

Bombay High Court

Harinarayan G. Bajaj vs Securities Appellate Tribunal on 31 October, 2002

Equivalent citations: 2003 42 SCL 548 Bom

Bench: A Shah, S Bobde

ORDER

1. Both the appeals are directed against the common order dated 5th September, 2002 passed by the Securities Appellate Tribunal, Mumbai. The appeals are filed under Section 15Z of the Securities and Exchange Board of India Act, 1992, hereinafter referred to as the SEBI Act. When the appeals came up for admission, we pointed out that the order under appeal is only an order made on procedural matters and right of the parties are not affected by those orders and consequently the appeals may not be maintainable. Elaborate arguments were advanced by the learned Counsel for the appellants and respondents on the maintainability of appeals. The contention of the learned Counsel for the appellant is that Section 15Z creates a wide and broad appellate jurisdiction and every kind of judicial order could be challenged in appeal. The learned Counsel for the respondents on the other hand contended that the order is merely a procedural order and it does not affect the rights of the parties and, therefore, appeal would not be under Section 15Z. The question before us is, therefore, whether these appeals are maintainable.

2. The facts giving rise to these appeals are that the appellants are investors in shares and securities and they trade through broken at Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The appellants were served with two show cause notices by the respondents. These show cause notices are dated 11th July, 2001 and 27th July, 2001. Notice dated 11th July, 2001 alleged that the appellants had indulged in buying and selling of abnormal volumes of ARBL scrips with a view to creating artificial market in the scrip and in the context asked to show cause as to why criminal prosecution in terms of Section 24(1) of the SEBI Act read with Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, hereinafter referred to as 1995 Regulations, should not be launched against them. The second notice dated 27th July, 2001 alleged that the trading by the appellants in the scrips of ARBL resulted in creation of false market for ARBL shares and artificially raising the price of the said scrip and in the context asked them to show cause as to why directions restraining them from further dealing in the securities and other direction as deemed fit in the facts and circumstances of the case should not be passed against them under Regulation 11 read with Regulation 12(d) of the 1995 Regulations. The appellants responded to the show-cause notice in their letters dated 19th July, 2001 and 10th August, 2001 respectively requesting the respondents to furnish details as sought by them in their letter dated 11th April, 2001 and also to provide copies of answer the said show-cause notices. The appellants did not get any response from the respondents. The appellants, therefore, filed writ Petition No. 2737 of 2001 which came to be disposed of vide order dated 19th December, 2001 inter alia recording the statement of the Counsel appearing for the SEBI that the SEBI will hear and dispose of the applications within a period of one week after hearing rejected the applications filed by the appellants vide two separate orders dated 2nd January, 2002 and asked them to submit their replies to the show cause notices. The appellants claiming to be aggrieved by the said order 2nd January, 2002 filed appeals before the Securities Appellate Tribunal praying that the impugned order dated 2nd January, 2002 be quashed and set

aside and respondents be directed to furnish the details as sought by the appellants. By the impugned order the Tribunal dismissed both the appeals holding that the appellants are not in any way debarred from raising any objection before the respondents in the proceedings if they feel that the material relevant to the charges has been held back from them and in case they are aggrieved by the outcome of the proceedings initiated by the respondents, they are entitled to appeal against such decision before the concerned forum.

3. SEBI Act as can be seen from the Statement of Object and Reasons and the Preamble is enacted to provide for establishment of the Board to protect the interest of the investors in securities and to promote development of and to regulate the securities market and for matters connected therewith or incidental thereto. We find that the Act confers powers on the SEBI Board to carry investigations/inquiry and to take action or issue direction as provided in the Act. Section 15T provides that any person aggrieved by the order made by the SEBI Board or Adjudicating Officer may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter. Section 15Z provides an appeal to the High Court against the decision or order of the Securities Appellate Tribunal. Section 15Z reads as follows :

"Appeal to High Court - Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

4. In our opinion, in the context of the scheme of SEBI Act, it is difficult to accept the submission of the appellants that each and every order made by the Appellate Tribunal is intended to be subjected to appeal under Section 15Z. Mere procedural orders are not the orders which can be taken up and challenged under Section 15Z of the Act. Unless the orders formally adjudicate and affect rights of the parties, it is difficult to conceive that remedy of an appeal under Section 15Z would be available. In term Section 15Z provides for an appeal from the decision of the Securities Appellate Tribunal "on any question of fact or law" arising out of the order. This clearly implied that the order in appeal should have decided the fact or law or decided the mixed question of fact and law which affect the appellants rights adversely. The section, in our opinion, does not contemplate an appeal against any decision or order which does not decide the fact or law affecting any right of the parties.

5. In *Central Bank of India Ltd. v. Gokal Chand* , the Supreme Court was concerned with Section 38 of the Delhi Rent Control Act which provided an appeal from every order of the Controller. The Supreme Court held that the phrase "every order" is not so wide as to include Interlocutory orders which are merely procedural and do not affect the rights or liabilities of the parties. It was observed thus :

"(3) The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words 'every order of the Controller made under this Act', though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The Legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any part to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal." (p. 800)

6. The Supreme Court referred to its earlier decision in *Shankarlal Aggarwala v. Shankarlal Poddar* where the Court decided that the words "from any order or decision made or given in the matter of winding-up of the company by Court" in Section 202 of the Indian Companies Act, 1913, though wide, would exclude merely procedural orders or those which did not affect the rights or liabilities of the parties.

7. In *Bant Singh Gill v. Shanti Devi* again the relevant provision of the Delhi Rent Control Act came up for consideration. The Trial Court had held in the said case that the suit has not abated. The Supreme Court held that it was an interlocutory order and cannot be considered as an appealable order immediately. Whether the suit stood abated could be considered in an appeal from the ultimate order, in case the party becomes aggrieved by the ultimate order.

8. The observations of the Supreme Court in *Central Bank of India Ltd.'s case (supra)* would equally govern the relevant words used in Section 15Z of the SEBI Act. The rights and liabilities of the parties normally would be decided by the final order. Very rarely the interlocutory order on procedural matters would affect the rights of the parties. The course of a litigation should normally proceed unhampered. If at every stage the appellate court has to entertain an appeal there cannot be a speedy culmination of the litigation at all. It is with a view to expedite the trial and conclusion of a litigation before the original authority or court, the Supreme Court has limited the scope of the appellate jurisdiction in the manner stated in *Central Bank of India Ltd.'s case (supra)*. Therefore, we have no hesitation to hold that purely procedural orders which do not affect the substantive right of the parties are not appealable under Section 15Z of the SEBI Act. This interpretation would also apply with equal force to Section 15-I which provides an appeal to the Securities Appellate Tribunal against the order passed by the SEBI Board or adjudicating officer. Therefore, the interlocutory

orders not affecting the rights of the parties would not be appealable under Section 15T.

9. It was contended before us by the learned Counsel for the appellants that SEBI Board was not right in rejecting the request of the appellants to give inspection of the relevant documents. He in support of his contention cited various judgments. We do not propose to go into these questions because these questions can be appropriately considered by the Appellate Tribunal in appeal filed against the final order that may be passed by the SEBI Board. In case any adverse order is passed by the SEBI Board against the appellants the appellants will be entitled to agitate all issues in an appeal that may be filed against such order.

10. For the reasons stated above, we hold that the appeals are not maintainable and we dismiss the same with no order as to costs.

11. Appellants are granted four weeks time to file the reply. If reply is not filed within the said period. SEBI Board is at liberty to proceed ex parte.