

(1983) 03 KAR CK 0023
In the Karnataka High Court
Case No : Company Petition No. 17 of 1982

Chennabasappa Kothambari	Vs	APPELLANT
Multiplast Industries (Karnataka) Pvt. Ltd. and Others		RESPONDENT

Date of Decision : 01-03-1983

Acts Referred:

Companies Act, 1956 — Section 397, 398, 433 (e), 433 (f)

Citation : (1985) 57 CompCas 222

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : T. Venkanna, for the Appellant; A.G. Holla, for the Respondent

Judgement

Chandrakantaraj Urs, J.—This petition is presented by one Chennabasappa Kothambari purporting to be a petition under s. 433(e) and (f) read with ss. 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the Act"). The prayers in the petition are for an over winding up the first respondent- Multiplast Industries (Karnataka) P. Ltd., Hospet; for a declaration that the notice dated May 25, 1982, issued by the company, a copy of which is at Ex. Q to the petition to be illegal, void and not enforceable against the petitioner and pass an order directing the respondent-company to forbear from exercising its lien on the fully paid-up shares held by the petitioner and from selling the said shares. In the alternative, he has prayed that the respondent-company and its directors be directed to transfer the share held by the petitioner for a fair present market value and pay the sale proceeds to the petitioner forthwith.

2. To summarise the averments in the petition, the following few facts may be stated :

3. The petitioner and respondents Nos. 2 to 4 before the formation of the first respondent-company were partners doing the same business in the same name and style of Multiplast Industries Corporation. That partnership headed for some trouble and suit was filed for dissolution of the partnership by the petitioner. But,

while that suit was pending, the matter was settled out of court and that suit was disposed of in terms of a settlement reached by the parties thereto. It is thereafter that the present first respondent-company was incorporated.

4. It is further averred that in 1977, the petitioner was offered life directorship of the newly formed company and that he accepted the same. But action was taken against him by the board of directors by removing him from the directorship on account of his consecutively absenting himself for three board meetings without permission. In other words, he was declared to have ceased to be the director of the company by virtue of s. 283(g) of the Companies Act, 1956. That matter was agitated in this court by the petitioner. But that also was settled out of court by the petitioner. The effect was, he was released an guarantor in respect of certain debts in respect of which he had executed guarantee in favour of some banks which had advanced monies to the first respondent-company. He accepted his termination of the directorship as well as his liability as guarantor individually.

5. It is after all these, the present petition is filed, inter alia, contending that he is holding more than 1/4th of the shares of the company and the company has been mismanaged as shown in the balance-sheet for the period ending December 31, 1981, which is one of the exhibits produced. It shows that the company has incurred loss of rupees two lakhs and, therefore, it is contended, the affairs of the company are not managed in public interest and the directors are trying to recover the sum of Rs. 80,000 said to be due from the petitioner and others have filed suits in respect of alleged loans advanced by them. It is said that the sums demanded are not only due from the petitioner but also from his erstwhile partners in the earlier dissolved firm. It is these acts the petitioner alleged as mismanagement, oppression to the minority shareholders and carrying on business contrary to public interest. Therefore, it is prayed that the petition should be allowed and the company wound up on just and equitable grounds relying upon a decision rendered in *Davis and Collett Ltd., In re* [1935] 1 Ch 693. It is contended that the principles which apply to the dissolution of a partnership should be extended to the facts of the present case and the respondent-company wound up.

6. It is needless to say that the respondents have resisted the petition and the prayers therein. They have filed a detailed counter denying all the allegations made by the petitioner and have contended that the loss is a normal loss in the course of conducting the business of the company. Respondents have asserted that the company is commercially solvent and depending on the market conditions and other circumstances, the company's position is improving day by day.

7. Learned counsel for the petitioner is not clear whether this petition is under s. 433 or ss. 397 and 398 of the Act. If one were to assume that it is a petition under s. 433 of the Act, not being a creditor, the petitioner is not entitled to maintain the petition. The counsel fairly conceded that the petitioner is not a creditor of the company. No doubt, under clause (f) of s. 433(1) of the Act, the

company can be wound up on just and equitable grounds on the petition presented by a contributory. Similarly, under s. 398, if the allegations of oppression, mismanagement or damage of public interest is proved to the satisfaction of this court, the court may proceed to eliminate the oppression or prevent the damage to public interest and make appropriate orders including an order winding up the company if oppression cannot be eliminated.

8. As already narrated earlier, the petitioner is a chronic litigant with his fellow shareholders who are none other than respondents Nos. 2, 3 and 4. Time and again he has settled the matter out of court. The petitioner admits that any suit which the company or others have filed against him for recovery of monies will be defended by him. Therefore, mere filing of a suit against him by the parties cannot be said to be any oppression to him.

9. No material is placed before the court except the balance-sheet to indicate that loss has occurred on account of mismanagement. One other accusation made against respondents Nos. 2, 3 and 4 is that they have amended the articles of association of the company so that they became full-time directors each drawing a salary up to Rs. 2,000 per mensem. Learned counsel did not point out any provision of law that such salary should not be paid to the directors. If the remaining directors control the affairs of the company, they are at liberty to amend the articles of association, if that is in order and is made in accordance with law, it cannot be said to be oppression to the petitioner, who is a minority shareholder.

10. The notice at exhibit-Q is a notice issued by the respondent-company calling upon the petitioner to pay a sum of Rs. 86,079,85 due by him to the company. It also states that in the event of failure to pay the said sum by the petitioner, in accordance with the power conferred on the board by art. 4 (b) and reglns. 10 and 11 of Table A of Sch. I to the Companies Act read with art. 1 of the articles of association of the company, in respect of the ordinary shares held by the petitioner, the company would enforce lien to which the company is entitled to. The notice is dated May 25, 1982. The petitioner has not furnished any material before this court as to what his reply was to the said notice. It is reasonable to infer that a reply to that notice was issued before filing the present petition.

11. If a certain sum of money is said to be due by the petitioner to the company, the company has to establish that sum is due in accordance with law. In other words, the company has to first obtain a decree for that sum which is owed by the petitioner and, thereafter, resort to the board's power to exercise the lien which is claimed for the company. If a suit is filed, the petitioner will have his defence in that suit.

12. Therefore, the alternative prayer made, to which I have referred earlier, does not survive for consideration in this proceeding.

13. I am constrained to remark that no material other than the balance-sheet is produced to show that the company's affairs are not managed well except to

show that the directors are drawing salary as full time directors. That is a course open to the directors of the companies if articles of association provide for full time directors being employed to manage the affairs and that cannot be said to be an act of mismanagement. I, therefore, do not think that this court should come to the conclusion that there is mismanagement or public interest is in any way affected. In fact, none of the creditors of the company have come forward either to support this petition or have filed a separate petition seeking therein winding up of the company because it is unable to pay its debts. In that circumstance, I must accept the assertion made by the respondents that the company is solvent.

14. What remains for consideration is the just and equitable principle when the company is not managed well at all or when there is deadlock in the management. This company is closely held by shareholders consisting of friends and it cannot be said that the affairs of the company cannot be managed at all. In similar circumstances, the Supreme Court had an occasion to consider that question in the case of *Hind Overseas P. Ltd. v. Raghunath Prasad Jhunjhunwalla* [1976] 46 Com Cas 91. In construing the just and equitable principle, the Supreme Court had the following to say (P 104) :

"When more than one family or several friends and relations together form a company and there is no right as such agreed upon for active participation of members who are sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked. Besides, it is only when shareholding is more or less equal and there is a case of complete deadlock in the company on account of lack of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the just and equitable ground. In a given case, the principles of dissolution of partnership may apply squarely if the apparent structure of the company is not the real structure and on prising the veil it is found that in reality it is a partnership."

15. From the above enunciation, it is clear that the petitioner who holds only 1/4th of the shares in the private limited company cannot now claim that the affairs of the company have reached a kind of deadlock by which the affairs of the company cannot be managed which will warrant dissolution of a partnership in similar circumstances or a company itself when it is closely held by member-relatives. If this is the law declared by the Supreme Court, the decision rendered by the Chancery Division in 1935 has no application whatsoever to the facts of the present case.

16. For these reasons, I do not think that this petition is well-conceived. It is, therefore, liable to be rejected in limine. I must also state that no evidence was asked to be recorded nor was it recorded in this proceeding except to go by the papers produced by the parties.

17. The petition is dismissed. But there will be no order as to costs.