

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

Diary No.01(58) of 2018  
(I.A. No. of 2018)

In

T.P. No.04/397/398/GB/2016  
[ Arising out of C.P. No.994/2011]

Under Section: 397/398 of the Companies Act, 2013

In the matter of:

Gaurangika Patel & others

... Petitioners

-versus-

Doloo Tea Co. (I) Ltd. & others

... Respondents

Order delivered on 08<sup>th</sup> February, 2018

Coram:

Hon'ble Mr. Justice P. K. Saikia, Member (J)

For the Petitioners: Mr. N. Dasgupta, Advocate  
Mr. S. Nigam, Advocate  
Mr. S. S. Roy, Advocate

For the Respondents: Mr. G. Khandelia,

- for Respondent No.1

**ORDER**

The matter is taken up for consideration on being mentioned by Mr. N. Dasgupta, learned counsel appearing for the petitioners. I have also heard Mr. N. Dasgupta, Mr. S. Nigam and Mr. S.S. Roy, learned counsel for the applicants /petitioners. On considering the note of the Registry, this application is admitted for hearing .

2. Referring to the order of this Bench, rendered on 05.02.2018, in connected company petition, Mr. Dasgupta, learned counsel for the applicants/ petitioners submits that on 05.02.2018, this Bench rendered an order allowing the respondent No1 to file a separate application questioning the maintainability of the connected company petition. This Tribunal , so allowed the respondent No.1, to file such a fresh application on hearing oral submissions , advanced by the learned counsel appearing for the respondent No.1 .



3. It has been pointed out that on 05.02.2018, the learned counsel appearing for the respondent No.1 submitted that though the respondent No.1 had persistently prayed this Bench to hear the maintainability point before deciding the other contentions therein on merit, this Bench refused to do so, vide order dated 18.12.2017, rendered in IA 45-/17. Said order, rendered by this Bench in IA 45-/17 on 18.12.2017 was carried to Hon'ble NCLAT in order to question the legality of such a final order, vide company appeal (AT) 31/2018.

4. It has also been pointed out that Mr S.Sen, learned counsel appearing for the respondent No.1, before this Bench on 05.02.2018 had informed that Hon'ble NCLAT while disposing the said appeal, allowed the respondent No.1 to file fresh application before this bench questioning the maintainability of the connected company petition and such petition was ordered to be filed within three weeks from the date of such an order.

5. But such a submission, advanced from the side of the respondent No.1 was stated to be not correct since, according to petitioners in company petition, Hon'ble NCLAT, New Delhi while disposing the aforesaid appeal, never granted any opportunity to the appellant/respondent No.1 Company file any fresh application questioning the maintainability of the connected company petition. This tribunal, on hearing both the parties accepted the version of the counsel for respondent No.1 since it did not have the benefit of going through the order dated 02.02.2018 rendered in Company Appeal (AT) No.31 of 2018.

6. However, in the meantime, the applicants/petitioner could lay their hands on the order dated 02-02-2018, rendered by Hon'ble NCLAT, New Delhi in Company Appeal (AT) No.31 of 2018. After going through the order dated 02-02-2018, it is found that the stance, taken by the applicants/petitioners on 05.02.2018 before this Bench, was correct since the order dated 02.02.2018 reveals that no liberty, whatsoever was granted to the respondent No.1 to file fresh application to question the maintainability of the connected company petition.

7. The Hon'ble NCLAT, rather, had directed this Bench to hear the maintainability matter and all other contentions in the main company petition simultaneously and dispose of all those questions, both on facts and law, by a reasoned order. In view of above, Mr. Dasgupta, learned counsel for the petitioners herein has submitted that the order dated 05.02.2018 should suitably be recalled and modified. Consequently, no application, as indicated in the order of this Bench dated 05-02-2018, should be allowed to be filed before the Registry from the side of the respondent No.1. Further, the Registry of this Bench should also be asked not to accept any such application.

8. Mr. Khandalia, the learned counsel appearing for the respondent No.1, however, submits that the respondent No.1 had received a copy of the application in hand yesterday evening only and as such, they could not respond properly to the allegation in the application, aforesaid. Being so, the respondent No.1 may be given some time to respond to the application submitted before this Bench.

9. But, Mr. Khandalia, the learned counsel further submits that an application has already been preferred before the Registry of the Hon'ble NCLAT, New Delhi and on being mentioned, the Hon'ble NCLAT has already directed the respondent No.1 to file an application before the Hon'ble NCLAT, New



Delhi seeking necessary modification to the order dated 02-02-2018 so as to enable the respondent No. 1 to file fresh application questioning maintainability of the main company petition. He, therefore, urges this bench not to make any modification to the order rendered by this Bench on 05.02.2018.

10. Mr. Dasgupta, learned counsel for the petitioners however, submitted that this Tribunal has enough power and authority to recall its order, rendered on 05-02-2018 since such an order was passed on the basis of verbal submissions, advanced by the parties thereto but without perusing the order of Hon'ble Appellate Tribunal since none of the parties thereto could secure a certified copy of the order date 02.02.2018, rendered in Company Appeal No.31/2018.

11. In support of his such submission, he has drawn my attention to the Judgment of the Hon'ble Supreme Court rendered in the case of Kushalbhai Ratanbhai Rohit Vs State of Gujarat reported in (2014) 9 SCC 124, wherein the Hon'ble Supreme Court has held as under: -

*"5. Aggrieved, the petitioners preferred Criminal Appeal No.2012 of 2006 before the High Court of Gujarat and during the pendency of the appeal, the petitioners had been enlarged on bail vide order dated 22.11.2006. The appeal was finally heard on 11.12.2013 and the court took a view that sanction of the State Government under Section 197 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") was necessarily required, and in view thereof, the order was dictated in open court allowing the appeal on technical issue. However, the order dictated in open court and acquitting the petitioners vide order dated 11.12.2013 was recalled by the court suo moto vide order dated 27.12.2013 and directed the appeal to be reheard. The order had been recalled on the ground that the court wanted to examine the issue further as to whether in the facts and circumstances of the case where the accused had been police constables, the offence could not be attributed to have been committed under the commission of their duty where sanction under Section 197 Cr.P.C. would be attracted. Hence, this petition.*

*6. Heard Shri Fakhruddin, learned senior counsel for the petitioners and Shri Anurag Ahluwalia, learned counsel for the State and perused the record.*

*7. We do not find any forcible submission advanced on behalf of the petitioners that once the order had been dictated in open court, the order to review or recall is not permissible in view of the provisions of Section 362 Cr.P.C. for the simple reason that Section 362 Cr.P.C. puts an embargo to call, recall or review any judgment or order passed in criminal case once it has been pronounced and signed. In the instant case, admittedly, the order was dictated in the court, but had not been signed.*

*8. In Mohan Singh v. King-Emperor 1943 ILR (Pat) 28, a similar issue was examined wherein the facts had been that the judgment was delivered by the High Court holding that the trial was without jurisdiction and a direction was issued to release the appellant therein. However, before the judgment could be typed and signed the court discovered that the copy of the notification which had been relied upon was an accurate copy and that the Special Judge had jurisdiction in respect of the offence under which the appellant therein had been convicted. Thereupon, the order directing the release of the accused was recalled and the appeal was directed to be heard de novo. When the matter came up for re-hearing, the objection that the court did not have a power to recall the order and hear the appeal de novo, was rejected.*

*9. In view of the provisions of Section 362 Cr.P.C. while deciding the case, the Patna High Court relied upon the judgment of Calcutta High Court in Amodini Dasee v. Darsan Ghose, 1911 ILR (Cal) 828 and the judgment of Allahabad High Court in Emperor v. Pragmadho Singh, 1932 ILR (All.) 132. A similar view has been reiterated by the Division Bench of the Bombay High Court in State of Bombay v. Geoffrey Manners & Co., AIR 1951 Bom. 49. The Page 6 Bombay High Court*



had taken the view that unless the judgment is signed and sealed, it is not a judgment in strict legal sense and therefore, in exceptional circumstances, the order can be recalled and altered to a certain extent.

10. In *Sangam Lal v. Rent Control and Eviction Officer, Allahabad & Ors.*, AIR 1966 All. 221, while dealing with the rent control matter, the court came to the conclusion that until a judgment is signed and sealed after delivering in court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed. 8. This Court has also dealt with the issue in *Surendra Singh & Ors. v. State of U.P.*, AIR 1954 SC 194 observing as under: "Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus paenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery. But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment."

11. Thus, from the above, it is evident that a Judge's responsibility is very heavy, particularly, in a case where a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture. Therefore, one cannot assume, that the Judge would not have changed his mind before the judgment become final.

12. In *Iqbal Ismail Sodawala v. The State of Maharashtra & Ors.*, AIR 1974 SC 1880, the judgment in *Surendra Singh* (supra) referred to hereinabove was considered in this case. In that case, criminal appeal was heard by the Division Bench of the High Court, the judgment was signed by both of them but it was delivered in court by one of them after the death of the other. It was held that there was no valid judgment and the case should be re-heard. This Court took the view that the judgment is the final decision of the court intimated to the parties and the world at large.

13. In view of the above, we are of the considered opinion that no exception can be taken to the procedure adopted by the High Court in the instant case.

14. The petition is devoid of any merit and is accordingly dismissed."

12. I have heard the parties and found that the facts and circumstances in which the order dated 05.02.2018 was rendered were not very similar to the facts and circumstances in case relied on. Rather, facts and circumstances in which such an order was rendered on 05.02.2018, coupled with the facts that have been projected before this Bench today by the counsel for the petitioner in connected company



petition firmly demonstrate that the order dated 05.02.2018 was rendered on the basis incorrect information.

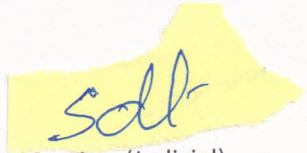
12. But, now, an uncertified copy of the order rendered by NCLAT on 02.02.18 in Company Appeal No.31/2018 has been produced before this Bench which shows that the order dated 05.02.2018 was not wholly in conformity with the order rendered by NCLAT on 02.02.18 and therefore, the directions, rendered in the order dated 05.02.2018, being provisional in nature, liable to be tuned to the order, passed by the appellate authority on 02.02.18 18 in Company Appeal No.31/2018.

13. Since this Bench is bound by the directions, rendered by Hon'ble NCALT in its order dated 02.02.2018 in Company Appeal No.31/2018, this Bench does not find any scope to allow the Registry to receive any application from the side of respondent No1 in connected company petition as indicated in the order dated 05.02.2018.

14. However, Mr. Khandalia, learned counsel for the respondent No1 submitted that they had already filed an application seeking modification of the order of the Hon'ble NCLAT rendered on 02-02-2018 in Company Appeal No.31/2018.

15. In the event of their getting an order modifying the directions in the order dated 02-02-2018 in Company Appeal No.31/2018 and in the event of their producing a copy of such modified order before this Bench, this Bench will do the needful as indicated in such an order.

16. This application is disposed of accordingly.

  
Member (Judicial)  
National Company Law Tribunal  
Guwahati Bench: Guwahati.

Dated, Guwahati, the 08<sup>th</sup> February, 2018  
*Deka/08-02-2018*