(1952) 06 KL CK 0009

In the High Court Of Kerala

Case No : A.S. No. 79 of 1123 (Cochin)

Manakkil Paily — APPELLANT

Vs

Kaimathuruthil Sebastian Joseph and Others — RESPONDENT

Date of Decision : 13-06-1952

Acts Referred:

Companies Act, 1913 — Section 153, 20A, 32

Citation : AIR 1952 Ker 357

Hon'ble Judges : Joseph Vithayathil, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : C.A. Ouseph and V.U. Joseph, for the Appellant; T.S. Venkiteswara Iyer, for the Respondent

Judgement

1. The Official Liquidator in Company Petition No. 1 of 1117 of the Anjikaimal District Court is the Appellant. The appeal is from an order rejecting a petition filed by the Official Liquidator u/s 153, Companies Act, for permission to convene a meeting of the members of the company in liquidation for considering a proposal for reconstructing the company. The company in liquidation is the Gothuruthu Educational and Industrial Co. Ltd., which was incorporated under the Cochin Companies Act, 4 of 1080 in 1096. It was registered u/s 32 of the Act as a company started for promoting charity. The primary object of the company was to propagate and foster education, industry commerce and charity and for that purpose to collect funds by conducting kuries etc. It had no share capital. According to the memorandum of association every member was liable to the extent of Rs. 500 but the period of liability was limited to 24 years from the date of the starting of the company. It was also provided that the profits of the company should be utilised for advancing the educational, industrial and commercial interests of the members of the St. Sebastian''s Church of Gothuruthi. The members of the company have no right to share in the profits or surplus assets of the company.

The company started various kuries and collected large funds. Subsequently, on account of the economic depression many of the prized subscribers in the kuries defaulted to pay their subscriptions, and consequently that company was not able to pay off non-prized subscribers in full. As the company became unable to pay its debts a petition for winding up the company was filed, and a winding up order was passed, and the Appellant was appointed Official Liquidator. When the present petition was filed there was an amount of Rs. 22,000 odd belonging to the company remaining in deposit in Court. There were only very few liabilities that had to be discharged, and they related to claims which were disputed by the company. It is represented by learned Counsel for the Appellant that at present a sum of about Rs. 65,000 is in Court and that all the liabilities of the company have been discharged. As there is no provision in the memorandum of association of the company relating to the manner in which the surplus assets of the company should be utilised in case of dissolution of the company and since there are no debts to be paid off, the Official Liquidator submitted1, a scheme for reconstructing the company, and prayed for the permission of Court to convene a meeting of the members of the company to consider the proposal.

According to the Appellant there are 190 members in the company while according to the Respondents there are only 138 members. 74 members opposed the petition. Their objections are that the reconstruction of the company would be against the interests of the members and that it would revive their personal liability which has been extinguished after the expiry of 24 years from the date of the starting of the company. The Court below rejected the petition of the Official Liquidator on the ground that the reconstruction of the company would involve the placing of the surplus assets in Court at the disposal of the original members of the company, that it may result in the loss of those assets and that nothing stood in the way of the members starting a new institution instead of reconstructing the company in liquidation. The appeal is from that order.

2. We do not think that the reasons given by the Court below are sufficient for refusing permission to convene a meeting of the members of the company. Section 153, Companies Act, provides thus:

153(1). Where a compromise or arrangement is proposed between the company and its creditors or any class of them or between a company and its members or any class of them, the Court may in a summary way on the application of the company or of any creditor or member of the company or, in case of the company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing 3/4ths in value of the creditors or class of creditors or members or class of members, as the case may be, present either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on

all the creditors or class of creditors or on all the members or class of members, as the, case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

The scheme proposed by the Official Liquidator may or may not be accepted by the members of the company. According to the petition of the liquidator the meeting is to be convened "for the purpose of considering and, if thought fit, approving, with or without modification, a scheme or arrangement given in the schedule" submitted along with the petition. Objections relating to the scheme will have to be discussed at the meeting. The fact that 74 members have now opposed the scheme does not necessarily mean that some of them may not change their views when all aspects of the question are discussed in the meeting. In view of the fact that a large sum of money belonging to the company is in court and that there are no subsisting liabilities, it is only proper that an attempt is made to reconstruct the company. It was submitted on behalf of the Respondents that u/s 20A, Companies Act, no alteration can be made in the memorandum of association so as to increase the liability of the members of the company and that the reconstruction of the company will revive the personal liability of the members which had been extinguished according to the provisions of the memorandum of association... This objection also is one that can be raised at the meeting. Even if the scheme is approved by not less than 3/4th of the members it can come into effect only if it is sanctioned by the Court, and the court will have to consider all objections relating to the scheme at the time of according sanction. The Court below rejected the petition of the official liquidator as if it were one for sanctioning the scheme proposed by him. The prayer in the petition is only for a direction to convene a meeting for considering the proposal. We find no reason why such permission should not be granted. We, therefore, set aside the order of the lower court and direct the Appellant to convene a meeting of the members of the company as prayed for by him. He will take the necessary directions, from the court below relating to the time and place of the meeting. The expenses for convening the meeting will be met from the assets of the company.

3. The appeal is thus allowed. There will be no order as to costs.