

(2008) 01 MAD CK 0013

In the Madras High Court

Case No : C.A. No's. 1899, 1900, 2284 to 2288, 2303 and 2304 of 2007 in C.P. No. 140 of 2005

M. Rajendra Naidu

APPELLANT

Vs

Sterling Holiday Resorts (India) Ltd. and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Agriculturists Relief Act — Section 21
Companies Act, 1956 — Section 235, 236, 237, 274, 283
Easements Act, 1882 — Section 60
Provincial Insolvency Act, 1920 — Section 37, 43

Citation : (2008) 144 CompCas 243 : (2009) 1 CompLJ 170 : (2009) 93 SCL 11

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : Aravind P. Datar, for V. Kalyanaraman, in C.A. Nos. 1899 and 1900 of 2007, T.K. Seshadri, in C.A. Nos. 2284 to 2287, 2303 and 2304 of 2007 and Karthik Seshadri, in C.A. No. 2288 of 2007, for the Appellant; Aravind P. Datar, for V. Kalyanaraman, in C.A. Nos. 2284 to 2288, 2303 and 2304 of 2007, Karthik Seshadri, in C.A. Nos. 1899 and 1900 of 2007 and Respondent No. 4 in C.A. Nos. 2284 to 2286 and 2303 and 2304 of 2007 and G. Sundaram, for Respondent Nos. 1 and 2 in C.A. Nos. 1899 and 1900 of 2007 and Respondent Nos. 2 and 3 in C.A. Nos. 2284 to 2288 and 2303 and 2304 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—C.A. No. 1899 of 2007 has been filed to grant an order of interim injunction restraining the third respondent, her men,

agents and nominees from in any manner dealing with the property more-fully described in the judge's summons.

2. C.A. No. 1900 of 2007 has been filed to set aside the sale of the property conveyed under the sale deed dated December 27, 2006, registered

as Document No. 91 of 2007 on the files of Sub-Registrar of Assurances, Renigunta, morefully described in the schedule annexed to the judge's

summons.

3. C.A. No. 2284 of 2007 has been filed to implead the petitioner as respondent in C.A. No. 1899 of 2007 in C.P. No. 140 of 2005.

4. C.A. No. 2285 of 2007 has been filed to implead the petitioner as respondents in C.A. No. 1900 of 2007 in C.P. No. 140 of 2005.

5. C.A. No. 2286 of 2007 has been filed to grant an ad interim injunction restraining respondents Nos. 2 to 5 herein their men, servants, agents,

nominee, assignees or any one claiming through or under each one of them from in any manner dealing with the schedule mentioned property and

from removing, demolishing, dealing with in any manner and from removing any structure, tree and from laying any road or from developing the

schedule mentioned property till the disposal of C.P. No. 140 of 2005.

6. C.A. No. 2287 of 2007 has been filed to grant an ad interim injunction restraining respondents Nos. 4 to 6 from in any manner granting

permission, process any papers or registering any document in respect of the schedule mentioned property.

7. C.A. No. 2288 of 2007 has been filed to vacate the interim injunction in C.A. No. 1899 of 2007 and C.A. No. 1900 of 2007 in C.P. No. 140

of 2005 made on July 27, 2007.

8. C.A. No. 2303 of 2007 has been filed to implead the petitioner as one of the respondents in C.P. No. 140 of 2005.

9. C.A. No. 2304 of 2007 has been filed to implead respondents Nos. 4 and 5 as respondents in C.P. No. 140 of 2005.

10. C.P. No. 140 of 2005 was filed by the petitioner, namely, one Mr. M. Rajendra Naidu of Tirupathi u/s 237(a)(ii) of the Companies Act 1956,

praying for a declaration to declare that the affairs of the company, namely, M/s. Sterling Holiday Resorts (India) Ltd. (hereinafter called ""the

company"") ought to be investigated by inspectors appointed by the Central Government to investigate the affairs of the company before this Court.

11. In his petition, i.e., C.P. No. 140 of 2005 the petitioner states that he is a shareholder of the company holding about 58 equity shares and he is

interested in the well being of the company as a shareholder. It is his case that the chairman and managing director Thiru R. Subramanian of the

company has been declared as an insolvent by an order of this Court dated June 12, 2000, made in I.P. No. 124 of 1999, which was filed by

Canara Bank. Despite being declared as an insolvent the chairman and managing director continued to function as a director and vice-chairman of

the company by suppressing the real fact. As per Section 274 of the Companies Act, chairman and managing director is disqualified from being the

director and his office is vacated automatically u/s 283 of the Companies Act. Still he continued as chairman and managing director of the company

and entered into an agreement on June 6, 2005, for the sale of the property at Chittoor district for a total consideration of Rs. 135 lakhs.

Thereafter, another agreement was entered into with the same buyer on June 13, 2005, wherein the consideration was mentioned as Rs. 99 lakhs.

Thus, according to the petitioner in C.P. No. 140 of 2005, the company continues to be conducted in the manner prejudicial to the interest of the

members and public. Hence, the affairs of the company is to be investigated by the inspectors appointed by the Central Government.

12. Pending C.P. No. 140 of 2005, the petitioner filed C.A. No. 1899 of 2007 and 1900 of 2007 praying to set aside the sale of property

conveyed under the sale deed dated December 27, 2006, with regard to Chittoor property and also for an interim injunction restraining the

purchaser namely, Tmt. Madala Sumathy of Tirupathi town from in any manner dealing with the property.

13. In the affidavit filed in support of C.A. Nos. 1899 and 1900 of 2007, it is stated that the Chittoor district property measuring an extent of

1.859 hectares was owned by the company and the C.M.D. by letter dated June 6, 2005, appointed one Thiru M.S. Suresh Achari as the agent

of the company authorising him to take possession of the property and on the same day the C.M.D entered into an agreement of sale with the

above said M.S. Suresh Achari, whereby Mr. M.S. Suresh Achari agreed to buy the property for a sum of Rs. 134 lakhs. On June 13, 2005, the

above said M.S. Suresh Achari and one Thiru R. Mohan who is the senior vice-president of the company entered into an agreement of sale with

possession by which the said Mr. M.S. Suresh Achari agreed to purchase the property for a sum of Rs. 99 lakhs.

14. M/s. Gujarat Industrial Investment Corporation filed C.P. No. 213 of 2001 before this Court for winding up of the company. In C.P. No. 213

of 2001, one Thiru N. Nageswara Raju filed an application in C.A. No. 830 of 2005 seeking for a direction directing the respondent therein to sell

the very same Chittoor district property which is the subject-matter of the present application. The said Thiru Nageswara Raju also sought for an order of interim injunction restraining the respondent therein from dealing with the property. The company and Thiru M.S. Suresh Achari are respondents in those applications. By order dated December 22, 2006, this Court dismissed the application giving liberty to Mr. N. Nageswara Raju to initiate appropriate proceedings. Taking advantage of the order dated December 22, 2006, the company represented by senior vice-president, Mr. R. Mohan and the said Suresh Achari conveyed the property to Tmt. Madala Sumathi, the third respondent herein by a deed of sale dated December 27, 2006, which was registered as document No. 91 of 2007 on the file of the Sub-Registrar of Assurances, Renigunta. In the sale deed dated December 27, 2006, it is stated that the board of directors have unanimously resolved to sell the property vide resolution passed on May 25, 2006.

15. According to the applicant, the above sale transaction is void ab initio for the reason that on June 6, 2006, the C.M.D., second respondent herein, authorised the said Mr. M.S. Suresh Achari to take possession of the property when he ceased to be a director of the company as he was adjudicated as an insolvent by the court on June 12, 2006, itself. It is his further contention that the property is worth more than Rs. 10 crores but the same was sold at a throw away price of Rs. 99 lakhs. Hence, he filed C.A. No. 1899 and 1900 of 2007 for the aforesaid relief.

16. This Court on July 27, 2007, directed the third respondent not to disburse the property or the same in any encumbrance until further orders.

17. Respondents Nos. 1 and 2 entered appearance through counsel and filed a detailed common counter affidavit.

18. It is stated in the common counter affidavit that the real intention of the applicant is that the company should not sell its immovable property situated at Chittoor district measuring an extent of 1.859 hectares to any one other than Thiru Nageswara Raju. The company represented by its director Thiru P.N. Mohan signed an agreement with the said Nageswara Raju for sale on November 23, 1998, agreeing to sell the very same Chittoor district property. The agreement dated November 23, 1998, was valid for a period of three years as the time was the essence of the

contract. Thiru Nageswara Raju did not pay the agreed consideration within the period of three years and therefore, he converted the advanced

payment as loan amount, but failed to pay the agreed loan amount within the time. In the meantime, one M/s. v. Dempo P. Ltd., Goa, pressurised

the company for repayment of the loan availed by the company by giving the Chittoor district property as a security. Therefore, it was decided to

sell the property to a nominee of the said M/s. Dempo P. Ltd. Though the said Nageswara Raju was nominated by M/s. Dempo P. Ltd., earlier,

this nomination was changed by them by nominating one Mr. Suresh Achari who agreed to purchase the property for a sum of Rs. 134 lakhs.

19. It was specifically stated in the common counter affidavit that on coming to know about the agreement dated June 6, 2005, Thiru Nageswara

Raju filed C.A. No. 830 of 2005 in C.P. No. 213 of 2001 for the relief of direction to the company to sell the property at Chittoor district to him

only and also for a consequent injunction. As Nageswara Raju could not get expected orders when the application was filed on June 12, 2005, he

arranged to buy fifty equity shares of the company in the name of one Rajendra Naidu, who is the petitioner in C.P. No. 140 of 2005 and the

applicant in C.A. Nos. 1899 and 1900 of 2007.

20. After purchasing 50 equity shares in the second week of 2005, he filed C.P. No. 140 of 2005, on June 20, 2005. He also filed C.A. Nos.

989 and 900 of 2005 for an injunction restraining Thiru R. Subramanian from functioning as C.M.D. of the company and also for an injunction

restraining the company from taking up items 1 and 4 of the notice of the meeting to be held on July 30, 2005. In these two applications, the

applicant could not get the expected orders.

21. C.P. No. 213 of 2001 was disposed on merits by this Court by dismissing the same on December 22, 2006. Consequently, C.A. No. 830 of

2005 was also dismissed by this Court on February 1, 2007, observing that it would be open to the applicant to file in an appropriate court. Thiru

Nageswara Raju thereafter filed O.S. No. 45 of 2007 for specific performance and the same is pending on the file of the Additional District and

Sessions Court, Tirupathi. I.A. No. 789 of 2007 was also filed along with the suit restraining the defendants in the suit from dealing with Chittoor

district property and no interim order was granted by the court. Therefore, the

said Nageswara Raju set up the said Rajendra Naidu, the applicant in C.A. Nos. 1899 and 1900 of 2007 seeking the aforesaid relief.

22. It is stated that the order declaring the second respondent as an insolvent on June 12, 2000, in I.P. No. 124 of 1999 is an ex parte order and

the second respondent came to know of the order only on July 29, 2005, through a paper publication made in The Hindu dated July 29, 2005.

From the date of knowledge of the adjudication order, he did not perform the duties of a director till the said ex parte order was annulled on

November 23, 2006, by this Court in A. No. 434 of 2006 in I.P. No. 124 of 1999. The decision to sell the property to Mr. Suresh Achari was

taken up by the board of directors of the company and it is second respondent's personal decision. The total consideration of Rs. 134 lakhs was

split into two components, one is the real consideration and the other is the developmental expenditure. It is contended that the applications are not

maintainable as the applicant has an alternative remedy available under Sections 397 and 398 of the Companies Act. Hence, they prayed for the

dismissal of both the applications.

23. To this common counter affidavit filed by respondents Nos. 1 and 2, the applicant filed a reply affidavit denying that he has been set up by the

said Nageswara Raju. He is only interested in the welfare of the company and therefore he is questioning the sale transaction of the property which

would fetch a sum of Rs. 5 crores but was sold for Rs. 99 lakhs only.

24. The third respondent purchaser entered appearance through her counsel and filed C.A. No. 2288 of 2007 praying to vacate the interim

injunction granted in C.A. Nos. 1899 and 1900 of 2007 on July 27, 2007.

25. In the affidavit filed in support of C.A. No. 2288 of 2007, it is stated that the applicant is a person who has been set up by the said Nageswara

Raju who was allegedly holding some agreement with the company to purchase the same property. He already filed a specific performance suit in

O.S. No. 45 of 2007, in which she is also a party. She has paid valid consideration and a valid sale deed has been executed in her favour. This

sale deed is not disputed by the company, she is in no way concerned with the internal affairs of the company. She has pointed out that the

applicant was able to get an order of interim injunction from this Court when the said Nageswara Raju failed to get any interim order in the specific

performance suit filed by him. She is bona fide third party purchaser and protected by the doctrine of indoor management. The sale deed has been

executed on December 27, 2006, itself and therefore the interim injunction granted on July 27, 2007, is to be vacated.

26. When these applications were pending, the said Mr. Nageswara Raju filed C.A. Nos. 2284 to 2287 of 2007 to implead himself in C.A. Nos.

1899 and 1900 of 2007 and also for consequent injunction with regard to Chittoor district property. He also filed C.A. No. 2303 of 2007 to

implead himself in C.P. No. 140 of 2005 and C.A. No. 2304 of 2007 to implead Tmt. Madala Sumathi and Suresh Achari as respondents in C.P.

No. 140 of 2005.

27. A common counter affidavit was filed by the company opposing all the impleading applications. It is stated that these reliefs prayed for in all the

above applications are outside the scope of Section 237 of the Companies Act.

28. Heard Mr. Aravind P. Datar, learned senior counsel for the applicant in C.A. Nos. 1899 and 1900 of 2007, learned Counsel for the third

respondent and learned Counsel for respondents Nos. 1 and 2 and Mr. T.K. Seshadri, learned senior counsel for the applicant in C.A. Nos. 2284

to 2287 of 2007 and C.A. Nos. 2303 and 2304 of 2007. I have also gone through the documents and judgments referred to by them in support

of their submissions.

29. Mr. Aravind P. Datar, learned senior counsel for the applicant submitted that the second respondent was declared as insolvent on June 12,

2000 and consequently he ceased to be the director of the company as per Section 283(1)(c) of the Companies Act. Thus, all the action done by

the second respondent, including the sale of the subject property are void ab initio on and from June 12, 2000. Therefore, the applicant who is

holding 50 equity shares of the company is competent to question the same when his main application for a declaration to declare that the affairs of

the company are to be investigated u/s 237(a)(ii) of the Companies Act is pending. Learned senior counsel relied on the following decisions in

support of his submissions:

(1) Bharat Insurance Co. Ltd. v. Kanhaya Lal Gauba [1934] 4 Comp Cas 411 : AIR 1935 Lah 792.

(2) N. Muthusami Chettiar Vs. Periyal Achi and Another, .

(3) Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company, .

(4) Vakacharla Sumitra v. Vakacharla Lakshminarayanarao AIR 1977 AP 83.

30. Per contra, learned Counsel for respondents Nos. 1 and 2 contended that when the scope of the main application, i.e., C.P. No. 140 of 2005

itself is narrow, these applications are not maintainable. He further submitted that the applicant has got an alternative remedy under Sections 397

and 398 of the Companies Act. He further pointed out, the applicant is only a puppet in the hands of Thiru N. Nageswara Raju, who having failed

to get expected orders in C.A. No. 830 of 2005 in C.P. No. 213 of 2001 and also in the pending O.S. No. 45 of 2007, set up the applicant to

file the above applications for interim reliefs. Learned Counsel further submitted that the order adjudicating the second respondent as an insolvent is

an ex parte one and even though it was passed on June 12, 2000, the second respondent came to know about this order on July 29, 2005, only

that too from a paper publication. Further, the ex parte order dated June 12, 2000, was already annulled on November 23, 2006, in A. No. 434

of 2006. He further submitted that the second respondent did not participate in the affairs of the company as a director from July 29, 2005, to

November 23, 2006 and even otherwise the decision to sell the property to the third respondent is the decision of the board of directors of the

company and therefore that cannot be questioned by the applicant. Learned Counsel relied on the following decisions in support of his submissions:

(1) Ashoka Marketing Ltd. v. Union of India [1981] 51 Comp Cas 634.

(2) Safia Usman v. Union of India [2002] 110 Comp Cas 710 .

(3) V.V. Purie v. E.M.C. Steel Ltd. [1980] 50 Comp Cas 127 .

(4) Gamoji Venkata Ramakrishnarao Vs. Gullapalli Sambamurti, .

31. Learned Counsel for the third respondent submitted that these applications are an abuse of process and it is an attempt by a person to file

umpteenth number of cases until he gets an order of his liking. Even otherwise, learned Counsel submitted that she is a bona fide purchaser and she

is not concerned with the internal affairs of the company. Learned Counsel further submitted that her interest would be protected by the doctrine of

indoor management. He relied on the following decisions in support of his submissions:

(1) Freeman and Lockyer v. Buckhurst Park Properties (Mangal) Ltd. [1964] 34 Comp Cas 405 : [1964] 2 WLR 618.

(2) Nellai Metal Rolling Mills (P) Ltd. Vs. The Southern India Central Benefit Fund (P) Ltd., .

32. Mr. T.K. Seshadri, learned senior counsel for the applicants in C.A. Nos. 2284 to 2287 of 2007, and C.A. Nos. 2303 and 2304 of 2007

submitted that as the applicant in those applications has valid agreement of sale dated November 23, 1988, with the company to sell the property

situated in Chittoor district, the applicant has to be impleaded in all the proceedings to protect his interest and consequent injunction is also to be

granted in his favour to protect the property from being demolished or altered in any way or manner.

33. I have considered the submissions of counsel with regard to facts and citations.

34. Before considering the facts of the case, let me consider the judgments cited by learned Counsel for the parties to find out the relevancy to the

facts of the case.

35. In Bharat Insurance Co. Ltd. v. Kanhaya Lal Gauba [1934] 4 Comp Cas 411 : AIR 1935 Lah 792, it is held as follows:

Before dealing with the main point in this appeal which is the correct interpretation of Clause (d) of article 3 of the memorandum of association, it is

necessary to notice the contention urged by Mr. Badri Das at the outset that the cause of action disclosed in the plaint is not maintainable against

the company and that Mr. Gauba, if dissatisfied with the proceedings of the directors, should have raised the question before the general body of

shareholders. The broad rule in such cases is no doubt that in all matters of internal management of a company, the company itself is the best judge

of its affairs and the court should not interfere. But here the main point involved is the interpretation of a certain clause in the memorandum of

association relating to the application of the assets of the company. Such a question is not a matter of mere internal management. It is alleged that

certain directors whose good faith has not been questioned have misunderstood the clause in question and are in consequence acting ultra vires in

their application of the funds of the company.

Under these circumstances, I have no doubt that a single member of the

company can maintain a suit for a declaration as to the true construction of the article in question. I would refer in this connection to the observations by Brice on ultra vires on pages Nos. 714, 726 and 745 of third edition

which deal with the circumstances under which a single member can maintain an action against the company for acts alleged to be ultra vires.

36. In *N. Muthusami Chettiar Vs. Periyal Achi and Another*, , this Court has held that the subsequent annulment of adjudication cannot give

validity to a suit filed by an insolvent during the pendency of insolvency when the property is vested with the official receiver.

37. The relevant portion reads as under:

There is no statutory prohibition of a suit by an insolvent during the continuance of his insolvency, but it seems to follow from the fact that all the

properties of the insolvent vest in the receiver, that the insolvent will during his insolvency have no such title in any part of the estate vested in the

receiver as would form a basis for a suit regarding that property, and so much has been repeatedly held (vide *Subbaraya Chettiar v. Lakshmi*

Ammal). If, the insolvent cannot maintain a suit/regarding the property vested in the official receiver so long as the insolvency enures, it is difficult to

see how the insolvent can take advantage of the court's delays in disposing of that suit so as to clothe a suit, which in its inception was bad, with a

validity due only to the subsequent annulment of the insolvency. If the insolvent or his legal representative had no right of suit when the suit was

filed, that suit should have been dismissed.

38. In *Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company*, , the hon''ble Supreme Court held as under:

(10). Thus, when the appellant was making the offer for creating a trust he was not merely an agent of the company; he was also a trustee of the

assets of the company and was in a fiduciary relationship with the respondent. Therefore, the appellant could not do anything in regard to the assets

of the company which would prejudicially affect its rights. The appellant made an offer that he would erect the building on the land belonging to the

respondent which is in Schedule A, the building being Schedule B. He also offered that it would be a trust property. He could not create a trust in

regard to land which belonged to the company nor could he by a unilateral act create a lease in his own favour in regard to the land which is in

Schedule A. Thus, when a complaint is made that the appellant has unilaterally acted to deprive the company of some of its right the complaint is not wholly without foundation, although the company also may not be entirely without blame. But the fact comes to this; the appellant was asked to construct the building at a cost of Rs. 12,000, it was subsequently found that the cost would be more than the estimated amount which probably the company was not prepared to spend. It is not that the building had not yet commenced, it had commenced and probably not completed. At that stage the appellant made an offer which was accepted but the offer was that he would finish the construction of the building and hand it over to the respondent-company as trust property of which the trustees would be the directors of the company. The transaction therefore was confined to the offer as contained in exhibit AB and in exhibit II. It is true that for some reason or another certain members of the company were not prepared to stick to the original arrangement and wanted certain modifications but in spite of that it was not open to the appellant to ignore his offer altogether and create a wholly new trust which he has done. His rights, if any, if they could be enforced would only be in exhibit II which the appellant himself has abandoned. He cannot now be heard to say that because the company after accepting his offer had refused to abide by the agreement, he was entitled to appropriate by means of the trust created by him the land in schedule A by constituting the trust a tenant and deprive the company of which he was at that time a director and therefore a trustee. In these circumstances, it is impossible to say that he is entitled to enforce by way of defence to the suit of the respondent.

(12) In these circumstances the cases which were cited on behalf of the appellant are of little assistance. The appellant relied on Hafis Manzoor

Ahmad and Others Vs. Mohammad Abdul Jamil, , which was a case u/s 60(b) of the Easements Act where a license had become irrevocable u/s

60(b) and it was held that it could not be revoked on payment of compensation. The East Punjab case, i.e., Dominion of India v. R.B. Sohan Lal

AIR 1950 EP 40, again is not of much assistance to the appellant. It was there stated that in every case the terms of the license have to be

examined and the law applied to such terms. It was also observed by Das, C.J. (as he then was) that in order to be irrevocable u/s 60 the license

has to be coupled with a transfer of property whereas under the English law it was enough if it was coupled with a grant or interest in the nature of

profit and in every case the irrevocability whether under the English law or under the Indian statute will give way to the special agreement if any of

the parties but it is unnecessary to go into these cases because of offer which was originally made by the appellant and accepted by the

respondent-company has not been adhered to and the appellant is now proceeding on an entirely new basis.

39. In *Vakacharla Sumitra v. Vakacharla Lakshminarayanarao* AIR 1977 AP 83, a Division Bench of the Andhra Pradesh High Court held as

under:

5. Sri M. Jagannadha Rao's next submission was that the annulment of the adjudication had the effect of wiping out the liability of the insolvent as if

he had never been adjudicated an insolvent. Therefore, he submitted, the suit, even if it was not validly instituted, could be continued by the

insolvent after the annulment of his adjudication. He relied on the decisions in *Ps. Ar. Ar. Arunachalam Chettiar Vs. Narayanaswami Goundar*, and

Subbaiah Goundan Vs. Ramasami Goundan and Others, . It was held in those two cases that the effect of annulment of an adjudication was to vest

the property retrospectively in the insolvent, wiping out altogether the insolvency and its effect except to the limited extent of saving the acts of the

court and the receiver. The argument of Sri Jagannatha Rao was that the adjudication, having been annulled the effect of the annulment was to

validate the suit instituted by the insolvent when the adjudication was in force. The answer of Sri Bapi Raju was that it would not be so where the

annulment of adjudication was accompanied by a simultaneous order vesting the property in a person appointed u/s 37 of the Provincial Insolvency

Act.

6. In *Moturi Veerayya Vs. P.V. Sreenivasa Rao and Others*, , a Full Bench of the Madras High Court considered the effect of an annulment of

adjudication and a simultaneous vesting of the insolvent's property in an appointee u/s 37. The learned judges observed that there were three

possible views/and they stressed their preference for the view that while the property of the insolvent vested in the--appointee u/s 37 he was

subject to the directions of the court. The appointee had only such powers as

were necessarily implied by the vesting order. The learned judges did not accept the other two views, namely, (1) that the annulment of the adjudication brought the insolvency proceedings to an end and the insolvency court, thereafter would have no power to pass any orders in regard to the insolvent's property, the appointee u/s 37 being a mere custodian of the insolvent's property and (2) that if a vesting order was made the insolvency proceedings were continued for all purposes. Thus, according to the learned judges, the person appointed u/s 37 would not be a mere custodian nor would he have all the powers of the receiver, but the property would vest in him and he would have to carry out the directions of the court. If the property vests in the appointee u/s 37 it follows that the insolvent cannot maintain or continue an action in respect of such property. The distinction between an unconditional annulment of adjudication and a conditional annulment of adjudication along with which an order for vesting u/s 37 is made was brought out by Somayya J., in two cases decided by him. In *Ratnavelu Chettiar by mother and guardian Madhuravalli Ammal and Another Vs. Franciscu Udayar and Others*, , Somayya J., held that an unconditional annulment of adjudication would have the effect of vesting the property retrospectively in the insolvent so as to save the sale of a property in execution of a decree obtained against the insolvent without the leave of the insolvency court. In another case *Kolaparathi Venkatasubbiah Vs. Madallapalli Venkatasubbiah and Another*, , Somayya J., held that where while annulling an adjudication the insolvency court passed an order u/s 37 vesting the debtor's properties in the official receiver a sale of such properties through court without impleading the receiver in execution of a money decree obtained against the debtor was void. The learned judge pointed out that there was no "reversion of the debtor's property to himself where an order u/s 37 vesting the property in a person other than the debtor was passed. In such a case the only person entitled to represent the estate would be the appointee under the section.

8. In the present case, it is not necessary to go to the extent that Wordsworth J., did since simultaneously with the annulment of adjudication an order was made vesting the property in an appointee u/s 37. Even so, it was argued by Sri Jagannadha Rao that the receiver having been impleaded as a party to the suit, the suit could not be defeated on the mere

ground that the receiver had not instituted the suit. Whatever force there may be in this submission it is of no avail in the present case since the receiver was not impleaded as a party to the suit originally but was impleaded as a party only after the period of limitation had expired. In *Sripada Venkatasubba Rao Vs. Namagiri Venkateswaralu*, , the insolvent had filed suits without obtaining the permission of the court. Finding that the suits were defective for want of permission he applied for and obtained permission beyond the date of limitation. The High Court held that in as much as the suits were barred by limitation on the date of permission such permission should not be granted.

40. In *Gamoji Venkata Ramakrishnarao Vs. Gullapalli Sambamurti*, , a Division Bench of this Court, held that the effect of annulment of adjudication was to bring about, the state of affairs as if there had never been an adjudication and the property was deemed to have been the property of the applicant on the relevant dates.

41. The relevant portion reads as under:

(2) The decree to be scaled down was passed in O.S. No. 32 of 1933. The appellant on his own application was adjudged an insolvent on April 16, 1937; and on account of his own laches the adjudication was annulled on March 5, 1941. The argument which appealed to the learned judge

was that both on October 1, 1937, the relevant date referred to in Act IV (4) of 1938, and on March 22, 1938, when the Madras Act IV (4) of

1938 came into force, the property was vested in the official receiver ; for those dates were subsequent to the adjudication and prior to the

annulment of the adjudication. It is now well-settled law that the effect of the annulment of an adjudication is to bring about the same state of affairs

as if the adjudication had never taken place. The learned advocate for the appellant has cited to us *Ratnavelu Chettiar by mother and guardian*

Madhuravalli Ammal and Another Vs. Franciscu Udayar and Others, , in which *Somayya J.*, held that a transaction which had taken place

between the date of adjudication and the date of annulment without the permission of the court was valid, because the annulment dated back to the

date of adjudication. In that, he followed *Kothandaram Ravuth v. Muruges Mudali* 27 Mad 7, in which on the Insolvency Act then in force, the

learned judges held that the adjudication was null and void. After *Somayya J.*,

had decided the above case, his decision came up for consideration by a Bench of this Court in Sakhamuri Peraya and Others Vs. Nimmaraju Kondayya and Others, . There, the law bearing on the subject was considered in detail and reference made not only to Kothandaram Ravuth v. Murugesu Mudaliar 27 Mad 7, but also to an earlier decision on which Kothandaram Ravuth v. Murugesu Mudaliar 27 Mad 7, was based, namely, Ramasami Kottadiar v. Murugesu Mudali 20 Mad 452 : 7 MLJ 229. It was pointed out that although at the time when Ramasami Kottadiar v. Murugesu Mudali 20 Mad 452 : 7 MLJ 229 and Kothandaram Ravuth v. Murugesu Mudaliar 27 Mad 7 , were decided, the law governing insolvency was the Indian Insolvency Act 11 and 12 of 1848 yet despite some slight change in the wording, the law relating to the effect of the annulment of the adjudication remained the same. In support of that conclusion three decisions of single judges to that effect were referred to : Bhyradevanhalli Lingappa Vs. Official Receiver, , Dharmasamarajayya Vs. Sankamma and Others, and Ratnavelu Chettiar by mother and guardian Madhuravalli Ammal and Another Vs. Francisco Udayar and Others, . The judgment of Somayya J., in particular was considered at some length ; and it was pointed out that his remarks that if the annulment did not have retrospective effect, there would be no need for the clause validating Acts done by the court or by the receiver, for they would be valid, were very pertinent. So there can be no doubt that the effect of the annulment of the adjudication on March 5, 1941, was to bring about the same state of affairs as if there had never been an adjudication on April 16, 1947, which means that on the relevant dates October 1, 1937 and March 22, 1938, the property vested in the appellant.

(3) The learned district judge felt himself impelled to follow Kudithipudi Venkatramayya Vs. Mallacheruvu Pundareekakshudu and Others, . In that case, as in the present case, the relevant dates occurred during the period between the adjudication and the annulment of the adjudication; but the learned judge overlooked the distinction between that case and this in that there, upon the annulment of the adjudication, it was ordered that the property should continue to vest in the official receiver. If it had revested in the insolvent, then the date on which the revesting would be deemed to have taken place would be the date on which the original order of adjudication

was passed, which would, in effect, mean the wiping out of the intermediate period. Where, however, at the time of the annulment of the adjudication, or an order is passed continuing the property in the official receiver, no question arises of the revesting of the property in the insolvent; nor does the annulment of adjudication have the effect of putting the insolvent in the same position with regard to his property as he would have been in, had he not been adjudicated an insolvent. It is not, therefore, surprising that in the judgment of Wadsworth J., who delivered the judgment in that case, we find only a passing reference to the effect of Sections 37 and 43. The learned judges almost entirely confined their consideration to an examination of Section 21, Agriculturists Relief Act. They did not, therefore, consider what effect the annulment of adjudication would have upon the ownership of the property on the relevant dates. Kudithipudi Venkatramayya Vs. Mallacheruvu Pundareekakshudu and Others, is, therefore, easily distinguished; and we are bound by the other decisions above referred to. We, therefore, hold that the property must be deemed to have been the property of the insolvent on October 1, 1937 and March 22, 1938 and that, therefore, the provisions of Madras Act IV (4) of 1938 would apply.

42. In V.V. Purie v. E.M.C. Steel Ltd. [1980] 50 Comp Cas 127, the Delhi High Court held as under:

I may at once state that of the two preliminary objections raised by Sri Ved Vyas there is no substance in the second objection that the petition is mala fide and intended only to harass the respondents. It is no doubt true that some broad allegations have been made in paragraphs 18 and 19 of the petition making certain allegations against the respondents which may not be quite material for the disposal of the petition. But I do not think that the mere fact that such allegations have been made can result in the dismissal of the petition on the grounds suggested by Sri Ved Vyas. If otherwise the petitioner has made out a case for an investigation into the affairs of the company I do not think that the petition can be dismissed because the petitioner is motivated in filing the petition either in view of the pending litigation between the two parties or in view of the grievance of the petitioner that the respondents had taken advantage of certain political situations in their dealings with him.

It is common ground that, apart from the one transaction above referred to in respect of which the petitioner has already filed a suit, the petitioner has no manner of interest in or concern with, the affairs of the company as a shareholder, creditor or otherwise. This being so, the question raised is whether the petitioner has any locus standi to present this petition u/s 237 of the Act, to ask for an investigation into the affairs of the company.

I have already pointed out that, on general principles, it would not be correct to read the section as authorising any man in the street to seek orders for investigation into the affairs of a company, merely because it is a public company and its affairs are, in his opinion, being conducted to the detriment of public interest. The interest which the person may have as a member of the public in the purity of the administration of public companies is too remote and intangible for the infraction of which he may move a court. That apart, I do not think that Section 237 is capable of such a wide interpretation even when read in the context of the scheme and the various other provisions of the Companies Act. There are several provisions of the Companies Act which contemplate restrictions and provisions to safeguard the interests of the public. A contravention of the provisions of the Act would also be an offence which can lead to a criminal prosecution. Nevertheless, whenever there is a violation of the statute, a right to seek redress from the courts is conferred only upon the statutory authorities who are entrusted with the supervision of the companies or on members, creditors or other persons interested in the company. Under Sections 397 and 398, where the affairs of a company, inter alia, are being conducted in a manner prejudicial to the public interest, the intervention of the court may be sought but only by a specified number of members of the company though even a smaller number may apply subject to certain conditions and restrictions. A petition for the winding up of a company even where such winding up is occasioned by the conduct of its affairs in disregard of the statute and to the detriment of public interest, can be presented only by the company, its creditors or contributories or by the designated officers of the Government. Where a company is being wound up and it appears that only the liquidator, creditor or contributory can seek appropriate orders from the court against the persons who are alleged to have been parties to the carrying on of the business in the manner aforesaid. Thus, the scheme of the Act does not seem to envisage that,

merely because a company is a public company, it would be open to any member of the public to move the court for directions.

The above extracts contain an enunciation of the general principle that the courts will not entertain action on behalf of private persons to enforce the

observance of public rights and duties unless they have a personal interest in the matter and unless their rights and interests are in some way

affected. I think that even in the interpretation of Section 237 this basic limitation should be treated as implicit and the section should not be given

an interpretation which would make it possible for persons to start litigation in respect of what does not concern them. The section should be so

interpreted as to enable relief to be obtained only by some person whose rights have been affected by the manner in which the affairs of the

company have been conducted or accounts maintained and has, therefore, a grievance in the eye of law for which he seeks relief from the court.

There is ample scope for the invocation of Section 237 by persons whose rights are infringed or affected and whose interests need to be protected

or safeguarded by an investigation, a creditor who is unable to move the Central Government, u/s 235; member or members who, though

aggrieved, are unwilling to move the Central Government, or unable to fulfil the requirements of Section 236 and hence unable to move the Central

Government; members who approach the Central Government under Sections 235 and 237(b) and are aggrieved by the rejection of their

applications; a company which wants an investigation but is unable to have special resolution passed. These are some illustrations of persons who

would be able to move the court u/s 237(a). It is therefore, not as if the scope of the remedy enacted by this provision would be unreasonably

curtailed or would become illusory by reading into the section an implied limitation to exclude persons having no manner of interest or concern with

the company, from availing of it.

43. In the above decision, the Delhi High Court while dealing with a company petition filed u/s 437 of the Companies Act, by a person who

already filed a suit against the company for getting her relief, held that having filed a suit she has no manner of interest or concern with the affairs of

the company, as a shareholder, creditor or otherwise.

44. Further, the Delhi High Court dealt with Section 237 of the Companies Act

elaborately and held that Section 237 should not be given an interpretation which would make it possible for persons to start litigation in respect of what does not concern them.

45. In *Ashoka Marketing Ltd. v. Union of India* [1981] 51 Comp Cas 634, a Division Bench of the Delhi High Court held the circumstances

justifying action u/s 237 of the Companies Act should exist at the date of the order.

46. In *Safia Usman v. Union of India* [2002] 110 Comp Cas 710 the Kerala High Court held as under:

It is further contended that the jurisdiction vested in this Court u/s 237(a)(ii) and (b) is concurrent. In such circumstances, there is no reason to relegate an incumbent to the statutory authority.

This contention also cannot be accepted. When concurrent jurisdictions are conferred on two different authorities, the lowest among them should

be approached first, is the normal rule and there is no reason to depart from that normal rule. So, merely because the remedy available to the

petitioner in terms of Section 237(a)(ii) to approach this Court or under Clause (b) of the said section to approach the Company Law Board is

concurrent, there is no reason to exercise the discretionary remedy vested with this Court when the petitioner has a statutory remedy available to

her.

I am more inclined to accept this view because the issue involved in this case is declaration that the company's affairs need an investigation.

Necessarily, there shall be an enquiry to be conducted by this Court with respect to the main objects, its conduct of business, financial aspects and

dealings. This may necessarily require evidence as to whether there is mismanagement or maladministration as the petitioner alleges. When there

will be contentions versus contentions from either side, necessarily, parties may have to rely on oral evidence as well to substantiate their case as to

whether there is mismanagement of the company or not, because declaration with respect to the affairs of the company is important for the

reputation of the company itself. If oral evidence has to be adduced, this Court may not find time to collect such evidence. That also is the reason

why the petitioner should approach the specialised statutory authority, the Company Law Board constituted by the Act, to seek the very same

relief.

47. In the above decision, the Kerala High Court held that the relief u/s 237(a) (ii) of the Companies Act is a discretionary relief and a person

seeking the relief under the section should approach the Company Law Board first, it being specially constituted to deal with certain cases arising in

respect of companies incorporated under the Companies Act alone.

48. In *Freeman and Lockyer v. Buckhurst Park Properties (Mangal) Ltd.* [1964] 34 Comp Cas 405 : [1964] 2 WLR 618, the Court of Appeal

held that the doctrine of ostensible authority in relation to a limited company gives rise to different legal problem and the strangers dealing bona fide

with officers of the company have a right to assume that they have been duly appointed.

49. In *Nellai Metal Rolling Mills (P) Ltd. Vs. The Southern India Central Benefit Fund (P) Ltd.*, , this Court held that even though, no resolution

authorising the directors of the company to enter into suit transaction was passed, that need not be given undue significance because in fact the

company received and enjoyed the benefits of the transaction, even though it suffered the infirmity of lack of a resolution by the board of directors.

50. This Court further held in the above decision that a stranger dealing with a company has a right to assume as against the company that all the

requirements of the internal management have been duly complied with.

51. In the light of the above facts and the law laid down in those citations, let me consider all the applications filed in C.P. No. 140 of 2005.

52. C.P. No. 140 of 2005 itself was filed u/s 237(a)(ii) of the Companies Act for declaring that the affairs of the company ought to be investigated

by inspectors appointed by the Central Government.

53. As held by the Delhi High Court in *V.V. Purie v. E.M.C. Steel Ltd.* [1980] 50 Comp Cas 127, Section 237 should not be given an

interpretation which would make it possible for any person to start litigation in respect of what does not concern them.

54. Further, even though the remedy available to a person in terms of Section 237 to approach the court is concurrent, it is better for any person to

approach the Company Law Board first to seek the very same relief.

55. I am not passing orders in the main petition, i.e., in C.P. No. 140 of 2005, still it is useful to refer to the scope and ambit of Section 237 of the

Companies Act 1956.

56. The main grievance of the applicant in C.A. Nos. 1899 and 1900 of 2007 is that the property of the company situated at Chittoor district was

sold by the company to the third respondent through the second respondent who was declared as an insolvent at the relevant point of time.

57. It is true that the second respondent in his capacity as managing director by letter dated June 6, 2005, appointed one Mr. M.S. Suresh Achari

as company's agent and authorised him to take possession of the property. Further, on the very same day, i.e., June 6, 2005, the company

represented by the second respondent entered into an agreement for sale with the said M.S. Suresh Achari for selling the property in Chittoor

district for a sum of Rs. 135 lakhs.

58. But on June 13, 2005, another agreement of sale with possession was entered into by the company represented by its senior vice-president

(finance) Thiru R. Mohan with the very same Suresh Achari for selling the very same property situated at Chittoor district, Thereafter, by a sale

deed executed on December 27, 2006, the property was sold to the third respondent by the company represented by the very same senior vice-

president and the said M.S. Suresh Achari. This sale deed is assailed by the applicant on the ground that during the relevant period that is on June

6, 2005, the second respondent was an insolvent as it is he who appointed M.S. Suresh Achari as agent and authorised him to take possession of

the property.

59. I am unable to accept the contention of the applicant in this regard.

60. Even though the second respondent wrote a letter on June 6, 2005, appointing M.S. Suresh Achari and entered into an agreement of sale with

him on the same day, that was not the basis for executing the sale deed dated December 27, 2006. Another agreement of sale with possession

was entered to by company through its senior vice-president R. Mohan with the same M.S. Suresh Achari, on that basis only both the company

and the said M.S. Suresh Achari executed the sale deed in favour of the third respondent on December 27, 2006, wherein it was clearly

mentioned that the third respondent was nominated by M.S. Suresh Achari. It was admitted fact that there was no allegation of insolvency against

the senior vice-president who represented the company in the agreement of sale

dated June 13, 2005 and sale deed dated December 27, 2006.

Hence, I do not find merits in the allegation that the second respondent was an insolvent on June 6, 2005 and therefore the sale deed dated

December 27, 2006, is void ab initio. Further, a reference was made in the sale deed to the resolution unanimously passed by the board of

directors of the company on May 25, 2005, empowering the senior vice-president to execute the agreement of sale with possession in favour of

the intending purchaser. It further referred to the unanimous resolution passed by the board of directors on December 23, 2006, empowering the

senior vice-president (finance) to execute and register the sale deed in favour of the purchaser nominated by Mr. M.S. Suresh Achari. A copy of

both the resolution was made available by respondents Nos. 1 and 2 in the typed set volume 2 filed by them. It is also an admitted fact that there

was no embargo on December 23, 2006, or on December 27, 2006, for selling the property by the company in favour of the third respondent.

Therefore, without even going into the question whether the order of annulment dates back to the order of adjudication, I find no merits in the

application seeking to set aside the sale deed executed by the company on December 27, 2006 ?

61. As rightly contended by learned Counsel for the third respondent that being a stranger to the company and being a bona fide purchaser, she is

entitled to assume the internal affairs of the company are conducted properly and the officer-in-charge of the company has the necessary

authorisation to do the act. Therefore, on the basis of the decision of this Court reported in *Nellai Metal Rolling Mills (P) Ltd. Vs. The Southern*

India Central Benefit Fund (P) Ltd., , the third respondent's right is to be protected as she purchased the property for a valid consideration which

was also admitted by the company.

62. Therefore, C.A. Nos. 1899 and 1900 of 2007 are dismissed and consequently C.A. No. 2288 of 2007 is allowed and the interim injunction

granted on July 27, 2007, is vacated.

63. In so far as the other applications for impleading and consequential injunction are concerned are all filed by one Thiru Nageswara Raju, who

according to him is holding an agreement of sale dated November 23, 1998, with the company for purchasing the very same property situated in

Chittoor district.

64. It is an admitted fact that the applicant in the impleading petition filed C.A. No. 830 of 2005 in C.P. No. 213 of 2001 for the relief of directing

the company to sell the Chittoor district property to him and also for consequent injunction. C.P. No. 213 of 2001 itself was dismissed by this

Court on December 22, 2006 and consequently C.A. No. 830 of 2005 was also dismissed on February 1, 2007. While dismissing C.A. No. 830

of 2005 this Court observed that it would be open to the applicant to file a suit. It is also an admitted fact that the applicant also filed a specific

performance suit in O.S. No. 45 of 2007 on the file of Additional District and Sessions Court, Tirupathi and it is also an admitted fact that no

interim order was granted by the trial court in I.A. No. 789 of 2007 filed along with O.S. No. 45 of 2007.

65. If that being so, it is unnecessary, for the applicant to be impleaded in C.P. No. 140 of 2005 and also in the subsequent applications filed by

the petitioner in C.P. No. 140 of 2005, especially when the scope of Section 237 of the Companies Act is considered. I am also drawing support

from the decision of the Delhi High Court reported in V.V. Purie v. E.M.C. Steel Ltd. [1980] 50 Comp Cas 127, for coming to the conclusion.

66. The only grievance of the proposed impleading applicants is that the property should be protected as he is holding a valid agreement of sale. If

that being so, his interest will be very well protected in the pending suit in O.S. No. 45 of 2007 and he is an unnecessary party in the proceedings

pending before this Court.

67. Hence, C.A. Nos. 2284 to 2287 of 2007, C.A. Nos. 2303 and 2304 of 2007 are all dismissed. No costs.