
(2009) 07 KAR CK 0039
In the Karnataka High Court
Case No : O.S.A. No. 29 of 2008

A. Mallikarjunappa

APPELLANT

Vs

Standard Industrial Engineering Company and Another

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Companies Act, 1956 — Section 466, 483
Limitation Act, 1963 — Section 5

Citation : (2009) 151 CompCas 199 : (2010) 99 SCL 88

Hon'ble Judges : D.V. Shylendra Kumar, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Madan Mohan, for G. Gokhale, for the Appellant; M.V.V. Ramanna and Deepak, for official liquidator, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This appeal u/s 483 of the Companies Act, 1956, is directed against the order dated August 27, 2008, passed by the learned single judge dismissing C. A. No. 697 of 2008 which was an application u/s 5 of the Limitation Act and consequently dismissing the other two applications, viz., C. A. No. 645 of 2008 for recalling the order dated July 21, 2005 passed by the learned company judge allowing Company Petition No. 180 of 2001 (Standard Industrial Engineering Company v. Bellary Power (India) P. Ltd. [2006] 133 Comp Cas 787 (Kar)) and ordering the winding up of the respondent-company in the company petition filed under Rule 9 of the Rules and another C.A. No. 646 of 2008 seeking for stay of the orders sought to be recalled filed u/s 466 of the Companies Act.

2. The appeal in substance is against the order passed by the learned company judge of this Court allowing the Company Petition No. 180 of 2001 in terms of the order dated November 21, 2005 (Standard Industrial Engineering Company v. Bellary Power (India) P. Ltd. [2006] 133 Comp Cas 787 (Kar)) and ordering the winding up of the second respondent company-M/s. Bellary Power (I) Ltd., now

represented by the official liquidator.

3. Matter having come up for admission, we have heard Sri Madan Mohan, learned Counsel for the appellant and Sri Deepak, the learned standing counsel for the official liquidator, Sri Ramanna, learned Counsel for the first respondent/ the petitioner in the original company petition.

4. While we find, the so called application for recalling the order dated November 21, 2005 (Standard Industrial Engineering Company v. Bellary Power (India) P. Ltd. [2006] 133 Comp Cas 787 (Kar)) of the learned single judge, passed u/s 433(e) and (f) of the Companies Act, 1956, is not an application provided for in law, as such an order could have been appealed against, we further notice that the order wherein the company was directed to be wound up, had, in fact, been appealed against by the very company and the appeal has been dismissed in O.S.A. No. 94 of 2005 Bellary Power (India) P. Ltd. Vs. Standard Industrial Engineering Company, in terms of the judgment produced at annexure C to the present appeal.

5. The appeal came to be dismissed affirming the order passed by the learned single judge.

6. It is much later the present appellant claiming to be a former director of the company had filed the applications referred to above in the Company Petition No. 180 of 2001 (Standard Industrial Engineering Company v. Bellary Power (India) P. Ltd. [2006] 133 Comp Cas 787 (Kar)), seeking for recalling of the original order for winding up of the company due to its inability to repay the debts.

7. The learned single judge noticed that the application itself was belated and while dismissed the application for condonation of delay, consequently dismissed the other two applications.

8. Submission of Sri Madan Mohan, learned Counsel for the appellant is that earlier appeal had been filed by the company and the present appellant was an ex-director of the company prior to the company being wound up and who was not aware of the proceedings and that he was prepared to discharge the liability of the company and contends that in such circumstances there was no occasion for the company being wound up and has, therefore, sought for the impugned order to be set aside.

9. We have examined the submission made at the Bar. Learned Counsel for the respondent and the company now represented by the official liquidator, have pointed out that there is no question of the present appeal being entertained for the simple reason that the main order passed by the learned company judge for winding up of the company had been appealed against and in the appeal it has been affirmed and therefore the order does not survive independently for examination.

10. Whether there is delay or not in filing such an application, it is not one provided for in law. There is no way of a person claiming to be a former director

of the company, now claiming interest in the company, getting over the order passed by the learned single judge which has got merged in the appeal by the company and there cannot be any retracing of such steps.

11. There is no question of this Court entertaining an appeal of this nature and applications filed for such purpose are not tenable.

12. The appeal and application for stay both are accordingly dismissed.