

(2008) 07 CAL CK 0002

In the Calcutta High Court

Case No : C.A. No's. 604 of 2004 and 794 of 2007

Dewrance Macneill and Co. Ltd. (In Liquidation)

APPELLANT

Vs

Padam Kumar Khaitan

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Companies (Court) Rules, 1959 — Rule 130, 260, 261, 6
Companies Act, 1956 — Section 454, 456, 538(1), 542, 542(1)

Citation : (2011) 161 CompCas 402 : (2008) 2 CompLJ 768 : (2010) 97 SCL 236

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : P.C. Sen, Utpal Bose, Aniruddha Ray, D.N. Sharma, Ranajit Chowdhury and Kounish Chakraborty, for the Appellant;

Judgement

Jayanta Kumar Biswas, J.—The first respondent in CA No. 604 of 2004 has taken out this application by the Judge's summons dated 8-8-2007 for an order deleting his name from the array of respondents in CA No. 604 of 2004 and other consequential reliefs.

2. CA No. 604 of 2004 is an application taken out by the Official Liquidator of this Court u/s 543 of the Companies Act, 1956 ("the Act") by the Judge's summons dated 1-10-2004. He took out the application initiating misfeasance proceedings against all the seven respondents named in the Judge's summons as the erstwhile directors of Dewrance Macneill & Co. Ltd., the company-in-liquidation. The winding up proceedings in which the winding up order dated 13-10-1999 was made by this Court had been initiated on the basis of an order of the Board for Industrial and Financial Reconstruction ("BIFR") constituted under provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The BIFR recommended that the company should be wound up.

3. In the pending winding up proceedings administrative order dated 25-4-2003 was made by the company court appointing K.S. Bothra & Co. auditors to find

out the acts of misfeasance, if any, on the part of the erstwhile directors of the company-in-liquidation. Accordingly, the auditors submitted their report dated 29-3-2003 (sic) concluding that there were enough prima facie facts showing misfeasance. Thereupon the Official Liquidator sought administrative directions from the company court and by order dated 25-6-2004, Mr. Ranajit Chowdhury, advocate, was engaged to take appropriate steps for initiating misfeasance proceedings. Under the circumstances, the Judge's summons initiating the proceedings was taken out.

4. It is to be noted that the summons was taken out in terms of the provisions of the Companies (Court) Rules, 1959 Rule 260, which is:

260. Applications u/s 542 or 543.- An application under Sub-section (1) of Section 542 or under Sub-section (1) of Section 543, shall be made by a summons returnable in the first instance in Chambers. The summons shall state the nature of the declaration or order for which the application is made, and the grounds of the application, and shall be served on every person against whom an order is sought not less than 8 days before the day named in the summons for the hearing of the application. It shall not be necessary to file any affidavit or report before the return of the summons. The summons shall be in Form No. 120 or 121 with such variations as may be necessary.

5. Thereupon the Official Liquidator delivered the points of claim on 16-2-2005; and they were delivered in terms of the provisions of Rule 261, which is:

261. Directions at preliminary hearing of summons.- On the return of the summons the Court may give such directions as it shall think fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross-examination, before the Judge on the hearing, either in Court or in Chambers, of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the liquidator to make, and generally as to the procedure on the summons and for the hearing thereof. Points of claim to be delivered shall be in Form No. 122 or 123 with such variations as may be necessary.

6. The points of claim were delivered in the prescribed Form No. 123 appended to the rules; para 4 of the Form reads as follows:

4. Etc. (Set out in separate paragraphs as may be necessary, the main facts showing the misfeasance or breach of trust committed by each of the respondents and the amounts which they are jointly and severally liable to make good to the company in consequence of such misfeasance or breach of trust.)

7. The respondents, except the third respondent, in the misfeasance application delivered their respective points of defence. Documents were disclosed and inspected by the parties, and the application became ready for final hearing. At such stage, the first respondent took out this application by the Judge's summons dated 8-8-2007. The Official Liquidator has filed his opposition dated

30-11-2007, and the first respondent has filed his reply affidavit dated 6-12-2007. As a matter of fact, recording of evidence in the proceedings commenced a few days ago.

8. The Official Liquidator is contending that in view of the administrative order of the company court dated 25-6-2004 engaging advocate for taking appropriate steps for initiating the misfeasance proceedings, the present application, in the nature of one under Order 7, Rule 11, of the Code of Civil Procedure, 1908 ("the Code"), is simply not maintainable. Mr. Chowdhury, Counsel for the Official Liquidator, has contended that once, after considering the auditors' report suggesting initiation of misfeasance proceedings against the erstwhile directors of the company-in-liquidation, the company court made an administrative order directing the Official Liquidator to initiate misfeasance proceedings, and the misfeasance proceedings have been initiated in compliance with such order, there is no scope for any respondent therein to contend that the proceedings as against him should be dropped on the ground that the facts stated in the pleading read with the supporting materials do not make out any case against him for proceeding u/s 543. Mr. Sen, Counsel for the first respondent, has submitted that the administrative order was made only for the purpose of engaging an advocate, and, hence, there is no reason to say that simply because an advocate was engaged and an application has been filed initiating proceedings u/s 543, the question whether the application makes out any case against the respondents named therein cannot be gone into.

9. In my opinion, Mr. Sen is right. The administrative order dated 25-6-2004 was made only for engaging Mr. Chowdhury for examining the question of initiating misfeasance proceedings in view of the opinion expressed by the auditors in their report. This does not imply that while making the administrative order, the company court formed an opinion, after considering the report of the auditors, that a prima facie case of misfeasance was made out against all or any of the respondents named in the application. In any case, no such opinion was recorded in the order dated 25-6-2004. I do not see how it can be said that because of the administrative order, this Court is not empowered to exercise its judicial power to examine the question whether the application filed by the Official liquidator does make out any case of misfeasance against all or any of the respondents named therein. If such an interpretation as given by Mr. Chowdhury is accepted, in my view, it will lead to refusal on the part of the company court, while acting judicially, to exercise its powers. In my view, the administrative order dated 25-6-2004 does not in any way prevent this Court from entertaining the first respondent's application and examining it on merits.

10. Mr. Chowdhury has then argued that an application in the nature of one under Order 7, Rule 11, of the Code is not maintainable in proceedings u/s 543 of the Act, for the simple reason that they are summary in nature. Mr. Sen has disagreed with the proposition by saying that as a matter of fact proceedings u/s 543 are more akin to suits as will be evident from the provisions of the

Companies (Court) Rules, Rule 6, that makes the provisions of the Code, so far as applicable, applicable to all proceedings initiated under the provisions of the Act and the Companies (Court) Rules. His argument is that Section 543 proceedings which are always decided by holding a trial on evidence are definitely demurrable based on the provisions of Order 7, Rule 11, of the Code.

11. It seems to me that Mr. Sen is once again right. The provisions of Rule 6 of the Companies (Court) Rules provide:

Practice and procedure of the Court and provisions of the Court to apply.- Save as provided by the Act or by these rules the practice and procedure of the Court and the provisions of the Code so far as applicable, shall apply to all proceedings under the Act and these rules. The Registrar may decline to accept any document which is presented otherwise than in accordance with these rules or the practice and procedure of the Court.

12. There is no dispute that misfeasance proceedings initiated u/s 543 are decided on the basis of a trial on evidence. The procedure followed in case of a suit is followed in misfeasance proceedings; and this is apparent from the provisions of Rule 261, quoted hereinbefore. Therefore, Mr. Sen is right in saying that misfeasance proceedings initiated u/s 543 are more akin to suits initiated before ordinary civil courts. There is no reason to say that the proceedings are summary in nature. Hence, I do not see any reason to accept the contention that in the proceedings an application in the nature of one under Order 7, Rule 11 of the Code cannot be taken out by a respondent named in the Section 543 application contending that the pleading does not disclose a cause of action against him.

13. In my opinion, a demurrer such as the present one is quite permissible in misfeasance proceedings initiated u/s 543 of the Act, because the principle fundamental to the justice delivery system is that for preventing abuse of the process of Court proceedings initiated on the basis of application that does not disclose any cause of action against the respondent named therein should be nipped in the bud. And in support of this proposition, Mr. Sen has rightly relied on *T. Arivandandam Vs. T.V. Satyapal and Another*, . In that case, their Lordships said:

5. ...The Learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under order VII, Rule 11, CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.... (p. 470)

14. Mr. Chowdhury has then argued that at the present stage of the proceedings,

the application should not be, and rather cannot be, entertained. His argument is that once the first respondent filed his points of defence, disclosed documents, inspected documents, and recording of evidence commenced, there is no scope for entertaining an application in the nature of one under Order 7, Rule 11 of the Code. He has said that in all proceedings initiated u/s 543, the matters in issue are to be decided invariably after recording evidence, because what the provisions of Section 543 provide is only assessment of damages as a consequence of non-compliance with the provisions of its preceding Sections by the erstwhile directors of the company-in-liquidation named in the application initiating the misfeasance proceedings. In support of his contention, he relies on P.K. Nedungadi Vs. The Malayalee Bank Ltd. (In Liquidation) and Others, r, Official Liquidator, Supreme Bank Ltd. Vs. P.A. Tendolkar (Dead) by Lrs. and Others,

15. Mr. Sen has said that it is not correct to say that once an application u/s 543 is filed initiating misfeasance proceedings, the Court has to decide it by holding a trial on evidence, even if absolutely no allegation against any of the respondents in the application is made. As to the observations made by their Lordships of the Apex Court in P.K. Nedungadi's case (supra):

...Allegations or proof of fraud are not essential and it is immaterial that the offence is one for which the offender may be criminally liable. (p. 832)

Mr. Chowdhury has heavily relied on these observations, Mr. Sen has said that as will appear from the subsequent Apex Court decision in Official Liquidator v. Raghawa Desikachar [1975] 45 Comp. Cas. 136 and also from the statutory Form No. 123 appended to the Rules, a mandatory requirement of an application initiating misfeasance proceedings is that it must contain detailed particulars of specific allegation showing misfeasance by each of the respondents named in it. His further submission is that there is no reason to say that in proceedings u/s 543 only damages are assessed, and nothing else is adjudicated and determined.

16. Once again, I find that Mr. Sen is fully right in what he says. It is a mandatory requirement that an application initiating proceedings u/s 543 must contain detailed specific allegations against each of the respondents named therein. In Raghawa Desikachar's case (supra) their Lordships of the Apex Court said:

...It may be mentioned that misfeasance action against the directors is a serious charge. It is a charge of misconduct or misappropriation or breach of trust. For this reason the application should contain a detailed narration of the specific acts of commission and omission on the part of each director quantifying the loss to the company arising out of such acts or omissions. The burden of proving misfeasance or non-feasance rests on the Official Liquidator. The Official Liquidator, it may be mentioned, merely relied upon the evidence recorded in public examination of the directors and on a few documents tendered in evidence. At the stage of public examination there was no charge of misfeasance

against the directors and they were not in a position to know what would be the grounds that would be alleged against them for recovering any amounts for the loss said to have been caused to the company by reason of such misfeasance. The application made by the Official Liquidator did not give sufficient particulars which, in our view, it should have.... (p. 142)

17. Paragraph 4 of the statutory form in which the Official Liquidator is to deliver his points of claim specifically provides that the main facts showing the misfeasance or breach of trust committed by each of the respondents, and the amounts which they are jointly and severally liable to make good to the company in consequence of such misfeasance or breach of trust, must be set out in separate paragraphs, as may be necessary. The view that the application must contain sufficient particulars of acts of misfeasance or breach of trust, as the case may be, is also supported by the decisions in *D.C. Mehta, Official Liquidator of Gaya Sugar Mills Ltd. v. Jogeshwar Prasad* [1976] 46 Comp. Cas. 671 (Pat.); *Premier Credit & Motors Co. (P.) Ltd. v. Shafiqur Rehman* [1987] 3 Comp. LJ 197 (All.); *Security & Finance (P.) Ltd. v. B.K. Bedi* [1991] 71 Comp. Cas. 101 (Delhi); *Chamundi Chemicals & Fertilisers Ltd. v. M.C. Cherian* [1993] 77 Comp. Cas. 1 (Karn); *Sajida Book Shop Vs. Kaumudi Exporters (P) Ltd. and Others*, and *Ashoka Auto & General Industries (P.) Ltd. v. Inder Mohan Puri* [2005] 124 Comp. Cas. 422 : 62 SCL 19 (Delhi) - these all cited to me by Mr. Sen.

18. I am, therefore, unable to accept Mr. Chowdhury's contention that once an application is filed initiating misfeasance proceedings u/s 543, and even if it contains no allegation against the respondent named in it, the Court must proceed to decide it by holding a trial on evidence, and not otherwise. By just making a formal application without any vestige of any act constituting an allegation of misfeasance or breach of trust against the respondent named in it, the Official Liquidator cannot set the proceedings into an unstoppable motion even to the extent of fettering the Court from examining, on application by the respondent, the question whether there is any specific allegation in the Section 543 application, against him, disclosing a case of misfeasance or breach of trust. Such an approach as suggested by Mr. Chowdhury is bound to encourage the abuse of the process of Court, and the Court cannot afford to waste its precious time by holding a trial on evidence when the application does not contain any allegation whatsoever against a respondent named in it.

19. I do not find any merit either in the contention that at the present stage of the proceedings the first respondent's demurrer should not, or rather cannot, be examined on merits. Mr. Sen has relied on *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, in support of his contention that an application in the nature of one under Order 7, Rule 11 of the Code, can be taken out by the aggrieved person even at the stage of recording of evidence. He is right in saying so. In *Security & Finance (P.) Ltd.'s case* (supra), a Single Bench of the Delhi High Court said:

Depending upon the facts and circumstances, of a case and to meet the ends of

justice and/or to prevent the abuse of the process of court, the court can drop proceedings under Sections 542 and 543 of the Act or dismiss such an application against any party to the proceedings at any stage. (p. 121)

20. In ITC Ltd.'s case (supra), their Lordships of the Apex Court said:

13. We may state that in the context of Order 7, Rule 11 CPC, a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in Azhar Hussain v. Rajiv Gandhi [SCC p. 324] as follows: [SCC para 12]

In substance, the argument is that the Court must proceed with the trial, record the evidence, and only after the trial is concluded that the powers under the CPC for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned Counsel, it is an argument which is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court....

The abovesaid judgment which related to an election petition is clearly applicable to suits also and was followed in Samar Singh v. Kedar Nath. We, therefore, hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7, Rule 11 CPC.

21. It is, therefore, apparent that there is no prohibition against entertaining an application in the nature of one under Order 7, Rule 11 of the Code, such as the present one taken out by the first respondent, even when recording of evidence in the proceedings concerned has commenced. It can be taken out at any time before conclusion of the trial; and it is the duty of the Court to decide such an application on merits, so that totally unmeritorious proceedings, in the sense that the facts stated in the pleading, i.e., the application initiating the proceedings, taken at their face value, do not disclose a cause of action, or a case of misfeasance or breach of trust, a more appropriate expression in the present context, may be dropped for preventing an abuse of the process of Court. It is, therefore, to be seen what are the allegations made by the Official Liquidator in his application initiating the proceedings, and whether they disclose any case of misfeasance or breach of trust within the meaning of Section 543 against the respondents named therein.

22. Before narrating the case stated in the application, I think it will be profitable to see what the provisions of Section 543 are, they are as follows:

543. Power of Court to assess damages against delinquent director, etc.- (1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company-

(a) has misapplied, or retained, or become liable or accountable for, any money

or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company; the Court may, on the application of the Official Liquidator, of the liquidator, or of any creditor or contributory, made within the time specified in that behalf in Sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof, respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) An application under Sub-section (1) shall be made within five years from the date of the order for winding up or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This Section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

23. The case stated by the Official Liquidator in the points of claim delivered by him in support of the summons is this. The auditors appointed by this Court in their investigation report have opined that there are enough prima facie facts indicating misfeasance estimated at Rs. 54,48,97,000. During the course of investigation, the auditors could not find any financial and statutory books as well as other documents and records up to the date of winding up of the company. On inspection of the records available with the Registrar of Companies, West Bengal, the auditors found that the company duly filed its annual return on 30-5-1997 and balance sheet up to 30-9-1996. In spite of service of notice u/s 454 of the Act and Rule 130 of the Companies (Court) Rules, the former directors of the company deliberately failed and neglected to submit the statement of affairs of the company, except the statement of affairs submitted by one of them, namely, Sri K.K. Khaitan, based on the unaudited accounts, as on 13-10-1999, and the profit and loss account for the period from 1-4-1999 to 13-10-1999. The assets and liabilities, as on 31-3-1999, remained the same on 13-10-1999. The company had incurred huge loss prior to the financial year ending 31-3-1999. The total sales tax liability of the company till the date of order of winding up, excluding interest, was Rs. 2,59,48,000. Because of mismanagement by the former directors and other officers of the company, as will be evident from the unaudited balance sheet submitted by one of the former directors, the company suffered the following losses and liabilities : secured loan from Canara Bank and United Bank of India Rs. 4,90,61,000 + unsecured loans Rs. 6,51,07,000 + sundry creditors goods Rs. 2,13,98,000 + sundry creditors for expenses Rs. 49,67,000 + preferential creditors Rs. 80,29,000 + advances from parties Rs. 10,08,000 + sundry creditor others Rs. 10,91,99,000 + sundry debtors over six months Rs. 26,64,000 + sales tax assessment dues Rs. 2,59,48,000 + accumulated loss till the date of winding up Rs. 26,11,16,000 = Rs.

54,48,97,000. The total dues in respect of Income Tax and central excise tax could not be assessed due to non-availability of the records. It is, therefore, apparent from the investigation report that all the former directors deliberately and wilfully failed and neglected to submit statement of affairs, books of account, directors' minute book, bank statement records and all other connected papers, and, thus, they violated the provisions of Section 538(1) of the Act; and that they adopted the course in order to keep the wrongful and illegal gains, misappropriation and diversification of funds for which they are jointly and severally liable, accountable and answerable secret.

24. Making these allegations, the Official Liquidator concluded that the respondents in the proceedings are guilty of misfeasance or breach of trust, and, hence, they should be directed to compensate the company-in-liquidation by paying the sum of Rs. 54,48,97,000.

25. The auditors' report on the basis whereof the application was filed is the only document in the Judge's brief of documents filed by him in the proceedings. The report does not contain any information or materials other than those stated in the points of claim. The auditors specifically mentioned that their observations noted in the report were based on the particulars and information gathered from the unaudited accounts and documents which were made available to them for verification. They said that the unaudited balance sheet would show that the company had suffered the losses and liabilities due to the mismanagement by its former directors and other officers. The losses and liabilities mentioned in the report were entirely reproduced in the points of claim, and they have been mentioned hereinbefore. In their rather a short report the auditors concluded by saying:

Under the above stated circumstances though the proper investigation could not be made in absence of financial and statutory books as well as correspondence with the Registrar of Companies, West Bengal, Income Tax Department and Excise Department up to the date of winding up as required for investigation, it is submitted that there are enough prima facie facts for misfeasance estimated at Rs. 5,448.97 lakh as described above.

26. The question is whether the facts stated in the points of claim have disclosed a cause of action against any one of the respondents in the proceedings. As I have already noticed the authorities cited to me by Mr. Sen are consistent in one thing that the application initiating proceedings u/s 543 must contain particulars of specific allegation against each of the respondents who are to be specifically identified and named to the extent of their respective acts of misfeasance or breach of trust making them liable to compensate the company-in-liquidation. As the Apex Court has said the proceedings, quasi-criminal in nature, are very serious, and, hence, the application must contain a detailed narration of the specific acts of misfeasance or breach of trust, so that the specifically named respondent may deal with the allegations made against him. This means that for going into a trial on evidence a case based on sufficiently disclosed particulars

must be made out in the application. It is not that an application based on speculative allegation is to be entertained and decided of course following the process of trial on evidence. In the absence of a case made out by the facts stated in the application, read with supporting materials, e.g., the auditors' investigation report, as in the present case, there is absolutely no scope to undertake the process of a trial on evidence for the purpose of searching out a case of misfeasance or breach of trust. It is true that u/s 543 damages, if any, are to be assessed. But that is not the only thing to be done in proceedings u/s 543. The question of assessment of damages may arise only if the allegations of misfeasance or breach of trust are established against all or any of the respondents named in the application.

27. It is clear from the facts stated in the points of claim, read with the supporting auditors' report, that there are absolutely no particulars of any act of misfeasance or breach of trust by any of the respondents in the proceedings. Only a general allegation has been made that because of mismanagement of the company-in-liquidation by its former directors and other officers the company suffered loss to the tune of the amount mentioned hereinbefore. Who mismanaged and what was the nature of the mismanagement - nothing has been stated. It is difficult to appreciate how investments, loans, debts, etc., can automatically be treated as the losses of the company-in-liquidation caused by any deliberate and wilful mismanagement of the company by the respondents in the proceedings. No allegation has been made against any of the respondents naming him specifically. As a matter of fact, by making investigation the auditors did not detect anything which was not stated in the unaudited balance sheet of the company. I do not think Mr. Sen was unfairly expressing his surprise by commenting that it was beyond his comprehension how the unaudited balance sheet prepared by the company could reflect the acts of misfeasance and breach of trust indulged in by the respondents.

28. Mr. Chowdhury has strenuously argued that it is definitely a case of misfeasance and breach of trust, since the respondents wilfully and deliberately withheld the books of account and other records of the company-in-liquidation. He has argued that though they were under a statutory obligation to submit the books of account and the records, in violation of the provisions of Section 454 they did not submit them. Mr. Sen has rightly responded by saying that the Official Liquidator was not powerless, since in exercise of power u/s 456 he could take custody of the books of account and other records. Mr. Chowdhury has argued that in the absence of all books of account and records, the Official Liquidator, unable to specify the acts of misfeasance and breach of trust indulged in by the respondents, was only to proceed on the basis of the report of the auditors who opined that there were sufficient materials for initiating misfeasance proceedings. As I have already noticed the opinion of the auditors is not based on any information or material other than the unaudited balance sheet prepared by the company-in-liquidation. One will wonder why all concerned did not think it appropriate to make a more effective investigation before deciding to

set the law into motion initiating the quasi-criminal proceedings, now finding themselves difficult to survive. I have no hesitation in saying that absolutely no case of misfeasance or breach of trust has been made out against any of the respondents in the proceedings.

29. Mr. Chowdhury has said that if I conclude that the case against the first respondent should be dropped on the ground that allegations made in the application do not disclose any case against him, I should keep the proceedings alive for proceeding against the other respondents. As Mr. Sen has rightly said, that, if I do, will amount to the Court encouraging an abuse of the process of Court. It is immaterial that all the respondents have not taken out applications like the first respondent. If by examining the facts stated in the pleading and the materials submitted in support thereof it is found that no case of misfeasance or breach of trust has been made out against any of the respondents in the proceedings, in my view, then it will be a failure of duty on the part of the Court not to drop the proceedings against all the respondents, but only against the respondent who has taken out an application. In the present case, even if everything what has been stated in the points of claim and the auditors' report is taken at its face value, in my judgment, it cannot be concluded that any case of misfeasance or breach of trust has been made out against any of the respondents in the proceedings. I, therefore, hold that the proceedings against all the respondents should be dropped.

30. For these reasons, I allow the application and drop the misfeasance proceedings initiated u/s 543. CA No. 604 of 2004, the misfeasance application, is hereby rejected on the ground that the allegations made therein do not disclose any case of misfeasance or breach of trust against any of the respondents named therein. On the facts, I am not inclined to make any order for costs. Hence, there shall be no order for costs.