. Ch. Gautam, Advocate, present for the respondent No. 1.

Date of Hearing 10th July, 2014.

Date of Order 10th July, 2014.

ORDER

HON'BLE PRAFULLA. C.PANT, CHIEF JUSTICE

1. Heard.
2. By means of this civil revision petition filed under Article 227 of Constitution of India, the petitioners have sought quashing of order dated 3-6-2014 passed in TS No. 4(T) of 2014 pending in the court of Assistant to Deputy Commissioner (Judicial), Ri-Bhoi District, Nongpoh. The petitioners have further sought quashing of all the proceedings related to said suit.
3. Brief facts of the case are that TS No. 4 (T) of 2014 was instituted by the present respondent, Balaji Candles Private Limited (plaintiff) for declaration of permanent injunction in respect of land in suit situated at Pahamkiedum, 8th Mile, Baridua, GS Road, Raid Marwet, Myllem Syiemship, Ri-Bhoi District, Meghalaya. The trial court appears to have passed the impugned order dated 3-6-2014 entertaining the said petition and directing the same to be registered, whereafter the trial court further directed the plaintiff to take steps for service on the defendants.
4. A pure legal ground has been raised in this petition, and attention of this court has been drawn to Section 10GB of Companies Act, 1956. Section 10-GB of Companies Act, 1956 reads as under:

“10GB. Civil Court not to have jurisdiction.-(1) No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect

of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force”.

5. It is pointed out on behalf of the petitioners (defendants) that they were Directors of the plaintiff company and are still shareholders. As such, the dispute between them and the present respondent (plaintiff) was covered under Section 398 of Companies Act, 1956 which reads as under:

“398. Application to *(Subs. By Act 11 of 2003, sec. 44, for “Company Law Board”. Earlier the words “Company Law Board’ were substituted by Act 31 of 1988, sec. 67, for the word “Court” (w.e.f. 31-5-1991) [Tribunal] for relief in cases of mismanagement.*-(1) *Any members of a company who complain-*

(a) *that the affairs of the company (Subs. By Act 53 of 1963, sec. 11, for “are being conducted” (w.e.f. 1-1-1964) [are being conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company; or*

(b) *that a material change not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors, (The words “or of its managing agent or secretaries and treasurers,” omitted by Act 53 of 2000, sec. 178 (w.e.f. 13-12-1960)[***] (Ins. By Act 65 of 1960, sec.153 (w.e.f. 28-12-1960). [or manager] (Certain words omitted by Act 53 of 2000, sec. 178 (w.e.f. 13-12-2000) [***] or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company (Subs. By Act 53 of 1963, sec.11, for “will be conducted” (w.e.f. 1-1-1964) [will be conducted in a manner prejudicial to public interest*

or] in a manner prejudicial to the interests of the company, may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under subsection (1), the [Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

(i) The holder of a General Power of Attorney for and on behalf of a shareholder can validly give consent to a petition under sections 397 and 398 of the Act; **P. Punnaiah v. Jeypore Sugar Co., Ltd.**, AIR 1994 SC 2258: 1994 (81) Comp. Cas. 1: 1994 (2) Com LJ 13.

(ii) Section 398 comes into play when there is actual mismanagement or apprehension of mismanagement of the affairs of the company. It may be contrasted with section 397 which deals with oppression to the minority shareholders, whether there is prejudice to the company or not; **Shanti Prasad v. Kalinga Tubes Ltd.**, 1965 (35) Comp. Cas. 351: 1965 (1) Com LJ 193: AIR 1965 SC 1535.”

6. In view of the above provisions of law contained in Companies Act, 1956, read with Section 9 of Code of Civil Procedure, 1908, this Court is in agreement with learned counsel for the petitioners that the Civil Court had no jurisdiction to try the suit in question.
7. Therefore, the present petition is allowed. Impugned order dated 3-6-2014 passed in TS. No. 4 (T) of 2014 passed by District Judge/ Additional Deputy

Commissioner (J), Nongpoh, and the one passed by Assistant to Deputy Commissioner/Munsiff, Ri-Bhoi District, Nongpoh, are hereby quashed. The proceedings of the suit are also quashed, with liberty to the respondent (plaintiff) to seek remedy before the appropriate forum provided under the Companies Act, 1956.

(Prafulla C.Pant)
CHIEF JUSTICE
10-7-2014

S.Rynjah

WP(C). No. 232 of 2014

10-7-2014

HON'BLE THE CHIEF JUSTICE

Ms. P. Bhattacharjee, Advocate, present for the petitioner.

Mr. SC Shyam, Sr. Advocate, present for the respondents.

Learned counsel for the respondents prays for and is allowed 4(four) weeks' time to file the counter affidavit.

List after 4(four) weeks.

S.Rynjah

CHIEF JUSTICE