

(1955) 07 KAR CK 0003
In the Karnataka High Court
Case No : Misc. Appeal No. 39 of 1953

Chellaradh and Co. Ltd.

APPELLANT

Vs

M.V.K. Sundaram and Another

RESPONDENT

Date of Decision : 12-07-1955

Acts Referred:

Companies Act, 1913 — Section 162

Citation : AIR 1955 Kar 122

Hon'ble Judges : Venkataramaiya, C.J; Padmanabhiah, J

Bench : Division Bench

Advocate : B.N. Krishnaswamy, for the Appellant;

Judgement

Venkataramaiya, C.J.—This is an appeal against an order passed u/s 162, Companies Act, by the learned Second Addl. District Judge, Bangalore, for winding up the Appellant Company. The ground on which the order was made is that the Appellant failed to pay debts due to the Respondents. On a perusal of the petition filed by the Respondents and the objections thereto by the Appellant, it is seen that the claim is seriously disputed. Respondents claimed Rs. 8000 and as being due but Appellant asserted that they are entitled to get only about Rs. 220 and odd which the appellant offered and was ready to pay. The dealings between the parties consist of items of debit and credit with respect to which, there is keen controversy. The result of the transactions cannot be determined unless a volume of correspondence and a number of account books are closely looked into and the proceeding treated as if it is a suit on accounts. Part of the difficulty for deciding as to whose version is to be accepted is due to the fact that the respondents appear to have had dealings with the Industrial Expansion Company which functioned as the Managing Agents of the appellant company and the need to distinguish the dealings which the Managing Agents had on their own account from those which they had on behalf of the appellant company. The Respondents, though notified, were absent at the hearing and not represented by any counsel. The lower Court has recorded a volume of evidence find entered

into an unduly lengthy discussion of the materials placed before it in support of the claim and contentions of the parties.

2. In a suit filed in the Court of the Subordinate Judge, Bangalore, the liability of the Appellant to Respondents for payment of amounts is said to have been involved. I do not think that the provisions of the Companies Act can be availed of for obtaining an adjudication of the right to obtain payment when it is contested and the finding involves such a detailed and lengthy investigation as is necessary for a decision in a suit. As stated in Palmer on "Company Precedents" para 2,"Chap. III page 52 :

"It is now well-settled that a petition for winding up with a view to enforce payment of a disputed debt is an abuse of the process of the Court and should be dismissed with costs A winding up petition is not to be used as machinery to try a Common Law action."

In Tulsidas Lallubhai Vs. The Bharatkhand Cotton Mills Co. Ltd, it is stated that:

"Where the defence is that the debt is disputed all that the Court has first to see is whether that dispute is on the face of it genuine or merely a cloak of the Company's real inability to pay just debts."

In "The Company v. Rameshwar Singh" AIR 1920 Cal. 1004 (B) is an other case to the effect that "when a debt is bona fide disputed by a debtor company, it Cannot be said to have "neglected to pay" the debt". Beasley T. observed with reference to a similar petition in P.R. Doraiswami Ayyar Vs. Coimbatore Easwara Sahaya Nidhi Ltd., :

"Courts will never allow creditors of a company to invoke the assistance of the Companies Act for getting payment of their debt. If there is genuine dispute with regard to the debt, then the creditor of the company must be referred to a suit."

An order for winding up a company is a compulsory process to be thought of when the conditions mentioned in the section are satisfied and implies exercise of discretion. It is not to be sought for as a short cut and cheap device to coerce payment and stifle contest. The mere failure of payment cannot be treated as a decisive factor to entitle a party invoking the aid of the section or as a ground for the Court embarking on an elaborate inquiry for the purpose of determining complicated questions as if it is a suit to be tried though no court-fee is paid. The apathy to the proceedings shown by the Respondents by their absence indicates want of interest and that they are not Seriously mindful of the result. This may be due to the respondents being content with the remedy available by means of a suit.

3. In view of all this, the order of the lower Court has to be set aside. The appeal is allowed. Parties will bear their own costs.

4. Appeal allowed.