

(1983) 07 KAR CK 0031

In the Karnataka High Court

Case No : Company Petition No. 5 of 1982

G.P. Ganapaiah Maiya and Others

APPELLANT

Vs

M.T.R. Associates and Others

RESPONDENT

Date of Decision : 22-07-1983

Acts Referred:

Companies Act, 1956 — Section 433, 583, 583 (4)

Citation : (1986) 59 CompCas 359

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

Bench : Single Bench

Advocate : Tukaram S. Pai, for the Appellant; S.V. Raghavachar, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—This petition was admitted after hearing the parties on April 20, 1982. On that date, there was no dispute between the parties regarding the jurisdiction of this court to entertain this petition. However, having regard to the contentions raised in Company Petition No. 4 of 1982, paper publication was deferred. That is evidenced by the order sheet of the court. Thereafter, numerous adjournments were taken to report settlement out of court.

2. On June 8, 1983, on an application made by the petitioners, a Commissioner was appointed to make an inventory of all movables, etc., found in the only asset owned by the first respondent firm (since dissolved - deemed company under the Companies Act, 1956, for purposes of winding-up) and his report was also received in court and no objection was received on that report.

3. On the request of parties, on July 18, 1983, the case was set down for hearing regarding advertisement of the petition. That was with the object of enabling the parties to make one more effort for settlement and no more. However, today Mr. V. Krishna Murthy, learned counsel appearing for respondents Nos. 1 to 6, has again raised the question of jurisdiction of this court to proceed with the winding up of the company and that the more appropriate remedy for the petitioners is to pursue proceedings in the proper civil court having jurisdiction to complete the

dissolution of the firm.

4. That the firm has dissolved itself is not in dispute. It is Mr. Krishna Murthy's argument that this court should not exercise its jurisdiction u/s 433 of the Companies Act at the instance of the partners of the firm who are no different than the contributories as there are no creditors whose interests are required to be safeguarded nor does it serve any public interest in winding-up the first respondent firm as a deemed company under the Act. He has relied upon two decisions of the Supreme Court, namely, *Madhusudan Gordhandas and Co. v. Madhu Woollen Industries (P) Ltd.* [1972] 42 Com Cas 125 (SC) and *Vasantryao v. Shyamrao* [1977] 47 Com Cas 666 (SC). Reliance on the said decisions has been placed by MR. Krishna Murthy to support the proposition that a suit for completing the dissolution under Partnership Act, 1932, is not barred.

5. That is stating the obvious. In the latter-mentioned decision of the Supreme Court, the matter agitated before that court was that a suit for dissolution of a partnership firm consisting of more than 7 persons could not be in civil court and the proper forum was only the company court as it was a deemed company. That proposition was negated by the Supreme Court. It was held that a suit also was maintainable under the Partnership Act.

6. The two decisions relied upon by Mr. Krishna Murthy do not support the proposition that this court cannot wind up the respondent company or similar association of person answering to the description of a deemed company under the Companies Act merely because there is another forum by which the dispute can be settled. I am of the view that deemed companies, including an unregistered firm of partnership consisting of more than 7 persons, have been subjected to winding-up proceedings under the Companies Act generally in the public interest because of the large number of partners involved and the duration of civil litigation that may protract the proceedings of dissolution in a civil court.

6. Proceedings under the Companies Act are summary in character and is a speedier way of safeguarding the interest of the partners or other persons who have formed themselves into an association of person answering to the description of "deemed companies" under the Act to settle their mutual rights as well as public interest if it is involved. It may be in some cases such companies may owe debts to third parties-creditors whose interest also is to be safeguarded instead of driving them to civil litigation.

7. If the argument of MR. Krishna Murthy is to be accepted, then, other creditors' petitions u/s 433 of the Companies Act should also be referred to the civil court because there is a forum to agitate the claim of the creditor. I do not think such an approach would be the correct approach. Parliament in its wisdom has enacted Part X of the Companies Act.

8. I have already stated that the first respondent is undisputedly an unregistered company within the meaning of that expression occurring in section 583 of the Companies Act. If that requirement is satisfied, the circumstances in which an

unregistered company may be wound up is enumerated under sub-section (4) of section 583 of the Act. In clause (a) of that sub-section, if the company is dissolved, then it is liable to be wound up under that part. If there is no dispute that the company has been unregistered and has been dissolved, then this court on the motion of a person who is entitled to move this court is bound to wind up the company. There cannot be a bar.

9. In that circumstance, I do not see any impediment to proceed further with the winding-up of the first respondent company and direct advertisement of the petition in Deccan Herald of Bangalore on or before 31st July, 1983. The date of hearing of the petition is fixed for August 26, 1983.