
(1962) 04 MAD CK 0039
In the Madras High Court
Case No : O.S.A. No. 59 of 1961

Gitanjali Press Private Ltd.

APPELLANT

Vs

S. Thangaswami and Another

RESPONDENT

Date of Decision : 10-04-1962

Acts Referred:

Companies Act, 1913 — Section 397, 398, 433(1), 443

Citation : AIR 1962 Mad 493 : (1962) 32 CompCas 1108 : (1962) 75 LW 497

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Ramakrishnan, J

Bench : Division Bench

Judgement

Ramachandra Iyer, C.J.—This appeal arises from the judgment of Venkatadri J. in O. P. No. 77 of 1960 appointing an administrator to conduct the affairs of a private limited company, Gitanjali Press (Private) Ltd., at Pudukottai, along with its managing director for the duration of certain appeals pending in this court. Gitanjali Press (Private) Ltd., the appellant, was incorporated on 27th October 1946 under the Indian Companies Act, 1913, as applied to the former Pudukottai State. The nominal capital of the company is Rs. 30,000, divided into 300 shares of Rs. 100 each, 203 out of the, 300 shares have been issued and are fully paid up. Swamikannu Pillai an Indian Christian was the promoter of this concern and he owned 50 shares. Thangaswami and Ratnam, the son and brother respectively of Swamikannu Pillai owned 20 shares each. 113 shares stood in the names of the employees of the Press owned and conducted by the company. It is, however, claimed on behalf of the respondents, the heirs of Swamikannu Pillai who died on 18th November 1956, that these shares were held by the employees only benami for Swamikannu Pillai and that after his death they stood transferred in their favour. The company, as stated already, was running a press at Pudukottah. Swamikannu Pillai was its managing director till the date of his death. His brother, Ratnam who was the secretary of the company till then. succeeded to the office as managing director, though it is not clear as to how he succeeded to that office.

After the death of Swamikannu Pillai misunderstandings arose between his heirs (respondents) on the one side and Ratnam, his brother, on the other. The latter claimed that although he and his brother, (Swamikannu Pillai) were Indian Christians, they had adopted Hindu law and customs and that there having been a coparcenary between the brothers he would be entitled to a half share in all the properties which stood in the name of Swamikannu Pillai including his interest in the company's shares. Ratnam then filed three suits, O. S. Nos. 6, 20 and 34 of 1958 in the Sub Court, Pudukottai for a declaration that the properties standing in the name of the deceased Swamikannu Pillai belonged to the joint family of which he was a member and for partition and separate possession of his share in the said joint family properties. These suits, were however dismissed. Appeals have been filed by Ratnam in this court against decrees and judgments in those suits. A. S. No. 35 of 1960 is the appeal which comprises as its subject matter, the interest of the deceased, Swamikannu Pillai in the Gitanjali Press.

2. While the suits filed by Ratnam were pending in the trial court, the son and widow of Swamikannu Pillai, respondents to this appeal, filed a company application No. 77 of 1960 for the winding up of the company under S. 433 of the Indian Companies Act. Substantially two grounds were alleged in support of the petition; The first was that the company was unable to pay its debts in that it had not discharged a liability of Rs. 21,747-77 due to the estate of the deceased Swamikannu Pillai in spite of demands. The second was that it was just and equitable that the company should be wound up, the reason being that there was a deadlock in the management in that a minor shareholder was oppressing the majority of shareholders. The latter ground requires further clarification. The case for the respondents was that by virtue of the fact that they had become the sole heirs of Swamikannu Pillai, they were entitled exclusively to the fifty shares that stood in his name and also to the 113 shares held by the employees of the Press benami for the deceased and thus they had become entitled to 203 shares inclusive of those that originally stood in the name of the first respondent.

It was stated that Ratnam on the other hand, was entitled only to 20 shares and that he arrogating to himself the position of a managing director, was conducting the affairs of the company according to his pleasure by declining to register the respondents as shareholders in respect of 183 shares to which they had become entitled after the death of Swamikannu Pillai. It was also alleged that no general body meeting of the company had been convened for the past three years and that the company was sustaining loss year after year.

3. This petition was opposed on behalf of the company by Ratnam. He asserted title to half the number of shares to which Swamikannu Pillai was entitled during his lifetime and also to the sum of Rs. 20,000 advanced by him to the company which formed the subject matter of the first charge. According to him there was no default in the matter of registration of the shares as the respondents exclusive title to them had not yet been declared by the court. He submitted that it was

not just and equitable to wind up the company.

4. The learned Judge has declined to accept the respondents' case that there was a deadlock in the management of the company or there was a disappearance of the substratum of the company. While accepting the case of Ratnam, that the business of the company was being carried on as before, he held that Ratnam was exercising a dominating influence in the matter of the management of the press and was oppressing the petitioners even though they possessed major number of shares in the company. Adverting to the losses incurred by the company during the two previous years the learned Judge held that they were incidental to the business and that if the business were allowed to continue it would be possible not merely to discharge the liabilities of the business but to earn profits in future. There was no controversy before us as to the capacity of the company to rehabilitate itself once the quarrels between its shareholders were settled. The company owns a valuable press with facilities for printing in English, Tamil and Devanagiri. The learned judge has held that in view of the claim of Ratnam to a half share of the properties that stood in the name of Swamikannu Pillai, an administrator should be appointed to carry on the business of the press along with Ratnam and he accordingly appointed the Official Receiver of Tiruchirapalli for the purpose. The appointment of the administrator was to enure for the duration of the appeals pending in this court.

Two reasons are given by the learned Judge to support his conclusion that Ratnam was oppressing the respondents. The first was that notices of the general body meetings (the respondents' case that there was no general body meetings having been rejected) were not sent to their permanent addresses at Madras but only to the addresses of the shareholders as shown in the share register. We cannot see how this can amount to an oppression of the majority of the shareholders by a minority, shareholder. The second reason was that Ratnam had made a claim for an equal share in the assets of the company and although he had failed in regard to that claim in the trial court he had filed appeals against the decrees of the trial court. With great respect to the learned Judge we cannot see how this circumstance can be regarded as indicative of oppression of the majority of the shareholders by the person in management. But there is a more fundamental objection to the order of the learned Judge, namely, his jurisdiction to appoint an administrator to carry on the affairs of the company, along with the managing director.

5. But before considering that question it is necessary first to advert to a preliminary objection taken on behalf of the respondents to the maintainability of the appeal. The direction given by the learned judge has undoubtedly the effect of introducing a stranger, though an officer of court, to conduct the affairs of the company. That certainly affects the rights, of the parties and would amount to a judgment within the meaning of Clause 15 of the Letters Patent.

6. The learned Judge has found that it was not just and equitable to wind up the company. The other ground relied on in support of the petition, namely, inability

of the company to meet its demands, depends for its validity upon the respondents being able to prove that they were exclusively entitled to the amount. That question is pending adjudication in the appeals before this, court and we do not consider that it would be safe to direct the winding up of the company on the ground that it is unable to pay its debts. The learned Judge himself did not consider that ground as sufficient by itself to warrant an order for winding up. From this it would follow, that the petition for winding up filed by the respondents should fail. But the learned Judge has appointed an administrator for the reason that Ratnam should not be allowed to be in sole charge of the printing press. It must, however, be remembered that there was no application before the learned Judge under S. 397 or 398 of the Indian Companies Act. Those sections enable a Court to intervene at the instance of the share-holders in the matter of the administration of the company under certain circumstances: One important circumstance is that the court should be satisfied on the facts found that a case for passing a winding up order has been made out. Secondly the other conditions prescribed in the sections should be satisfied.

In the present case none of the conditions specified in the two sections are in existence. The general rule is that courts will not intervene at the instance of the shareholders in matters relating to the internal administration of the company where directors act within their powers. But where circumstances exist which justify a winding up order different considerations will arise. If the court is of the opinion that the company should be salvaged, it can pass an order under Chapter VI of the Indian Companies Act provided the conditions prescribed by Ss. 397 and 398 etc., have been satisfied. But the jurisdiction of the court in such a case for intervening in the internal management of the company could be invoked only by an appropriate application under Ss. 397 and 398 of the Indian Companies Act. The procedure prescribed under these sections is different from that for a winding up petition. It will not be competent for the court whose jurisdiction has not been invoked under those provisions to pass an order which will have the effect of intervening in the management of the company in an application for the winding up of the company.

7. What a court can direct in an application for winding up is set out in S. 443 of the Act. It can either dismiss the petition or make an order for winding up of the company. During the pendency of the petition, it can adjourn the hearing conditionally or unconditionally or make such interim order as it thinks fit. Section 443(1)(b)(c) of the Act empower the court to adjourn the hearing of the petition conditionally or unconditionally or make any interim order which it thinks fit. Thus it will be competent while adjourning the winding up petition to impose conditions as to the management of the affairs of the company. But such powers can be exercised only if the petition for winding up. of the company is kept pending. But once it is found that the winding up petition cannot be sustained, it will be the duty of the court under S. 443 to dismiss it. Further it cannot while dismissing the petition impose on the company a management by the court for any period of time.

The order of the learned judge in the instant case appointing the administrator is for the duration of another litigation pending in this court. On the terms of the order it does not appear that the winding up petition has at all been kept pending. On the other hand, the order appointing the administrator is a final order on the winding up petition itself. Such an order is not warranted by the terms of Sec. 443 of the Act. The appeal will, therefore, stand allowed. The disposal of this appeal will, however, not prejudices the respondents or the other shareholders from applying to this court under Ss. 397 and 398 of the Indian Companies Act. We do not consider that it is a case in which there should be any order as to costs either here or before the learned company judge.

8. Appeal allowed.