

CASE NO.:
Appeal (civil) 41 of 1994

PETITIONER:
M/S. SAMANT AND ANOTHER

Vs.

RESPONDENT:
BOMBAY STOCK EXCHANGE & ORS.

DATE OF JUDGMENT: 27/04/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

SHIVARAJ V. PATIL J.
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In this appeal, the appellants have questioned the validity and correctness of the order dated 14.1.1991 passed by the High Court of Bombay in Writ Petition No. 3201 of 1990, dismissing the same.

The first appellant is a partnership firm carrying on business as share and stock brokers and the second appellant is a partner of the said firm. They filed the writ petition in the High Court challenging the action of the respondent no. 1 declaring the appellants as defaulters by its resolution / notice dated 25.3.1987 and to re-admit them as member. Before the High Court mainly two grounds were urged - (i) that the decision of the respondent no. 1 declaring the appellants as defaulters was in violation of the rules of natural justice as a copy of the impugned Resolution/Notice dated 25.3.1987 was not furnished nor they were given hearing before taking decision; (2) having regard to the unblemished track record of the appellants, the decision to declare them as defaulters was illegal and unjustified besides being contrary to the conditions set out in bye-law 316. An incidental grievance of the appellants was that their application for re-admission as member was rejected contrary to the provisions contained in Rules 60 to 63. The respondent no. 1 filed a detailed counter-affidavit resisting the claims of the appellants. The High Court after considering the respective contentions of the parties and referring to the rules and bye-laws of the Stock Exchange dismissed the writ petition on the ground of delay and laches by the impugned judgment and order.

The learned Senior Counsel for the appellants contended that the order declaring the appellants as defaulters is unsustainable as it was passed in violation of rules of natural justice inasmuch as no opportunity was given to explain the show cause; no reasons are recorded in the order and that the Report of the Enquiry Committee was not given. According to him, the decision of respondent no. 1 declaring the appellants as defaulters was arbitrary and

that there was malice on the part of the Executive Director of respondent no. 1. It was further urged that in a case like this where the impugned action of the respondent no. 1 was void, the High Court was not justified in dismissing the writ petition on the ground of delay and laches.

The learned Senior Counsel for the respondents made submissions supporting the impugned judgment and order. From the records, they pointed out that all was not well with the appellants; having regard to the facts and circumstances of the case it cannot be said that principles of natural justice were violated in passing the order declaring the appellants as defaulters; after the appellants were declared as defaulters, the membership was auctioned and third party rights have come in long back; the High Court was justified in dismissing the writ petition on the ground of delay and laches; according to them, there was no violation of any rule or bye-law in taking action against the appellants.

We have considered the rival submissions. We consider it necessary to notice few facts and events which gave rise to taking action against the appellants and the subsequent developments.

In the counter affidavit filed by one Amritlal Jashraj Shah, the Secretary of the first respondent in the writ petition, it is stated that some time prior to 11.2.1986, the appellants had fraudulently withdrawn from the clearing house of the first respondent Rs. 7.30 lakhs which was admitted before the Governing Board at the meeting held on 11.2.1986; for this a fine of Rs. 1,00,000/- was imposed on the appellants and they were suspended from Stock Exchange; a writ petition filed by the appellants challenging the same was dismissed; so also the appeal. The appellants were in financial difficulties some time prior to December, 1986 and hence they suspended their business as per their letters dated 23.12.1986 and 26.12.1986; since certain complaints were received against the appellants, a committee of three members was formed by the Governing Board of the respondent no. 1 to investigate into the affairs of the appellants and intimation thereof was given to them by letter dated 26.2.1987. The said committee examined the books of accounts and other documents of the appellants which were found incomplete and not in proper form; the committee obtained oral clarification and explanation from them and thereafter submitted its report dated 19.3.1987. Considering the report of the Committee, the Governing Board in its meeting held on 20.3.1987 authorised the President and the Executive Director of the Stock Exchange to take such action as was deemed fit including declaring the appellants as defaulters. The Governing Board of the respondent no. 1 in its meeting held on 25.3.1987 declared the appellants as defaulters. A notice intimating the said declaration was affixed on the notice board of the respondent no. 1 as required by the rules and bye-laws. The appellants by their letter dated 31.3.1987 requested for revocation of the decision declaring the appellants as defaulters; the same was rejected by the Governing Board on 9.4.1987. Pursuant to the resolution dated 31.1.1989, offers were invited for sale of the membership right which was originally held by the appellants. By a resolution dated 21.4.1989, the offer of one Vijay C. Shah was accepted for Rs. 16,63,000/-. On 29.1.1990, Vijay C. Shah was elected as a member. In the

meanwhile the appellants made representations and correspondence between 15.4.1989 to 14.6.1990 to the Government of India and other authorities. The writ petition was filed by the appellants in the High Court only on 26.10.1990.

From the letter of the appellants dated 23.12.1986 addressed to the Secretary of the respondent no. 1, it is clear that they stopped trading on the Stock Exchange for the time being from 4.1.1987 till further notice. The appellants addressed a letter dated 31.3.1987 to the President of the Governing Board of the respondent no. 1 stating that they were victims of circumstances as their clients who had to pay to the tune of Rs. 1,25,00,000/- in respect of transactions in shares effected by them through the Stock Exchange have not paid the said amount. In para 4 of the said letter, it is stated thus:-

We are highly obliged to the authorities of the Exchange for the cooperation extended to us in the circumstances in which we are put for no fault of ours and more particularly to the Executive Director and the President of our Exchange.

It may be noted that in the very first para of this letter, the appellants have acknowledged the receipt of the notice dated 25.3.1987 intimating that they had been declared as defaulters. In the said letter they had also sought for reconsideration and / or review of the decision to withdraw the decision declaring them as defaulters. The same was rejected on 9.4.1987.

In the light of the averments made in the writ petition, counter affidavit filed on behalf of the respondent no. 1 and looking to the correspondence, it is clear that the appellants were aware of their being declared as defaulters in the month of March, 1987 itself. The same is evident even from the first paragraph of their own letter dated 31.3.1987. They chose to file writ petition only on 26.10.1990. No doubt in the meantime they had made several representations to various authorities. The plea of the appellants for revocation of the action declaring them as defaulters was rejected on 9.4.1987. A notice declaring them as defaulters had been affixed on the notice board. Prior to 27.3.1987 they had surrendered their office Room No. 209, Second Floor, Jeejeebhoy Tower to the Stock Exchange to enable it to pay off their dues to the Stock Exchange, if any, to the member brokers for defective deliveries of shares, to the clearing house and also to the erstwhile clients. In the circumstances, the High Court was justified in dismissing the writ petition on the ground of delay and laches particularly so when rights were created in favour of third party namely, Vijay C. Shah by selling membership as early as on 29.1.1990 pursuant to the resolution dated 21.4.1989. The appellants did not take any effective steps either to get the stay of the operation of the notice dated 25.3.1987 declaring them as defaulters and similarly they did not take steps to pursue to get any interim order to stop sale of membership. Merely because the appellants went on making representations to the authorities who could not grant them any relief or that they were not sure about the legal position as to the maintainability of writ petition against the respondent no. 1, in our view, are not the grounds to justify the delay and

laches on the part of the appellants in filing the writ petition. Nothing prevented them to take such course as was available to them in law without any loss of time. The ground of malice urged against the Executive Director of the respondent no. 1 cannot be accepted. There are no sufficient details and particulars to say how the Executive Director had any malice against the appellants. A list of defaulters against whom similar action was taken by the respondent no. 1 was also placed before us during the course of hearing. It was also submitted that in respect of one or two members, action could not be taken because of interim orders issued by court but after interim orders were vacated, action was taken against them also. Thus the appellants were not discriminated. Further in their letter dated 31.3.1987 they had stated that they were highly obliged to the authorities of the Exchange for the co-operation extended to them and particularly to the Executive Director. Hence it is not possible to accept the allegation of malice made against the Executive Director of respondent no. 1. The contention that the decision of declaring the appellants as defaulters being void ab initio, the writ petition ought not have been dismissed on the ground of delay and laches, cannot be accepted. It is not the case of the appellants that the respondent no. 1 had no authority to declare them as defaulters in the given circumstances. They were intimated about the constitution of Enquiry Committee about the alleged irregularities and failure of the appellants in fulfilling their engagements / commitments. The financial difficulties and the inability to discharge their obligations in making payments is admitted by the appellants themselves and the Report of the Enquiry Committee is no different. No particular provision was shown to us by which it could be said that the decision taken by the respondent no. 1 declaring them as defaulters was one taken contrary to law or without complying with any mandatory requirements prima facie. Be that as it may, that even after coming to know of the fact that they were declared as defaulters at least as early as on 31.3.1987, they filed writ petition only on 26.10.1990. The High Court having referred to the relevant bye-laws and rules noticed that after the appellants were declared as defaulters, their membership vested in the respondent no. 1 and the respondent no. 1 had every right to sell the same. The High Court also noticed that the appellants did not make application for re-admission within the time and that in the meanwhile the rights were created in the third party. In these circumstances, the High Court has dismissed the writ petition on the ground of delay and laches and we find justification for such dismissal of the writ petition on the ground of delay and laches in the light of facts stated above. Hence, we do not think it necessary to go into the merits of other contentions raised that too at this length of time.

Thus, finding no merit in the appeal, it is dismissed but with no order as to costs.