
(1996) 01 DEL CK 0011

In the Delhi High Court

Case No : C.A. No. 833 of 1995, in C.A. No. 864 of 1985, in C.P. No. 4 of 1960

Anand Finance (P.) Ltd. (In Liquidation)

APPELLANT

Vs

Amrit Dasarath Kakad

RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Citation : (1996) 61 DLT 305 : (1996) 36 DRJ 234

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Ms. Geeta Sharam, for the Appellant;

Judgement

Dalveer Bhandari J.

1. The official liquidator has filed an application u/s 446 of the Companies Act, 1956. In this application, it is stated that Anand Finance Company was wound up by an order of this court dated February 3, 1982, passed in Company Petition No. 34 of 1976. The official liquidator attached to this court was appointed as a liquidator of the said company.

2. The said company (in liquidation) gave a loan to respondent No. 1 as hirer and respondent No. 2 as guarantor in respect of purchase of a vehicle. The respondents had undertaken to repay the loan amount in 24 installments. Some installments were paid and, thereafter, the respondents stopped paying the installments. The demand notice was sent to the respondents; even then, they did not pay the remaining amount. Therefore, the official liquidator had to approach this court for passing a decree or payment order against the respondent in the sum of Rs. 52,263.65. This court, vide its order dated May 19, 1994, passed a payment order against respondent No. 1 in the sum of Rs. 37,093.65 with interest at the rate of 12 per cent. per annum from the date of petition till realisation and also passed an order for recovery of possession of the vehicle in favor of the petitioner.

3. The official liquidator has moved C.A. No. 833 of 1995 in which he has

mentioned that the judgment-debtor resides and carries on business and works for gain within the local limits and jurisdiction of the Bombay High Court and prayed that the decree passed by this court be transferred to the court at Maharashtra for execution. The Assistant Registrar, attached to the company branch of this court, declined to register the application as transfer application and returned the application to the official liquidator for filing an execution application in accordance with the legislative intention of section 635 of the Companies Act, 1956.

4. The short controversy which arises in this petition is whether, in the facts and circumstances of this case, the official liquidator should file a transfer application or execution petition ?

5. Section 635 of the Companies Act reads as under :

"635. Enforcement of orders of one court by other courts. - (1) Where any order made by one court is required to be enforced by another court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the order.

(2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the court shall take the requisite steps for enforcing the order, in the same manner as if it has been made by itself.

(4) Where any order made by the Company Law Board is required to be enforced by a court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the order and the provisions of sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a court."

6. A similar controversy arose before the Division Bench of the Sind High Court and their Lordships had resolved the controversy by ascertaining the true intention of the Legislature in the case of Official Liquidators of Golden Provident Funds Society Ltd. v. Narain Deomal [1943] 13 Comp Case 83. The facts of the said case have a direct bearing on the facts of the case in hand. Therefore, it would be appropriate to briefly summarise the facts of that case in order to properly appreciate the controversy in issue.

7. An appeal was filed u/s 202 of the Companies Act, against an order of the Assistant Judge, Hyderabad, dismissing an application made by the official liquidator of the Golden Provident Funds Society Ltd., to the court to enforce an order passed by a judge of that court u/s 185 of the Companies Act, directing Thadani and Sons to pay the amount with interest at 6 per cent. on account of the debt due from them to the said society. The official liquidator applied to execute this order as if it were a decree. The learned judge rejected the application stating briefly that, in his opinion, the order of the Karachi Court should be transferred by that court to the Hyderabad Court.

8. The Division Bench after careful analysis of the provisions of law and the legislative intention of section 635 (which is equivalent to section 201 of the Indian Companies Act, 1913) observed that though the section does not expressly state that section 39 of the CPC does not apply, it is obvious, where a special provision is incorporated in a special statute, that special provision excludes the operation of a general provision in the general law.

9. The court further observed that the order of the Karachi court was made in favor of the official liquidator and it was the official liquidator who produced a certified copy of this order to the Karachi court to the proper officer of the Hyderabad court as contemplated u/s 201 of the Companies Act.

10. The court also observed that (page 85) : "We do not think then that any question of transfer of the order from one court to another, as if it were a decree to be transferred u/s 39 and Order 21 of the Civil Procedure Code, arises. Had it merely been provided that an order of the court was to be enforceable as a decree, the appropriate provisions of the CPC would have applied, but section 201 of the Companies Act provides its own special procedure in this matter and must be followed. We think, Therefore, the order of the learned judge cannot be justified and must be set aside."

11. A case from the Karnataka High Court in which similar question was involved is reported as *Rose Chit Funds (P.) Ltd. v. G. Venkatachalam* [1991] 70 Comp Case 280 (Kar).

12. The court analysed section 635 of the Companies Act and observed that an order made by the company court u/s 446(2) of the Companies Act must be treated as a decree, for the purpose of recovering the money. The court further observed that any order made by one court is required to be enforced by another court and for that, the only requirement is the certified copy of the order to be produced to the proper officer of the court required to enforce the order.

13. The production of the certified copy can be sufficient evidence of the order and, on production of such certified copies, the court shall take requisite steps for enforcing the order in the same manner as if it had been made by itself.

14. On an analysis of section 635 of the Act, the real intention of the Legislature becomes abundantly clear that the order passed u/s 446(2)(b) by the competent court could be considered a decree and the same shall be aforesaid for the purpose of Realizing the amount ordered to be paid by merely filing a certified copy of the order before the proper officer of the court required to enforce the order. This section was incorporated in the Companies Act perhaps to ensure that company debts are recovered expeditiously.

15. In view of the aforesaid, we sustain the objection raised by the registry and direct the registry to return the transfer application for filing an execution application.

16. Before parting with this judgment, I must compliment the Assistant Registrar

(Companies), Mr. Nirmal Sopory, for raising an intelligent query based on the legislative intention of section 635 of the Companies Act, 1956.

17. C.A. No. 833 of 1995, for transfer of the decree to the court of Maharashtra for execution is rejected and the official liquidator instead is directed to file execution application. The application is disposed of in the terms as indicated above.