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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

C.R.P.(MD)No.535 of 2014

and

M.P.(MD)Nos.1 and 2 of 2014

1.K.Prabhu

2.Deepa

3.K.Raja

....Petitioners

Vs

1.G.Reghukumaran

2.D.Gilbert James

3.T.R.Jeyashoba

4.K.Vasanthakumari

...Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to call for the records in connection with O.S.No.32 of 2014 on the file of the VI Additional District Court, Madurai, and to strike off the same.

For Petitioner : Mr.George Raja
for M/s.Ajmal Associates
For Respondents :No Appearance



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ORDER

The present Revision Petition has been filed by the defendants 1 to 3 in O.S.No.32 of 2014 on the file of VI Additional District Court, Madurai.

2.The original respondent herein, as plaintiff, had filed O.S.No.32 of 2014 for the relief of recovery of money of a sum of Rs.89,02,461/-.

3.According to the plaintiff, it is a Public Limited Company incorporated under the provisions of the Companies Act, 2013. As per the allegations in the plaint, the first defendant, namely, K.Prabhu, had officiated as a Managing Director of the plaintiff Company between 20.09.2010 and 13.09.2011. The plaintiff has contended that the first defendant, while officiating as the Managing Director of the Company, has misappropriated the funds of the Company and helped the third defendant to get rid of the financial constraints under the guise of entertaining a fake transaction of running a mineral water plant.



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4.The plaintiff has contended that the Managing Director had caused a huge financial loss to the plaintiff Company, while he was dealing with the funds generated from the general public. The plaintiff Company had relied upon the auditor's report relating to the misappropriation alleged to have been done by the first defendant. According to the plaintiff, the first defendant was actively assisted by other defendants in the misappropriation.

5.A careful perusal of the plaint allegations would reveal that a sum of Rs.89,02,461/- is sought to be recovered only on the basis that the first defendant, while officiating as the Managing Director of the plaintiff Company, has misappropriated the Company's funds, for which, the other defendants have assisted.

6.The present Civil Revision Petition has been filed to strike off the plaint on the ground that the Civil Court has no jurisdiction to entertain a suit for recovery of money from a Managing Director on the allegation of misappropriation of funds.



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7.The learned Counsel for the Revision Petitioners had relied upon Section 242(2)(i) of the Companies Act, 2013 and contended that only the Company Law Tribunal has got jurisdiction to recover any undue gains made by any Managing Director during the period of appointment.

8.The learned Counsel for the Revision Petitioners further relied upon Section 430 of Companies Act, 2013 to impress upon the Court that the Civil Court shall not have any jurisdiction to entertain any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act.

9.Though the respondent Company has been served, they have not chosen to appear in person or through Counsel.

10.I have carefully considered the submissions made on the side of the Revision Petitioners.

11.Section 242(2)(i) of the Companies Act, 2013, reads as follows:

*“242. Powers of Tribunal.— (1)
(2) Without prejudice to the generality of the powers*



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under sub-section (1), an order under that subsection may provide for—

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

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

.....”

12. Section 430 of the Companies Act, 2013, reads as follows:

“430. Civil court not to have jurisdiction.— No civil



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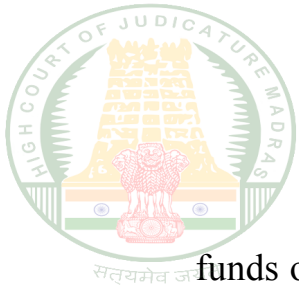


court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect 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, by the Tribunal or the Appellate Tribunal.”

13.A perusal of Section 242(2)(i) of the Act clearly reveals that the Company Law Tribunal has exclusive jurisdiction to deal with the issue of recovery of undue gain made by the Managing Director during the period of his appointment and the manner of utilisation of the recovery including transfer to Investors Education and Protection Fund or repayment to identifiable victims:

14.Section 430 of the Act clearly reveals that Civil Court will not have any jurisdiction to entertain any suit in relation to any matter which the Tribunal is empowered to determine under the Act.

15.A combined reading of Sections 242(2)(i) and Section 430 of the Act clearly reveals that the present suit for recovery of money is solely based upon the allegations that the first defendant has misappropriated the



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funds of the plaintiff/Public Limited Company, while he was officiating as the Managing Director. Therefore, the Civil Court has no jurisdiction to entertain the said suit.

16. In view of the said deliberations, the plaint in O.S.No.32 of 2014 on the file of the VI Additional District Court, Madurai, is hereby struck off. However, the plaintiff/Public Limited Company is at liberty to approach the appropriate forum for appropriate relief, if they are so advised. The Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2023

Index : Yes/No

Internet : Yes/No

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To

1. The VI Additional District Judge, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

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