

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**C.A. NO. 113/2012**

**IN**

**T.P NO. 30/2016**

**IN**

**C.P.NO. 50/2011**

**DATED: TUESDAY THE 13<sup>TH</sup> DAY OF DECEMBER 2016**

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF THE COMPANIES ACT, 1956  
UNDER SECTION 397/398 OF THE COMPANIES ACT, 1956  
AND**

**Mr. Ishwarappa Shiddalingappa Manvi & 7 others**

**Vs**

**M/S GADAG MAHALAKSHMI PRESSING GINNING COMPANY LIMITED  
& 2 OTHERS**

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**ORDER**

This Application is filed by petitioners under Regulations 44 of Company Law Board Regulations 1991 read with Order-1, Rule-10 and read with section 151 of C.P.C praying the Tribunal to implead them as Petitioners No.9 to 19 in the main company petition No.50/2011 which is renumbered as T.P No.30/16.

The averments in the petition accompanied by Affidavit that, Petitioners are all shareholders of the 1<sup>st</sup> Respondent Company. The petitioners wanted to come on record in the main company petition 50/2011 renumbered as T.P No.30/16 on the following grounds viz., 1<sup>st</sup> Respondent Company owned property bearing CTS No. 2862 measuring 65,402 Sq. Feet situated at Jayachamraj Nagar, Ward No.1, Hubli. The said property was acquired by the company as a Perpetual Lease. While so on 25<sup>th</sup> January 2010, the Board of Directors meeting was held and it was decided to part with the said property to raise funds to invest in new business activities and on 25<sup>th</sup> February 2010 the Minutes of Extra Ordinary General Meeting were drawn.

It is further stated that, 1<sup>st</sup> Respondent Company failed to issue Notices in respect of above two Meetings, but on the other hand documents were created forging the signatures of the petitioners as if they gave consent. Thus 1<sup>st</sup> Respondent Company allegedly committed fraud on the petitioners and they never

gave consent letters for selling the property. It is stated that, if petitioners are implead then, they would prove their allegations made against the Company. It is also stated that the company entered into Registered Agreement for sale of Perpetual Leasehold Rights of the property.



Further they questioned the sale consideration which was not according to the market. Therefore, they are necessary and proposed parties to the main petition.

The Respondents 1 to 3 filed Counter statement and the averments in the brief are that, present application is not maintainable as petitioners are the third parties and are not connected to the company petition. All the allegations in the petition are denied and it is further alleged that, the Respondents filed counter statement to the main company petition on 8<sup>th</sup> December 2011. In this case, pleadings are completed and when main petition is coming up for final hearing present application is filed just to delay and prolong the matter. Petitioners are neither proper nor necessary parties. In fact Company Law Board had allowed the Application filed by the Company for sale of property. It is further averred that, provisions of CPC do not apply except to limited extent as specified in the Act. At any rate the alleged grievances of the Applicants is not relating to the sale of property and the dispute is also covered in the Company petition and when Company Application is decided the same would be binding on all the shareholders. Therefore, the present of applicants is not necessary parties. It is therefore, prayed to dismiss the petition.

We have heard the Counsel for petitioners and also the counsel for Respondents.

It is contended on behalf of the petitioners, that petitioners are shareholders and that they are aggrieved parties and that they are disputing the alleged consent letters said to have been executed by them on which the 1<sup>st</sup> Respondent Company relied regarding the sale of 1<sup>st</sup> Respondent Company's immoveable property.

It is contended that, there is no conflict of interest between proposed parties and the petitioners who are already on record. It is contended to avoid multiplicity of proceedings the Petitioners can be brought on record.





The Counsel for Respondents would contend that, petitioners are no way connected to the main company petition. The present application is not moved by either party to the petition and as such petitioners have no locus stands to come on record. It is contended that, the main company petition is filed for questioning the alienation of company's immoveable property on various grounds. It is contended that the company/1<sup>st</sup> Respondent obtained permission from the Company Law Board for the alienation of the property and further Hon'ble High Court of Karnataka in Appeal confirming the order of the Company Law Board. It is contended that, the order if any passed in main company petition is binding the company and shareholders. Thus it is contended that, petitioners are neither proper nor necessary parties.

The Company Petition 50/2011 connected to T.P No.30/2016 is at the stage of final hearing. The present application is filed by same persons claiming to be the shareholders. Among others petitioners in their application alleged that their signatures were forged on the alleged consent letters and that the said consent letters were all fabricated. Thus petitioners wanted to come on record in the present company petition solely on the ground fraud was played and there was forgery.

It is the grievances of petitioners that subsequent to the filing of company petition this was happened. If so the said grievances to be decided in a separate application which could not be decided in the present Company petition which is filing on certain other grounds and seeking different reliefs.

The main allegations made by the petitioners in the company petition against Respondents can be decided without the presence of the proposed parties. In other words presence of proposed parties is not necessary to decide the dispute involved in the company petition. Even in the absence of proposed parties the dispute can be decided in the presence of parties already on record.

The present averments in the Application filed by the petitioners give raise to a separate cause of action and petitioners/proposed parties if so advised can take a separate action for alleged fraud or forgery available under law.



The said grievances of the proposed parties now alleged in the petition is quite outside the purview of the allegations made in the main company petition by the petitioners therein.

The test to determine whether proposed parties are proper and necessary party it is to be seen whether dispute involved cannot effectively be decided without the presence of proposed parties. In the main company petition the petitioners therein made certain allegations against the Respondents that, they indulged in oppression and mismanagement. To decide the same, presence of proposed parties is neither necessary nor proper. Therefore, there are no merits in the Application and it deserves to be dismissed.

In the result the Application C.A. 113/2012 is dismissed.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 13<sup>th</sup> DAY OF DECEMBER, 2016