

(1956) 04 OHC CK 0005
In the Orissa High Court
Case No : Appln. No. 3 of 1955

In Re: Orissa Jute and Cotton Mills Ltd. and Others

Date of Decision : 09-04-1956

Acts Referred:

Companies Act, 1913 — Section 281, 281(2)
Companies Act, 1956 — Section 633

Citation : AIR 1956 Ori 205 : (1956) 22 CLT 231 : (1956) 26 CompCas 218

Hon'ble Judges : Balakrishna Rao, J

Bench : Single Bench

Advocate : R.K. Ghose, for the Appellant;

Judgement

Rao, J.—This is an application u/s 281, Indian Companies Act of 1913 corresponding to Section 633 of the new Companies Act, that is, Act I of 1956, which has come into force on 1-4-56.

2. The petitioners are : the Orissa Jute and Cotton Mills Ltd., a company incorporated in the state of Orissa with its registered office at Cantonment Road, Cuttack and Messrs. Madanlal Jajodia, Sohanlal Jajodia, Bhagabati Prasad Khaitan and Radhakrishna Bala as its directors.

3. The Orissa Jute and Cotton Mills limited Company was incorporated under the Indian Companies Act on 27-11-46 and a certificate for commencement of business was issued in its favour on 19-8-49. The registered office of the company which was originally situated at Bakharabad was shifted to 14, Cantonment Road, Cuttack, and it was duly intimated to the Registrar, Joint Stock Companies on 4-10-49.

Sri Madanlal was in charge of the management of the assets of the company, but the accountant of the company who was in charge of all the accounts died in November, 1952, after a protracted illness and consequently the company could not hold its annual general meetings in the years 1952 and 1953, as required u/s 76(1), Indian Companies Act, 1913, inasmuch as the accounts of the Company could not be duly audited. The accounts of the Company have since been,

audited, and the annual general meetings of the company have been duly held on 21-9-54.

The annual summary of share capital, list of share holders and directors and the balance sheet for 1950 and 1951 were duly filed before the Registrar of the Joint Stock Companies on 24-9-54. The annual general meeting for the year ending 31-12-1951, was held on 9-11-54 and the annual summary, of share capital, list of share-holders and the balance sheet were filed before the Registrar on 17-11-54. On these allegations, the petitioners state that they may be relieved from their liabilities in respect of the defaults committed by them.

4. But it is also alleged in the petition that the Assistant Registrar of the Joint Stock Companies filed a complaint under Ss. 76(2), 32(5), 133(3), 134(4) and 72(4), Indian Companies Act, against the petitioners in the Court of the Sub-Divisional Magistrate, Cuttack, and the petitioners are now being tried in the Court of Sri. N.N. Mitra, Magistrate, 1st Class, Cuttack in Criminal case No. 213C-2 of 1954. The petitioners obtained an interim stay of the proceedings of this criminal case after filing this application.

Notice of this application was duly published in two newspapers, viz., Eastern Times of 5-8-1955, and in the "Samaj" of the same date. Nobody appears to object to the application. The petitioners could not comply with the provisions of the Act as stated in the affidavit filed" by them on account of the death of the accountant who was in charge of these accounts and another accountant could not be appointed in time in his place.

All these things which were not done in time were subsequently complied with, and I am therefore satisfied that the petitioners are entitled to be relieved from their liabilities under the Act which were due to their negligence, the negligence being only on account of certain unavoidable circumstances. But the question still remains whether this relief can be availed of by the petitioners in the prosecution against them before the criminal Court. Mr. R.K. Ghose, the learned counsel for the petitioners, contended that they ought to be relieved against that also.

The law on this subject is the same in India as in England. It is also the same u/s 281 Indian Companies Act. 1913, and Section 633 of Act, 1 of 1956. In England also the law appears to be the same u/s 372 of "Act of 1929 and Section 448 of the Act of 1948. The wording of these sections is practically the same as of Section 633 of the Indian Companies Act. 1 of 1956. Section 633, Indian Companies Act, 1956, is as follows:

" (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court hearing the case that he is or may be liable in respect of negligence, default, breach of duty, misfeasance" or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may

think fit.

"(2) Where any such officer has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as it would have had under this section if it had been a Court before which proceedings against that person for negligence, default, breach of duty, misfeasance or breach of trust had been brought."

Section 281 of the Act of 1913 is identical with the above and this applies to the case. Clause (2) of this section clearly empowers the Court to relieve the petitioners against any apprehended claim for not complying with the provisions complained of but Clause (1) empowers, only the Court before whom the proceeding for negligence, default, breach of duty is complained of and is pending, and the power is strictly confined to that Court.

In this case, unfortunately the petitioners came to this Court not even after the negligence was found out by them to have been committed, but after the institution of the proceedings against them by the Registrar of the Joint stock Companies. Had they filed their application before the institution of the prosecution, this Court could have, if it was satisfied with the reasons given by the petitioners, passed an order giving relief to the petitioners against the defaults committed, which would have prevented the prosecution being instituted.

But the petitioners having filed this application after institution of the prosecution, though I am satisfied that the default was due to unavoidable circumstances and grant them the relief, this "relief will be confined only as far as the future liabilities for the default are concerned." Under the express provisions of Clause (1) of Section 281, it is only the Court which is in seisin of the matter complained of that can grant relief regarding the subject matter of the prosecution.

In this case, the Magistrate, before whom the proceedings are pending, can if he is so satisfied grant the relief. This is the correct position of the law, in, England also as will be clearly seen from the decision In re Gilt Edge Safety Glass Ltd, 1940 Ch 495 (A) wherein it was held that

"Section 372, Sub-section (1) made the Court which heard the case the only Court which had" Jurisdiction to give relief in respect of the, proceedings which had already been commenced, and that with regard to the claim u/s 372 Sub-section (2), the Court would make an order granting the petitioners relief from future or apprehended claims in respect of what was a purely technical defect; the summary proceedings already commenced being expressly excepted from that order."

Following this decision "and the wording of 8. 281, I relieve the petitioners from any apprehended liability as I am satisfied that they could not comply with the

provisions of law on account of the unavoidable circumstances due to the death of the accountant, but I cannot relieve them from liability of pending prosecution. And this order shall not in any way prejudice the proceedings which are pending before the Magistrate and the Magistrate is at perfect liberty to come to his own conclusion irrespective of this order from the facts, and the evidence in the case before him.