

SADHWANI
V.
DEEPU SADHWANI.

COURT OF APPEAL
P. R. P. PERERA, J. &
PALAKIDNAR, J.
C. A. NO. 141/81 (F)
D. C. NEGOMBO: 1898/Spl.
NOVEMBER 02, 1988.

Company law — Change of Registered office — Procedure for change — Companies Ordinance S. 91(3)

The obtaining of the previous sanction of the Registrar of Companies is the first step to change the registered office and if he refuses an appeal can be made to the Permanent Secretary. The second step is the passing of a special resolution by the company. This should be followed by the notice under S. 91 within 14 days of the passing of the resolution.

When the Registrar accepts the notice it is clear evidence that the first and second steps have been taken. The maxim *omnia praesumuntur rite esse acta* (all official acts have been regularly performed) applies and accordingly it must be presumed that the two previous steps of previous sanction and passing of resolution have been duly taken.

Case referred to:

Royal British Bank v. Turquand (1856) 6 M & B 327

APPEAL from judgment of the District Court of Negombo.

Dr. H. W. Jayewardena Q.C. with *K. Kanag Iswaran P.C. Harsha Amarasekera* and *Harsha Cabral* for petitioner - appellants.
Respondents absent and unrepresented.

Cur. adv. vult.

December 01, 1988

PALAKIDNAR, J.

The Petitioner-Appellants filed an application under section 153A, 153B, 153E and 153F of the Companies Ordinance Chap. 145 C.L.E. as amended by 15 of 1964 against the 1st to 4th Respondents as Directors of the company named Esquire (Garments) Company.

The learned Trial Judge made an interlocutory order under section 377(b) of the Civil Procedure Code on 27-2-1981 — the date on which the application was filed.

The Respondent-Respondents filed objections and at the inquiry two preliminary points were raised by them, viz:

- (a) This court has no jurisdiction to entertain the application of the Petitioners;
- (b) The provisions of Section 153(F) did not empower this Court to make an interim order *ex parte* and without prior notice to the Respondent to the application.

The learned trial Judge held that the District Court of Negombo had no jurisdiction to entertain the application. In view of this finding he did not proceed to make any finding on the second issue raised.

In appeal the order of the learned trial Judge dismissing the application on the preliminary issue of jurisdiction was challenged by counsel for the Appellants. He urged that the Petitioner-Appellants had placed material before the learned trial Judge to show that the registered office of the company was in Katunayake within the jurisdiction of the District Court of Negombo.

The Memorandum of Association of the company marked 'X1' set out that the registered office of the Company shall be within the District Court of Colombo.

The Petitioner-Appellants urge that the office was changed to its present location at Katunayake as set out in document marked 'X13' produced at the trial.

Section 5 of Act No. 15 of 1984 governs the situation where there is change of the location of the office outside the jurisdiction mentioned in the Memorandum of Association.

The amendment to section 91 of the Companies Ordinance embodied in the amendment referred to set out the new sub-section (3) whereby with the previous sanction of the Registrar of

Companies, a company may, by special resolution change the situation of its registered office to any district whether or not it is a district specified in the Memorandum of the company as the district in which such office is to be situated.

Notice of such change shall be given in the prescribed form by the company to the Registrar within 14 days of the date of the resolution. The document marked 'K13' is a notice given in the prescribed form within fourteen days of the date of the resolution.

The authenticity of this notice has not been contested and the document itself bears the seal of the Registrar of Companies dated 21-2-1980.

The notice quite clearly states that the registered office of the company is situated at Canada Sri Lanka Friendship Road, Investment Promotion Zone, Katunayake from 21-2-1980, given by the Secretaries to the Company.

The contents of the notice have not been disputed. Thus the location of the registered office from 20-2-1980 is Katunayake within the District Court of Negombo.

The learned trial Judge has held that there was no proof of the previous sanction of the Registrar. Further he has held that there was no proof that there was a special resolution to that effect.

The obtaining of the previous sanction of the Registrar is the first step in the move to change the registered office of the company. A refusal can be countered by an appeal to the Permanent Secretary.

The next step after obtaining the previous sanction is the special resolution of the company to change the location of the registered office.

The resolution can be made by the company only after the sanction whether directly from the Registrar or on appeal from the Permanent Secretary on a refusal by the Registrar.

The next step is the notice under section 91 within 14 days of the resolution. There has been no objection to this notice that it is belated or that it was irregular in another way.

The notice can be given only after the first two steps set out above as required by sub-section (3) of the amended section 91 has been taken.

The Registrar's acceptance of such a notice is in our view clear evidence that the first two steps have been taken. There is no requirement in the prescribed form that the completion of the first two steps must be set out therein. It may even be observed that no objection was taken that the prescribed form under section 91 was a different one. The seal of authenticity was dated 20th February, 1980. The amendment was in the year 1964. The presumption of law that all official acts have been regularly performed must be borne in mind in considering this aspect based on the "*Omnia praesumuntur rite esse acta*" vide Evidence Ordinance section 114 illustration (c).

We were also referred to the case of *Royal British Bank vs. Turquand* (1) quoted in the Privy Council Judgment of Lord Wilberforce reported in 74 N.L.R. at page 245 wherein the rule that persons contracting with a company and dealing in good faith may assume that acts within its powers have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular.

In our view the learned trial Judge in answering the issue of jurisdiction, wrongly rejected the document 'X13' tendered by the Respondents as inadequate proof of the change of the location of the company. He stated that the previous sanction and the resolution have not been proved. It was not the responsibility of the Respondents to establish the two previous steps. They had furnished the notice which is statutorily given only after the first two steps have been taken within the stipulated time of 14 days thereafter.

Therefore, on the material placed before us we hold that the District Court of Negombo has jurisdiction to deal with this

application and set aside the order of the learned trial Judge and allow the appeal with costs fixed at Rs. 1050/- and direct that the inquiry into the application be proceeded with in the District Court of Negombo.

P. R. P. PERERA, J. — I agree.

Appeal allowed
