

(1999) 08 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 55 of 1999

Makhan Singh Devinder Pal Singh

APPELLANT

Vs

Raja Oil Mills

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Companies Act, 1956 — Section 2(10), 3, 433, 582, 583

Citation : (1999) 98 CompCas 190

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Rakesh Bhatia, for the Appellant;

Judgement

V.S. Aggarwal, J.—Makhan Singh Devinder Pal Singh filed the present petition u/s 583 of the Companies Act, 1956, for winding up of the respondent-company, Raja Oil Mills. It had been asserted that the petitioner-firm carries on business as commission agent of sun flower seeds. The respondent-company is an unregistered company having its factory as well as registered office at 74, Industrial Complex, Goindwal Sahib, Amritsar. The petitioner contended that it has no knowledge about the other partners except four, namely, Lakhwinder Singh, Satinder Singh, Kulwinder Singh, and Jatinder Pal Singh. The respondent-company was stated to have been indebted to the petitioner-firm and asserting that it has failed to pay its debts, the petition was filed for winding up of the respondent-firm.

2. The short question that comes up for consideration is as to whether such a petition is maintainable or not ?

3. u/s 433 of the Companies Act, a company can be wound up by the court on conditions (a) to (f) of section 433 of the Act being satisfied. Admittedly, the said provision would only come into play if the respondent-company was duly incorporated under the provisions of the Companies Act. This is for the reason that u/s 2(10) of the said Act, company" means a company as defined in section

3 of the Act. u/s 3 of the Act, "company" means :

"3. (1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below :-

(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii) ..."

4. Admittedly, the respondent-company is not a company incorporated under the Companies Act.

5. On behalf of the petitioner it was urged that the petition has been filed u/s 583 of the Companies Act for winding up of an unregistered company. Section 583 permits an application to be filed for winding up of an unregistered company. But section 582 of the said Act defines the meaning of an unregistered company and reads :

"582. For the purposes of this part, the expression "unregistered company" -

(a) shall not include -

(i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India and

(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members (at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the court)."

6. It has been alleged that the respondent is a partnership concern. But a vague assertion has been made that there are seven partners. Only four have been named in the petition. Despite repeated adjournments, the names of other partners have not been forthcoming to permit this court to conclude that there were seven or more partners. In the absence of it having been shown, prima facie it must be taken that the respondent is not an unregistered company.

7. Reliance on behalf of the petitioner was placed on the decision of the Karnataka High Court in G. P. Ganapaiah Maiya v. M.T.R. Associates [1986] 59 Comp Cas 359. But perusal of the cited judgment clearly reveals that the said court had expressed the view that it was an unregistered partnership concern of more than seven persons. In the present case it is not so. Therefore, the cited decision will not come to the rescue of the petitioner.

8. In that event reliance had been placed on the decision of Oriental Fire and General Insurance Co. Ltd. Vs. Jagadish Babu and Others, In the cited case, the respondent-association was a society consisting of more than 20 persons. It was concluded that it would be an unregistered company within the meaning of section 582 of the Companies Act. In the present case, the petitioner failed to show that the respondent has seven or more partners. Therefore, it is not an unregistered company and the petition for winding up by itself is not maintainable

9. For these reasons, the petition must fail and is dismissed in limine.