

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6659/2006

(From the judgement and order dated 20/03/2006 in LPA No. 21/2005 of The HIGH COURT OF
MADRAS)

TAMILNAD MERCANTILE BANK S.H.W. ASSOC.

Petitioner(s)

VERSUS

TAMINAD MERCANTILE BANK LTD.

Respondent(s)

With appln(s) for permission to place documents on record and exemption from filing O.T.and with

prayer for interim relief)(For final disposal)

With

SLP(C)...CC..5059/2006(With appln(s) to file SLP and office report)

With

SLP(C)..CC.5084/2006(With appln(s) for permission to file SLP and office report)

Date: 12/07/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr.Harish N.Salve, Sr.Adv.

Mr.S. Vallinayagam, Adv.

Mr. S. Thananjayan,Adv.

For Respondent(s)

Mr.A.L. Somayaji, Sr.Adv.

Mr. R. Shankara Narayanan, Adv.

Mr. S. Mahadevan, Adv.

Mr.R. Nedumaran, Adv.

Mr.K.S. Mahadevan, Adv.

Mr.Mukundan, Adv.

Mr. S. Krishnakumar, Adv.

Mr.A.K. Ganguli, Sr. Adv.
Mr. H. Kartik Seshadri, Adv.
Mr.P.H. Arvindh Pandian, Adv.
Mr. S. Mukundan, Adv.
Mr. V.Krishnamurthy, Adv.
Mr. Prashant, Adv.

UPON hearing counsel the Court made the following

O R D E R

Permission to file special leave petitions is granted.

Delay condoned. Leave granted.

The appeals are disposed of in terms of the signed order.

(Meenu Sethi) (Pushap Lata Bhar
dwaj) Court Master Court Master
Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3034 /2006

(Arising out of SLP(C) No. 6659/2006

Tamilnad Mercantile Bank ... Appellant
S.H.W.Assoc.

VERSUS

Tamilnad Mercantile Bank ... Respondent
Ltd.

With

C.A. No.3050/2006(@ SLP(C)..CC... 5059/2006)

C.A. No.3035/2006(@ SLP(C)..CC....5084/2006)

O R D E R

Permission to file special leave petitions granted.

Delay condoned.

Leave granted.

The plaintiff in the Suit is the appellant before us. In view of the order proposed to be passed by us, it is not necessary to state the facts of matter in great detail.

Suffice, it to say that a Suit before the High Court was filed by the Tamilnad Mercantile Bank Ltd.- the appellant herein seeking for permanent injunction restraining the defendants, their men or servants or any other person claiming under them from preventing the member, whose name is registered in the Register of Members of the Tamilnad Mercantile Bank Ltd. or their duly authorised proxies lodged, from participating and exercising their voting rights in the Annual General Meeting of the Bank. In the said Suit an application for injunction was filed. The learned Single Judge who took up the injunction application filed by the appellant herein, upon hearing learned counsel for the parties and having regard to the provisions contained in Articles 85

and 86 of the Articles of Association of the Bank passed

the following order:

" The following considered order is passed with consent of Mr. Venkatachalapathy, learned Senior Counsel appearing for the applicants/plaintiffs, Mr. A.K. Somayaji, learned Senior Counsel appearing for the Tamilnad Mercantile Bank Ltd., and Mr. Harikrishnan, learned Senior Counsel appearing for the existing Directors who are seeking re-election.

If any shareholder has executed a General power of Attorney in favour of any particular person and such General power of Attorney is duly registered and intimated to the Bank as required under Article 85 of the Memorandum of Association of the TamilNad Mercantile Bank Ltd, such persons who satisfy the requirement of Article 85 of the Memorandum of Association will be permitted to vote in the place of shareholder who has executed such power of Attorney in favour of such person. Those shareholders who have not executed such General Power of Attorney, but whose names are found in the Register as members of Tamilnad Mercantile Bank shall be permitted to vote and the respondents/defendants should not prevent them from exercising their franchise or participating in the Annual General Meeting.

However, in view of the disputes between the parties, the learned Principal District Judge, Tirunelveli is appointed as an observer to observe the entire proceedings of the Annual General Meeting and file an independent report in a sealed cover before this Court."

The Observer appointed by the High Court in terms of the said order submitted a report. Relying upon the said report of the learned Observer, the appellants filed an application for initiating a contempt proceeding on the ground of alleged dis-obedience of the Court's order on the part of the alleged contemnors herein. The principal question which arose for consideration before the learned Single Judge was in regard to the true meaning of the expression "duly registered" as contained in Article 85 of the Memorandum of Association of the Bank. The learned Single Judge opined that the said expression "duly registered" would mean registered with the Registrar of Assurances and proceeded to hold that the alleged contemnors have committed contempt of the said Court, particularly, in view of the fact that an earlier order of a Division Bench of the High Court taking a contrary view had not been brought to its notice earlier. However, in stead and place of punishing the contemnors for committing the alleged contempt of the Court, the following directions were issued:

"As far as this case is concerned, though there are sufficient materials to hold that the respondent might have deliberately flouted the orders of this Court,

still there is an element of scope to hold that he has been so advised by his counsel to follow the earlier order of this Court and therefore, acted in such a manner relying on the opinion of the counsel on the issues involved. Therefore, the respondent is warned to be more careful in future in obeying the orders of this Court and no further action is called for in the interests of justice with regard to the respondents' conduct. But, most certainly, the proceedings of the meeting were void, the meeting itself having been conducted in disobedience of the interim consent order, and that will equally apply to the resolution or resolutions passed therein. All proceedings held on 24.12.2004 in the Annual General Meeting are declared to be null and void and the respondent-Bank is directed to conduct a fresh Annual General Meeting within eight weeks from the date of receipt of a copy of this order by observing all legal formalities and allowing only those power of attorney holders whose power of attorneys have been registered in the Registrar's office to participate in the deliberations of the Annual General Meeting."

The said order came to be challenged in an intra Court appeal before a Division Bench by the Tamilnad Mercantile Bank Ltd. and some of its Directors.

The Division Bench over turned the order of the learned Single Judge holding that the directions issued in para 24 were not warranted. The appellants are thus before us.

Mr. Salve, learned senior counsel appearing on

behalf of the appellants submitted that keeping in view the tenor and purport of Article 85 of the Articles of Association, learned Single Judge must be held to be correct in opining that the expression "duly registered" would mean registered with the Registrar of Assurances. Learned counsel appearing on behalf of the respondent, however, supported the judgment of the Division Bench.

Having heard learned counsel for the parties, we are of the opinion that the expression "duly registered" cannot be said to be free from any ambiguity. It is apparent that the parties to the Suit construed the said expression differently. The learned Single Judge while passing the consent order did not specifically spell out that the said expression would mean that the Power of Attorneys must be registered with the Registrar of Assurances. It is now well settled that when an order is ambiguous and was reasonably capable of more than one interpretation, a proceeding for contempt would not be maintainable (See State of Bihar Vs. Rani Sonabati Kumari- AIR 1961 SC 221).

In this view of the matter, we are of the opinion that the High Court cannot be said to have committed

an error in holding that if a proceeding for contempt was not maintainable, no directions could have been issued therein. We are, however, of the opinion that in view of the order passed by the Division Bench and also for the views we have taken, it is necessary to pass a consequential order, namely, directing the learned Single Judge to consider the matter afresh. Learned Single Judge of the High Court is, therefore, requested to consider the application for grant of injunction filed by the appellants afresh on merits. All the contentions raised by the parties shall remain open. We may place on record the statement made before us by Mr. Salve, learned senior counsel appearing on behalf of the appellants that the Bank and its Directors shall be impleaded as parties in the Suit. We may further notice that learned counsel for the Bank and learned counsel for some of its Directors have been appearing in the matter throughout. It may also be stated that some of the Directors of the Bank have also preferred appeals before the Division Bench. Learned Counsel appearing on behalf of the Bank states that the Bank shall enter

formal appearance in the Suit and file written statement

within two weeks.

Learned Single Judge is also requested to consider the desirability of disposing of the Suit as expeditiously as possible. It would be open to the learned Single Judge to issue such direction(s) as may be found to be necessary as regards holding of 83rd Annual General Meeting and for the said purpose extend the time therefor. We may further place on record that

by our order dated 11.5.2006, the time for holding 83rd

Annual General Meeting was extended upto 30.7.2006.

In view of the order aforementioned, the said order need not be complied with.

The appeals are disposed of accordingly.

.....J.

(S.B.SINHA)

.....J.

(DALVEER BHANDARI)

New Delhi,

July 12, 2006.