UNIPAK LTD. AND OTHERS
v.
AMARASENA

COURT OF APPEAL
DISSANAYAKE, J. AND
SOMAWANSA, J.
CA NO. 547/92 (F)
DC MT. LAVINIA NO. 432/Spl
APRIL 05, 2001

Companies Act, No. 17 of 1982, sections 210, 211, 214 and 216 – Removal from the Board of Directors – Alleged material change in the management and control of company – Minority rights – Protection from oppression and mismanagement – Court interference with the internal management of a company – Acts claimed to be intra vires – Jurisdiction of court.

The petitioner-respondent instituted action in terms of sections 210 and 211 of the Companies Act, the complaint being that the 2nd and 3rd respondent-appellants have wrongfully and unlawfully removed her from the Board of Directors, that the affairs of the company are being conducted in a manner offensive to her and prejudicial to the interests of the company and that a material change has taken place in the management or control of the company. It was her contention that the purported removal of her from the Board is invalid. The position of the 1st, 2nd and 3rd respondents-appellants was that, all steps taken by them have been legal and in the best interest of the company. The District Court held with the plaintiff-respondent.

On appeal it was contended that court has no jurisdiction to interfere with the internal management of a company where the acts complained of are *intra vires* its powers.

Held:

(1) Sections 210 and 211 provide for prevention of oppression and mismanagement and section 210 (2) provides that where on any application made under the above provisions of subsection 1, the court is of opinion that the affairs of a company are being conducted in a manner oppressive to any member, the court may with a view to remedying the matters make such order as it thinks fit.

Section 211 (2) provides that if the court is of opinion that the affairs of the company are being conducted as referred to in subsection (1), the court may with a view to remedying or preventing the matters complained of make such order as it thinks fit. Section 216 deals with the powers of court on applications under sections 210 and 211.

(2) There are strong grounds for the court to interfere with the internal management of the company. Section 216 vests the court with the power to make the orders that were made by court, and they were in fact made in the interests of the company (except the order not to issue cheques on any of the Bank accounts).

APPEAL from the Order of the District Court of Mt. Lavinia.

Cases referred to :

1. *Burland and Others v. Earle and Others* – (1902) AC 83.
2. *Lee v. Chou Wen Hsun and Others* – (1985) B CLC 45.
3. *Re. The Langham Skating Revile Company* – (1877) 36 CT 605.

M. A. Sumanthiran with Ms *Bandaranayake* for 1st, 2nd and 3rd respondents-appellants.

Plaintiff-respondent not represented.

Cur. adv. vult.

May 17, 2002

A. M. SOMAWANSA, J.

The petitioner-respondent instituted action No. 432/Spl on 22. 03. 1985 01
in the District Court of Mount Lavinia against the 1st, 2nd and 3rd respondents-appellants in terms of the provisions of sections 210 and 211 of the Companies Act, No. 17 of 1982. The petitioner-respondent has come to court on the basis that she holds 1,000 shares of the 1st respondent appellant company and is therefore entitled to make this application in terms of section 214 of the said Act No. 17 of 1982. Her complaint being that the 2nd and 3rd respondents-appellants have wrongfully and unlawfully removed her from the Board of Directors of

the said company on or about 27th December, 1984, that the affairs of the said company are being conducted in a manner offensive to her and in a manner prejudicial to the interests of the said company and that a material change has taken place on the management or control of the company by reason of which it is likely that the affairs of the company may be conducted in a manner prejudicial to the interests of the company. In the circumstances, the petitioner-respondent prayed for among other reliefs, for a declaration that the purported removal of her from the Board of Directors is invalid and that she still continues to be a Director.

The 1st, 2nd and 3rd respondents-appellants filed objections and pleaded, *inter alia,* that the 2nd and 3rd respondents-appellants hold 80% of the issued share capital of the 1st respondent-appellant company that all steps taken by them have been legal and in the best interest of the company and that for the reason set out in their objections the petitioner-respondent is not entitled to any relief and her application should be dismissed *in limine.*

At the conclusion of the inquiry, the learned District Judge by his order dated 14th May, 1992, held with the petitioner-respondent and in terms of provisions of section 216 made the following orders :

(1) revoking the removal of the petitioner-respondent from the Board of Directors by the respondents-appellants as being an unlawful act and reinstating the petitioner-respondent as a Director.

(2) requiring the respondents-appellants to hold the Annual General Meeting and Directors' Meeting and granting the petitioner-respondent as a Director the right to nominate dates for same in the event of the failure of the respondents-appellants to do so.

(3) that the petitioner-respondent was entitled to, as a Director, to enter any premises where the official affairs of the 1st respondent-appellant company were being carried on and being held under the said company and to examine all books of the said company and at Directors' Meeting to require that they be audited.

(4) not to issue cheques on any of the Bank accounts of the 1st respondent-appellant company nor to utilize the monies lying in those accounts either for the benefit of the respondents-appellants or for the purpose of the said company without the petitioner-respondent being a signatory to same and for the Bank not to pay out any money on cheques which do not bear the signature of the petitioner-respondent.

(5) for the 2nd respondent-appellant to maintain all books and accounts of the company properly and to make them available to the petitioner-respondent or to her nominee for purpose of examination.

(6) issue share certificates to shareholders and to maintain a share register.

(7) to pay the petitioner-respondent as a Director a sum not less than Rs. 5,000 per mensem.

(8) such payment to be made taking into consideration the assets of the 1st respondent-appellant company and with the consent of the petitioner-respondent as Director.

At the very outset it must be stated that on an examination of the original case record, I find that the only documents that have been tendered to court by the respondents-appellants are the statement of objection and the affidavit of the 2nd and 3rd respondents-appellants. Though it is stated therein that copies of audited statements of the

1st respondent-appellant company as at 31st March, 1983 and 31st March, 1984, marked D and D2 are being tendered with the said statement of objections no such audited statement could be found in the original case record. In any event it appears that no other documents have been tendered by the respondents-appellants. Therefore, while conceding the fact that the respondents-appellants filed a statement of objections dated 29th April, 1985, denying the above-mentioned allegation of the petitioner-respondents, I must say the respondents-appellants have failed to place any documentary proof in support of their position except for the two copies of audited statements which are missing from the record. So that the contention of the counsel for the respondents-appellants that they have placed adequate documentary proof in support of their position is incorrect.

The main contention of the counsel for the respondents-appellants is that a court has no jurisdiction to interfere with the internal management of a company where the acts complained of are *intra vires* its powers. Counsel for the respondents-appellants has cited decisions of three decided cases in support of this contention. One of which is *Burland and Others v. Earle and Others*[1] where it was held that it is an elementary principle that a court has no jurisdiction to interfere with the internal management of companies acting within their powers. The other is *Lee v. Chou Wen Hsein and Others*[2] where a Director was expelled by his fellow Directors it was held that even if one or more Directors acted from ulterior motives the expulsion would be effective; presumably this is because the act of the other Directors if improperly motivated is voidable not void.

However, it appears to me that another elementary principle originates from these decisions and that is that if the acts complained of are *ultra vires* its powers then the court will interfere. This principle was recognized in *Re The Langham Skating Rink Company*[3] where it was observed that the power to manage the affairs of a company vests with the Directors and it is settled law that a court will not interfere with such power unless strong grounds are shown for doing so.

In the instant case, it appears that the petitioner-respondent has shown strong grounds for the court to interfere. One being her unlawful removal from the Board of Directors on or about 27th December, 1984, by the 2nd and 3rd respondents-appellants. In the petition of appeal as well as in the written submissions filed by the respondents-appellants it is contended that the respondents-appellants acted well within the powers conferred on them by the Articles of Association in removing the petitioner-respondent from the Board of Directors. Unfortunately, except for the bare statement that they acted well within the powers conferred on them by the Articles of Association the respondents-appellants have failed to adduce any evidence to establish this fact. No evidence as to the procedure adopted was in conformity with the powers conferred on them by the Articles of Association or in fact that they adopted any procedure other than informing the Registrar of Companies that the petitioner-respondent has been removed from the Board of Directors. In fact, there is no evidence that the removal was communicated to the petitioner-respondent.

The respondents-appellants have also failed to adduce any evidence to establish that the company held any Annual General Meeting or Board of Directors' Meetings or that the company was maintaining books of accounts and registers in proper order. It is suffice to say that except for a bare denial of the matters raised in the petition and affidavit filed by the petitioner-respondent the respondents-appellants have failed to adduce any evidence to rebut the said matters raised by the petitioner-respondent where as the petitioner-respondent along with the petition and affidavit and also annexed to their counter affidavit produced several documents to establish her complaint.

Sections 210 and 211 of the Companies Act, No. 17 of 1982 provides for prevention of oppression and mismanagement and section 210 (2) of the said Act provides that where on any application made under the provisions of subsection (1) the court is of opinion that the affairs of a company are being conducted in a manner oppressive to any member. . . the court may with a view to remedying the matters

complained of make such order as it think fit. Likewise, section 211 (2) of the said Act provides that where on any application made under the provisions of subsection (1) the court is of opinion that the affairs of the company are being conducted as referred to in subsection (1) (in a manner prejudicial to the interest of the company or that by any material change that has taken place in the management or control of the company whether by an alteration in its Board of Directors) . . . it is likely that the affairs of the company will be conducted as aforesaid the court may with a view to remedying or preventing the matters complained of or apprehended make such order as it thinks fit.

Section 216 of the Companies Act, No. 17 of 1982 deals with the powers of court on application under section 210 or section 211 of the said Act and the relevant provision in the said section to the instant case are –

216. "Without prejudice to the generality of the powers of the court conferred by section 210 or section 211, any order made under the provisions either of such sections may provide for –

(*a*) the regulation of the conduct of the company's affairs in future;

(*b*) any other matter for which in the opinion of the court it is just and equitable that provision should be made".

On an examination of the material placed before the learned District Judge at the inquiry, I am inclined to take the view that he has correctly exercised his discretion in view of the fact that the petitioner-appellant did satisfy court that there are strong grounds for the court to interfere with the internal management of the 1st respondent-appellant company supported by documentary evidence. I am also of the view that in terms of section 216 of the Companies Act, No. 17 of 1982, the learned District Judge is vested with the power to make the orders he made

on 14. 05. 1992 and in fact they were made in the interest of the 1st respondent-appellant company as well except item 04 whereby the learned District Judge has ordered –

> "not to issue cheques on any of the Bank accounts of the 1st respondent-appellant company nor to utilize the monies lying in those accounts either for the benefit of the respondents-appellants or for the purpose of the said company without the petitioner-respondent being a signatory to same and for the bank not to pay out any money on cheques which do not bear the signature of the petitioner-respondent."

I am of the view that if this order was to be implemented it would have an impact on the day to day business or the affairs of the 1st respondent-appellant company and may operate adversely specially in view of the fact that the petitioner-respondent's whereabouts are unknown and the notices sent to her to the given address have been returned. In the circumstances, I would delete item 04 of the orders of the learned District Judge. Subject to the said variation the appeal is dismissed.

N. E. DISSANAYAKE, J. – I agree.

Appeal dismissed subject of deletion of item 4 of the order.