

(24) It is also pertinent to note here that once the tenancy of the plaintiff-respondent on account of abovesaid lease deed Ex.PX which was the sole basis for filing the present suit, stood terminated and the plaintiff-respondent stands evicted from the suit property, no cause of action survives in his favour. He has been left with no *locus standi* to pursue his suit for mandatory injunction, because that relief is no more available to the plaintiff-respondent.

(25) Further, during the course of hearing, learned counsel for the plaintiff-respondent could not raise any substantive argument so as to support the impugned judgments and decrees passed by the learned courts below. In view of the observations made hereinabove, it is held that the impugned judgments and decrees were since suffering from patent illegality apparent on the record of the case, the same cannot be sustained.

No other arguments was raised.

(26) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned judgments and decrees cannot be sustained and the same are, hereby, set aside. Consequently, suit of the plaintiff-respondent must fail and the same is, hereby, dismissed.

Resultantly, the instant regular second appeal stands allowed, however, with no order as to costs.

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*S. Gupta*

*Before Surya Kant, J.*

**DR. JANG BAHADUR SINGH & OTHERS**—*Petitioner*

*versus*

**FRICK INDIA LTD. AND OTHERS**—*Respondents*

**CAPP No. 38 of 2013**

December 18, 2013

*Companies Act, 1956 - Ss. 397, 398, 402 & 403 - Company Law Board Regulations, 1991 - Regs. 44 & 46 - Code of Civil Procedure, 1908 - O. 6 R. 17, O. 39 R. 4 - Company Law Board - Power of -*

***Amendment of original petition - After arguments on behalf of Petitioner-Appellant was concluded before CLB, Appellant moved application for amendment of company petition - Appellant had already informed about its knowledge of relevant facts much prior to commencement of arguments in main petition - CLB dismissed amendment application - Petitioner-Appellant argued that since his arguments were still inconclusive, rejection was unjustified as rigours of CPC did not apply to proceedings before CLB - Held, that all procedural laws including CPC are harbingers of fair play in action even in judicial approach - These are designed to facilitate justice - These cannot be used to derail or obstruct administration of justice - It was imperative upon Appellant to seek amendment without wastage of even a single day - Amendment application was correctly dismissed.***

*Held*, that the expeditious disposal of the main petition is the core issue and every action or omission of the parties in deference thereto has to be adjudged by the Board keeping in view the observations contained in the order of this Court dated December 20, 2012. If that were so, the appellant owed an explanation to the Board for moving the amendment application in October, 2013 in relation to the facts he had come to know before August, 2012 (Re. appointment of additional directors) or in December, 2012 (Re. his non-appointment as director or removal from chairmanship by rotation).

(Para 14)

*Held further*, that it is unassailable that arguments in the main petition commenced on 11-1-2013. If the appellant intended to get a serious trial on the additional issues raised through the proposed amendment, he ought to have earnestly strived to seek amendment on the very first available opportunity. However, the appellant did not do so.

(Para 15)

*Held further*, that the question of whether or not the strict provisions of CPC applied to the proceedings before CLB, in my considered view, need not be gone into. All procedural laws including CPC are harbingers of fair play in action even in judicial approach. They are designed to facilitate justice and further its ends. Procedural laws do not create any impediment or obstruction in the administration of justice. They are known as 'the hand-maid of justice and not its mistress'. The

avowed object of the procedural laws is to aid and deliver substantial justice to the parties. They cannot be used to derail the plain and effective justice as the very purpose of enacting procedural laws is to advance the cause of justice

(Para 16)

*Held further*, that regulation 44 of the 1991 Regulations confers inherent power on the CLB to make such orders as may be necessary for the ends of justice or to prevent abuse of its process. Regulations 46 also enables the Board to amend any defect or error in any proceedings before it for the purpose of determining the real question or issue raised by or depending on such proceedings. These powers appear to be akin to the inherent powers conferred on a Civil Court under the Code of Civil Procedure or on the superior or the High Courts under different provisions of the procedural laws. The solitary object of these powers is to arm the courts to act according to their judicial consciousness and dismantle the barricade of injustice, if any, created by procedural niceties. Conversely, the cause of justice is also equally safeguarded by these very powers by enabling the courts to prevent the abuse of their process.

(Para 17)

*Held further*, that the paramount consideration and the litmus test thus is the correct appreciation of the facts and circumstances of each case by the court for drawing a distinction between 'doing substantial justice' or 'preventing the abuse of its process'. Since the facts and circumstances would vary on a case to case basis, so would be the applicability of the principles embodied in the procedural laws.

(Para 19)

*Further held*, that owing to the essence of time and anxiety of the respondents for an early disposal of the main petition, for which they agreed before this Court to produce the original records of the company even after succeeding before the CLB in not doing so, it was imperative upon the appellant to seek amendment without wastage of even a single day. The luxury of time at his disposal was ill-afforded. His amendment application deserved to be, and shall be taken to have been, dismissed on this score alone.

(Para 20)

***Words and phrases - Due diligence - Connotation - Prudence which enables Court to prevent abuse of its process - Rule of caution - Expression inseparably inbuilt in the inherent powers of every Court or Tribunal.***

*Held further*, that “due diligence” is a well-known connotation of prudence which enables the Court to prevent the abuse of its process. Even if this expression is not imprinted as a letter of law, it is inseparably inbuilt in the inherent powers of every Court or a Tribunal. This rule of caution must, therefore, be read into Regulation 44 of the 1991 Regulations also.

(Para 18)

UK Chaudhary, Senior Advocate with  
Parveen Gupta, Advocate;  
Ms. Avanti Tiwari, Advocate; and  
Karan Malhotra, Advocate *for the appellants*  
Amit Sibal, Advocate;  
Atul V Sood, Advocate;  
Vinay Tripathi, Advocate; and  
Gaurav Varma, Advocate for the respondents-caveator

**SURYA KANT, J.**

(1) This Company Appeal is directed against the order dated 12.11.2013 passed by the Company Law Board, New Delhi whereby CA No. 62/2013 in CP No. 34 (ND)/2012 moved by the appellant for amendment of his Company Petition has been dismissed.

(2) The facts may be noticed briefly. The appellant has filed CP No.34 (ND)/2012 under Sections 397, 398, 402 & 403 read with Section 111-A of the Companies Act, 1956 (in short, ‘the Act’) before the Company Law Board (in short, ‘the Board’). The Company Petition is founded upon several instances of alleged oppression and mismanagement including (i) illegal and *mala fide* transfer of 2500 shares held by the appellant to respondent No.3; (ii) attempt to illegally acquire 20% out of 40% shares held by the appellant in the Company through

undue threat and coercion; (iii) mis-management in the affairs of the respondent-company; (iv) resignation by an independent Director due to lack of trust and hostile environment created by the contesting respondents; (v) mis-reporting or non-reporting of the affairs of the Company to the Board and its Chairman; (vi) siphoning off the funds of the company; (vii) loss of business of the company due to negligent and unprofessional behaviour; and (viii) financial mis-management etc.

(3) The Company Petition is being hotly contested by the first and second respondents, *inter alia*, alleging the petition as a medium to avoid the Settlement Agreement dated 22<sup>nd</sup> December, 2011 entered into between the appellant and some of the respondents in USA for which a law suit is said to have been instituted before the Trial Court of Massachusetts. The contesting respondents claim that the instant petition has been filed with a view to recant on the Settlement Agreement and it deserves to be dubbed as forum shopping. Besides the allegation of abuse of the process of law, the doctrine of comity is also stated to be attracted.

(4) It appears from the paper-book of the appeal that several company applications have often been moved, eclipsing the main petition. CA No.420/2012 was previously moved by the appellant's competitor, seeking direction to the company to provide copies of some marked documents, and also to produce original invoices and receipts before the Board in a sealed cover. That application was dismissed by the Board vide order dated 8<sup>th</sup> October, 2012, which came to be challenged before this Court in CAPP No.26 of 2012. While the respondents have been anxious for an earlier disposal of the company petition, as according to them, the factum of its pendency was being misused by the appellant in the proceedings pending in the foreign court in USA, the appellants in that appeal did not object to the expeditious disposal of the company petition if they were not denied access to the company's record which purportedly had material bearing on the issues raised in the main petition.

(5) Keeping in mind the concern shown by both the parties, CAPP No.26 of 2012 was disposed of by a consent order dated 20<sup>th</sup> December, 2012 directing that CA No. 420/2012 shall be decided along

with the main petition and mindful of the urgency involved, the Board shall make an endeavour to hear the matter on the date fixed, i.e. 11.01.2013. The respondents volunteered to produce the original record or their certified copies in a sealed cover leaving it for the Board to scrutinize those records for the formation of its final opinion. It was also left to the discretion of the Board to issue appropriate directions for the maintenance of confidentiality and to prevent misuse of the Court proceedings.

(6) The order passed by the Board on 11.01.2013 does reveal that arguments in the main petition commenced and were part heard. Meanwhile, the appellant moved CA No.95/2013 seeking stay of the proceedings before the Board till the time an application under Order 39 Rule 4 CPC for vacation of the injunction order dated December 21, 2012, was decided by the High Court of Delhi. The appellant, however, withdrew CA No.95/2013 on 21<sup>st</sup> February, 2013. The main petition was thereafter heard on different dates and it was still part heard when the appellant moved CA No.62/2013 under Order 6 Rule 17 CPC read with Regulation 44 of the Company Law Board Regulations, 1991 for amendment of the Company Petition. The appellant wanted to incorporate averments in the main petition with regard to - (i) his *mala fide* removal as Chairman and Director of the respondent-company; (ii) *mala fide* appointment of five Additional Directors of the company; and (iii) resignation by his co-petitioner as a Director of the Company due to mischievous acts and hostile environment created by the contesting respondents. The appellant also sought amendment in the prayer clause to incorporate additional prayers with reference and as a consequence to the averments proposed to be incorporated in the main petition.

(7) The Board has dismissed the amendment application, *inter alia*, observing that -

- (i) the appellant was not re-appointed as Director of the company in the AGM held on 29<sup>th</sup> December, 2012 and stood retired by rotation;
- (ii) he has been admittedly enjoined by the High Court of Delhi from exercising the voting rights on their 20% shares, in a suit filed by one of the contesting respondents;

- (iii) the appellant earlier moved CA No.427/2012 seeking directions for setting aside the illegal appointment of five Additional Directors but it was dismissed as withdrawn on 23<sup>rd</sup> August, 2012 with liberty to file fresh CA.
- (iv) CA No.62/2013 seeking amendment of the relief clause to set aside appointment of five new Directors is identical to CA No.427/2012 which was dismissed as withdrawn on 23<sup>rd</sup> August, 2012;
- (v) the amendment application is highly belated as it has been moved after conclusion of arguments on 8<sup>th</sup> October, 2013;
- (vi) in view of the *proviso* to Order 6 Rule 17 CPC, the amendment application is liable to be dismissed as the appellant has failed to show due diligence and the trial in the main petition has already commenced.

(8) The Board has also noticed more than once that arguments have already been concluded on behalf of the petitioner i.e. the appellant.

(9) I have heard learned counsel for the parties and gone through the paper-book with their able assistance.

(10) It was emphatically implored by Sh. UK Chaudhary, learned senior counsel for the appellant that the application seeking amendment has been dismissed by CLB on a patently incorrect factual premise as if the arguments in the main petition have already been concluded on their behalf; the orders passed by CLB on different dates reveal that his arguments are still inconclusive; the very basis of rejecting the application for amendment is thus contrary to the record; the rigours of CPC do not apply to the proceedings before CLB which is expected to follow the procedure to achieve the cause of justice; the Board, even after noticing a 'plethora of case law', has not cared to follow the recent decision of the High Court of Delhi in *Gurpartap Singh & Ors. vs. M/s Vista Private Hospitality P.Ltd.* decided on 09.09.2013 which held that the strict provisions of CPC are not applicable to the proceedings before a Tribunal like the Board; no provision similar to the *proviso* to Order 6 Rule 17 CPC has been incorporated in Regulation 44 or 46 of the 1991

Regulations which is suggestive of a liberal approach by the Board to secure the ends of justice; the impugned order is perverse as it encourages profusion of litigation by permitting the appellant to institute a fresh petition instead of amending the one which is yet to be decided, and that the pre-eminent concern of the Board ought to have been to protect the interest of the company only, for which the proposed amendment is very much necessitated.

(11) Sh. Amit Sibal, learned counsel for the respondents has, contrariwise urged that the appellant is adopting one dilatory tactic after the other to prolong the proceedings and use their pendency against the respondents before different forums; one year has passed since this Court desired the commencement of hearing in the main petition on 11.01.2013 but the case is still part heard; the amendment application has not been dismissed on the sole premise that the arguments on behalf of the appellant are over; rather, the principal ground taken by the Board is that of inordinate delay and lack of due diligence in seeking the proposed amendment.

(12) On a thorough consideration of the rival submissions, it appears to me that the order under appeal calls for no interference. I say so for the reasons that an inadvertent observation by the Board that arguments from the appellant's side were complete is not the foundation of its final view formation. The Board has taken cognizance of the fact that the appellant had informed knowledge of the appointment of five Additional Directors much before he moved CA NO.427/2012 on 21<sup>st</sup> August, 2012 seeking to set aside their appointment, but he chose to withdraw the same on 23<sup>rd</sup> August, 2012 with liberty to file a fresh application. The appellant took over a year to seek that very relief by amending the original petition and that too when he had already committed before this Court to commence arguments in the main petition on 11.01.2013.

(13) The event of his non-appointment as a Director of the company or consequential removal by rotation also took place in December, 2012 to the full knowledge of the appellant. As regard to the third amendment on the resignation of the appellant's co-petitioner due to alleged hostile environment, the very *locus* of the appellant to rake up this issue is questionable.



(14) The expeditious disposal of the main petition is the core issue and every action or omission of the parties in deference thereto has to be adjudged by the Board keeping in view the observations contained in the order of this Court dated December 20, 2012. If that were so, the appellant owed an explanation to the Board for moving the amendment application in October, 2013 in relation to the facts he had come to know before August, 2012 (Re. appointment of additional directors) or in December, 2012 (Re. his non-appointment as director or removal from chairmanship by rotation).

(15) It is unassailable that arguments in the main petition commenced on 11.01.2013. If the appellant intended to get a serious trial on the additional issues raised through the proposed amendment, he ought to have earnestly strived to seek amendment on the very first available opportunity. However, the appellant did not do so.

(16) The question of whether or not the strict provisions of CPC applied to the proceedings before CLB, in my considered view, need not be gone into. All procedural laws including CPC are harbingers of fair play in action even in judicial approach. They are designed to facilitate justice and further its ends. Procedural laws do not create any impediment or obstruction in the administration of justice. They are known as “the hand-maid of justice and not its mistress”. The avowed object of the procedural laws is to aid and deliver substantial justice to the parties. They cannot be used to derail the plain and effective justice as the very purpose of enacting procedural laws is to advance the cause of justice.

(17) Regulation 44 of the 1991 Regulations confers inherent power on the CLB to make such orders as may be necessary for the ends of justice or to prevent abuse of its process. Regulation 46 also enables the Board to amend any defect or error in any proceedings before it for the purpose of determining the real question or issue raised by or depending on such proceedings. These powers appear to be akin to the inherent powers conferred on a Civil Court under the Code of Civil Procedure or on the superior or the High Courts under different provisions of the procedural laws. The solitary object of these powers is to arm the courts to act according to their judicial consciousness and dismantle the barricade of injustice, if any, created by procedural niceties. Conversely,

the cause of justice is also equally safeguarded by these very powers by enabling the courts to prevent the abuse of their process.

(18) “Due diligence” is a well-known connotation of prudence which enables the Court to prevent the abuse of its process. Even if this expression is not imprinted as a letter of law, it is inseparably inbuilt in the inherent powers of every Court or a Tribunal. This rule of caution must, therefore, be read into Regulation 44 of the 1991 Regulations also.

(19) The paramount consideration and the litmus test thus is the correct appreciation of the facts and circumstances of each case by the court for drawing a distinction between ‘doing substantial justice’ or ‘preventing the abuse of its process’. Since the facts and circumstances would vary on a case to case basis, so would be the applicability of the principles embodied in the procedural laws.

(20) Owing to the essence of time and anxiety of the respondents for an early disposal of the main petition, for which they agreed before this Court to produce the original records of the company even after succeeding before the CLB in not doing so, it was imperative upon the appellant to seek amendment without wastage of even a single day. The luxury of time at his disposal was ill-afforded. His amendment application deserved to be, and shall be taken to have been, dismissed on this score alone.

(21) Sh. Chaudhary, learned senior counsel for the appellant is, however, right and is so fairly not disputed by Sh. Sibal, learned counsel for the respondents, that arguments in the main petition on behalf of the petitioner (appellant herein) are still ongoing, for which the Board shall grant sufficient and reasonable opportunities. Para 15 of the impugned order to this extent is thus set aside.

(22) Save as the modification mentioned above, the rest of the impugned order is upheld and consequently the appeal is dismissed, however, without any order as to costs.

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***S. Gupta***