(1953) 02 KL CK 0019

In the High Court Of Kerala

Case No : A.S. No. 490 of 1952

Augustine Meenatoor APPELLANT

Vs

Mathai and Another RESPONDENT

Date of Decision : 16-02-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Companies Act, 1913 — Section 179, 183(5), 202
Provincial Insolvency Act, 1920 — Section 22

Citation : (1953) 02 KL CK 0019

Hon'ble Judges : Koshi, C.J;Gangadhara Menon, J

Bench : Division Bench

Advocate : T.K. Joseph, for the Appellant; K.K. Mathew and C.M. Kuruvilla, for the Respondent

Judgement

Koshi, C.J.—This is an appeal by an auction purchaser at a sale conducted by the Official Liquidator of Kothamangalam Rubber Estates Ltd. (in liquidation). With the sanction of the Court winding up the said Company the Official Liquidator, who is Respondent 2 to this appeal, sold the properties of the company at a public auction held on 16-3-1952 and the Appellant became the purchaser. The proclamation of sale expressly stated that the sale was being held subject to the confirmation of the Court. When the Official Liquidator''s report asking for confirmation came up before the Court there was before it a petition by Respondent 1 impeaching the sale on grounds of irregularity and fraud.

In his petition Respondent 1 alleged that the liquidator wrongfully kept out him and several other persons from participating at the auction by declining to receive deposits from them and that in So doing the Official Liquidator was acting in collusion with the Appellant to suit his own ends. According to Respondent 1 the Official Liquidator was a partner of the Appellant with respect to the purchase effected by the latter. When this petition came up for hearing the Appellant raised a preliminary objection that Respondent 1 had no ''locus standi'' to impeach the sale. The ground of objection was that Respondent 1 was not a "person aggrieved" within the meaning of Section 183(5), Indian Companies Act, 1913. The lower Court overruled the preliminary objection and posted the petition for evidence. The appeal is directed against that order.

2. Respondent 1 raised before us a preliminary objection as to the maintainability of the appeal. His point was that as the lower Court had not finally determined the Appellant''s right to the properties purchased by him the appeal was incompetent, and that Section 202, Indian Companies Act, 1913, did not permit such an appeal There is divergence of judicial opinion as to the scope and amplitude of Section 202, but in the view we take regarding the preliminary point taken before the lower Court we do not think it necessary to pronounce upon the question of the maintainability of the appeal. Were we of the opinion that the Appellant''s preliminary objection before the lower Court was one of substance we would not have hesitated to give him relief at least in the exercise of our revisional jurisdiction. This view point renders a decision as to the maintainability of the appeal bootless. We shall therefore deal with the lower Court''s order on the merits.

3. Though the learned Judge considers the question whether Respondent 1 is a "person aggrieved" within the meaning of Section 183(5), a careful reading of his order would show that the preliminary point was overruled not for the reason that Respondent 1 was a "person aggrieved". After referring to the English decisions cited before him the learned Judge states that the direct question whether a person who has been wrongfully excluded by an Official Liquidator from participating from a sale which he advertises with the sanction of the Court, is or is not a "person aggrieved" by the act or decision of the liquidator is not covered by any reported decisions. Then he states that in an Allahabad decision - Keshab Deo Vs. B. Rajendra Kumar Bhattacharji, Official Receiver and Others, and in a Travancore decision - '' 1944 Trav LR 665 ''(B) it was assumed that such a person would be an aggrieved person and afterwards proceeds to consider an aspect which was presented before him on behalf of Respondent 1 to sustain his petition.

It is on his decision on that point that the learned Judge held that an enquiry should be held regarding the allegations in the petition filed by Respondent 1. This is clear from para. 8 of the order which we take the liberty to quote here in full:

The Petitioner''s advocate argued that the Court has every right to scrutinise the actions of the Liquidator, apart from all provisions of law and that the petition is therefore filed invoking also the inherent power of the Court. The Petitioner has mentioned Section 151, CPC also in the petition. He relied upon the ruling - Kasim Sahib v. Official Receiver, Guntur reported in AIR 1946 Mad 89(C). That ruling says that ''when it comes to the knowledge of the Court that his (Receiver''s) action in any particular aspect is objectionable, the Court has inherent powers to rectify his errors or mistakes or to reverse or modify his acts or decisions.'' It was held further therein, that even a stranger is competent to bring that fact to the notice of the Court which has inherent power to review the conduct of the receiver so that the stranger may not be prejudiced by an unlawful act of its own officer. The present petition (C.M.P. 4180) seems therefore to be well founded.

We have given the matter our best consideration and are definitely of opinion that the view set out in the above extract is sound.

4. The Official Liquidator is an officer of the Court and to say that a Court should ratify an action of his ignoring allegations of misconduct on his part with reference to that action is a proposition which we cannot countenance. Such a proposition seems to be destitute of all authority; and it would be introducing an extremely dangerous rule of law to say that the Court should confirm the present auction without enquiring into the contents of the petition impeaching the same. It is the duty of the Court to satisfy itself that an action taken by one of its officers under cover of its order is above board. An extract from a decision of Justice Sir Ashutosh Mookerjee Kt., and Mr. Justice Beachcroft in a case reported in - Hanseswar Ghosh v. Rakhal Das 1920 Ind Cas 683(2)(Cal)(D) may usefully be quoted here.

At page 685 of the report after holding that the Petitioner in that case was not a "person aggrieved" within the meaning of Section 22, Provincial Insolvency Act the learned Judges went on to say as follows:

But it does not follow that the Court is not competent to deal with the objection taken by the Petitioner. When a Receiver has been appointed, he becomes an officer of the Court, and if he is about to act in excess of his authority, it is competent even to a stranger to bring that fact to the notice of the Court, which has inherent power to review the conduct of the Receiver and to make an appropriate order so that the stranger may not be prejudiced by an unlawful, act of its own officer; and for this purpose, the Court may hold a summary inquiry.

This view is in accord with that taken in the cases of - Ex parte Cochrane v. Mead 1875 20 Ea 282(E); - Searle v. Choat 1884 25 Ch D 723(F); and - ''In re Rasul Haji Cassum 9 Ind Cas 344 (Bom)(G). The inference follows that the application made by the Petitioner to the Court below must be entertained and an enquiry held into the truth or otherwise of his allegations; but the application is not one u/s 22, Provincial Insolvency Act, and is consequently not subject to the period of limitation prescribed by the proviso to that section.

No doubt the rule was enunciated in a case arising under the Provincial Insolvency Act and not under the Companies Act. Section 179(c), Indian Companies Act, 1913 only states that the Official Liquidator shall have power, with the sanction of the Court, to sell the immovable and moveable property of the Company by public auction or private contract etc. and not that he can sell on his own accord. The sanction of the Court is a necessary pre-requisite and when the sanction accorded expressly states that the sale held by him shall be subject to the confirmation of the Court, it is idle to contend that the Court cannot enquire into the allegations of misconduct etc. when such allegations come to the Court''s notice before the Court exercises its reserve power to confirm the sale. The reservation is as a safe-guard against irregularity or fraud in connection with the sale and against property being Sold at an inadequate price. In seeking to control the action of its officer there is no rule: the Court can do it only on the complaint of an aggrieved or interested party.

5. The decision in - '' 20 Ind Cas 683(2)(Cal)(D)'' was followed by the Lahore High Court in - Data Ram v. Deoki Nandan AIR 1920 Lah 361(H) and by the Madras High Court in the case referred to by the learned Judge, namely - AIR 1946 Mad 89 ''(C).

6. In the above view of the matter the question whether Respondent 1 was a "person aggrieved" need not be decided. When the Court''s officer is reported to be guilty of fraudulent conduct in the discharge of his duties the Court has not only jurisdiction but is also in duty bound to inquire into the officer''s conduct before his action is ratified. It is on this basis that the learned Judge posted Respondent I''s petition (C.M.P. 4180) for evidence and we hold that the course - adopted is thoroughly warranted by law.

7. The appeal fails and it is dismissed with costs.

