

(2012) 09 MP CK 0016

In the Madhya Pradesh High Court

Case No : Company Petition No. 2 of 1988

Kishori Devi Agrawal and Others

APPELLANT

Vs

Bhaskar Publication and Allied Industries Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Companies Act, 1956 — Section 397, 398, 483

Citation : (2012) 09 MP CK 0016

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Sameer Shrivastava, for the Appellant; K.N. Gupta with Ms. Sweta Bothra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Sujoy Paul

Order on I.A. No. 2660/12.

1. In this application for dismissing the company petition, the respondent No. 1 has stated that the present company petition is filed under Sections 397 and 398 of the Companies Act. Petition is instituted in the year 1988. During the pendency of the petition, admittedly, respondent No. 3-Sharda Devi Agrawal expired in January, 2004 by leaving various legal representatives (L.Rs..). The petitioners filed an application under Order 22 Rule 3 of CPC for bringing the L.Rs.. on record which was registered as I.A. No. 1430/04. Shri K.N. Gupta, learned senior counsel for respondent No. 1, submits that this Court issued notice to the proposed legal representatives and in addition thereto, directed for service of Dasti notice on the L.Rs.. of respondent No. 3. The matter was again came up for consideration before the Company Court on I.A. No. 1430/04. On 3.5.12 when the matter was listed on the said I.A., the learned senior counsel for the petitioners submitted that petitioners do not want to press the application. Accordingly, this Court dismissed I.A. No. 1430/04 as not pressed. Learned

senior counsel submits that since I.A. aforesaid is not pressed, all the legal representatives could not be brought on record. He submits that no cause of action survives after the death of Smt. Sharda Devi Agrawal in absence of impleadment of her legal representatives. He submits that the company petition should be declared as abated. To elaborate, the learned senior counsel submits that a perusal of pages 10, 15, 17, 18, 19, 20, 22, 23, 25 and 27 of the company petition show that joint allegations were made by the petitioners against respondents No. 2 and 3. The allegations are not separable, and therefore, in absence of respondent No. 3 nothing can be decided against respondent No. 2, and therefore, petition should be declared as abated. He relied on *The State of Punjab Vs. Nathu Ram*, and 6 which reads as under :

4. It is not disputed that in view of Order 22 Rule 4 Civil Procedure Code, hereinafter called the Code, the appeal abated against Labhu Ram, deceased, when no application for bringing on record his legal representatives had been made within the time limited by law. The Code does not provide for the abatement of the appeal against the other respondents. Courts have held that in certain circumstances, the appeals against the correspondents would also abate as a result of the abatement of the appeal against the deceased respondent. They have not been always agreed with respect to the result of the particular circumstances of a case and there has been, consequently, divergence of opinion in the application of the principle. It will serve no useful purpose to consider the cases. Suffice it to say that when Order 22 Rule 4 does not provide for the abatement of the appeals against the co-respondents of the deceased respondent there can be no question of abatement of the appeals against them. To say that the appeals against them abated in certain circumstances, is not a correct statement. Of course, the appeals against them cannot proceed in certain circumstances and have therefore to be dismissed. Such a result depends on the nature of the relief sought in the appeal.

6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court. The test to determine this has been described in diverse forms courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court and (c) when the decree against

the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed.

2. On the basis of tests laid down in the aforesaid paragraph from (a) to (c), it is stated that the petition does not survive and it should be declared as abated. In support of the same contention, the learned senior counsel relied on AIR 1966 SC 1427 (Sri Chand & others v. M/s. Jagdish Pershad Kishan Chand & Ors.), Ramagya Prasad Gupta and Others Vs. Shri Murli Prasad and Others, Babu Sukhram Singh Vs. Ram Dular Singh and Others, Bibijan and Others Vs. Murlidhar and Others, , Satguru Sharan Shrivastave Vs. Dwarka Prasad mathur (dead) through LRs. and Others, and lastly on Budh Ram and Others Vs. Bansi and Others, . On the strength of these judgments, it is stated that the nature of cause of action and events are such which if tested on the anvil of pleadings of company petition, it is crystal clear that on the death of respondent No. 3 and because of not allowing I.A. No. 1430/04, company petition stood abated. By placing reliance on 1975 J LJ SN 40 (Jainuddin S/o Abbas Bhai Bohra v. Jehrabibi & Ors), learned senior counsel submits that if certain L.Rs.. are already on record, others could be brought on record within three years and appeal would not abate.

3. Per contra, Learned Counsel for the petitioners, submits that respondent No. 3 died leaving behind three sons Sarvashri Girish, Pawan and Sudhir Agrawal. Shri Sudhir is already respondent No. 4 in the present company petition. The husband of deceased Sharda namely Ramesh is already there as respondent No. 2. Learned Counsel for the petitioners has raised following point:

If some of the legal representatives are already there as party respondent, the petition will not abate.

He relied on 1958 J LJ 639 (Laxminarayan Vs. Benibhai Bhikabhai) paragraph 8. He also relied on Collector of 24 Parganas and Others Vs. Lalith Mohan Mullick and Others, and ILR 2008 MP 647 (SC) (Mohd. Hussain (Dead) by LRs & Ors. Vs. Occhavilal & Ors.). Lastly, he relied on Mahabir Prasad Vs. Jage Ram and Others, In nutshell, his submission is that estate of deceased respondent No. 3 is already on record, and therefore, even if aforesaid I.A. is dismissed as not pressed, company petition will not lead to abatement. He further submits that in the very same matter earlier an appeal was filed before the Company Appellate Bench and the Division Bench in the case reported in 2011 (4) M.P.L.J. 599 (Bhaskar Publication and Allied Industries Pvt. Ltd. & ors. Vs. Kishori Devi Agrawal & Ors.) made it clear that the matter can continue before the present Court/Company Judge.

4. I have heard Learned Counsel for the parties and perused the record.

5. On the basis of aforesaid submissions, it is not in dispute that two legal representatives of deceased lady Sharda, namely Sarvashri Sudhir and Ramesh are already there as respondents No. 4 and 2 respectively. Thus, I find force in the argument of Shri Sameer Shrivastava, Learned Counsel for the petitioners,

that if the estate of respondent No. 3 is already there, the company petition cannot be held to be abated.

6. Heavy reliance is placed by Shri Gupta, learned senior counsel for respondent No. 1, on Nathu Ram (supra), however, a microscopic reading of the said judgment would show that the interference was made at an appellate stage. The basic reason on which interference was made was that if in the original case a decree is passed and if matter at appellate stage stood abated against one respondent and if it is permitted to continue against other respondents, it may lead to an anomalous situation where one party which died will be governed by one judgment of the original Court, whereas in the event appellate Court passes a different order, the other parties in the same issue/matter will be governed by different yardstick / order. In the present case, the situation is totally different. The matter is before the present Court, a Court of first instance, and therefore, there is no question of two orders on the same subject. This Court has no occasion to pass any order against respondent No. 3, and therefore, the contention of Shri Gupta, Learned Counsel for respondent No. 1, that if petition continues and a different order is passed against other respondents, it will create a situation where in the same matter two different orders are passed for different respondents. The argument is devoid of any substance because no order can be passed against a dead person and at best the petition will not continue against respondent No. 3 because of her death. Since her representatives are already there as respondents No. 2 and 4, petition will not abate and will continue against the remaining respondents. The other judgments cited by Shri Gupta, Learned Counsel for respondent No. 1, also do not lead to any other legal conclusion. In other judgments also, in the peculiar facts and circumstances of those cases, it was opined that no straight-jacket formula can be laid down and in the facts and circumstances of each case, the Court has to decide whether situation leads to a particular conclusion.

7. In the present factual backdrop, I am unable to hold that the petition is abated. It is profitable to quote para 8 of the judgment of Laxminarayan (supra) which reads as under:

8. To summarise the foregoing discussion it is generally accepted now that substitution need not be by a separate petition, if the legal representative or representatives happen to be on the record already impleaded as party. Secondly it is to be noted that the substitution is to enable the estate of the deceased defendant to be represented in cases where the cause of action survives the death of the defendant, and not necessarily everyone of the legal representatives. Thirdly, as long as there is no collusion or fraud, the failure to implead one or more of several legal representatives does not lead to the abatement of the suit as a whole as long as one of the legal representatives is so impleaded.

8. Apart from this, as against an interim order in the present matter dated 13th September, 2010 in MCC No. 63/10, an appeal was preferred u/s 483 of the

Companies Act before the Division Bench. The Division Bench decided the said matter in Bhaskar Publication and Allied Industries Pvt. Ltd. (supra) and opined as under :

This we are saying consciously as we are of the view that even if steps for substitution of all the legal heirs of respondent No. 3 were not taken by the petitioners (respondents herein), still their petition was liable to be decided by the Company Judge on merits in view of his earlier order on the same issue in this very case dated 11th July, 2003."

On the basis of the aforesaid, I am of the opinion that since the legal representatives of respondent No. 3 are adequately represented, it can be safely concluded that estate of respondent No. 3 is there to contest the matter. Apart from this, in view of the judgment in Bhaskar Publication and Allied Industries Pvt. Ltd. (Supra) and the settled legal position, I am unable to hold that the judgments cited by Shri K.N. Gupta, learned senior counsel for respondent No. 1, will lead to a conclusion that present petition is abated. Consequently, I find no substance in the aforesaid I.A. Accordingly, I.A. No. 2660/12 is rejected.

At this stage, the other counsel present in the Court submit that certain other I.As. are pending before this Court which may be considered after decision of the present I.A.

Prayer is reasonable. Accordingly, with the consent of the parties, list this matter for consideration on other I.As. in the week commencing 29th October, 2012.