(1980) 08 KAR CK 0037

In the Karnataka High Court

Case No : Original Side Appeal No. 4 of 1980

Metro Malleable Manufacturers (P.) Ltd. APPELLANT

Vs

Canara Bank and Another RESPONDENT

Date of Decision : 26-08-1980

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Companies (Court) Rules, 1959 — Rule 101
Companies Act, 1956 — Section 483

Citation : (1982) 52 CompCas 165 : (1980) ILR (Kar) 1442 : (1980) 2 KarLJ 379

Hon'ble Judges : V.S. Malimath, J;M. Nagappa, J

Bench : Division Bench

Advocate : H.S. Dwaraka Nath, for the Appellant; Y.K. Narayana Sharma and G. Vedavyasachar, for the Respondent

Judgement

Malimath, J.—When this appeal came up for admission we asked the learned counsel for the appellant to explain to us as to how this appeal is maintainable. The order challenged in this appeal is made by the company judge on Company Application No. 58/80 during the pendency of proceedings for liquidation of M/s. Metro Malleable Manufacturers P. Ltd. The petition for winding up was presented by respondent No. 2. Respondent No. 1, the Canara Bank, made an application under O. 1, r. 10, CPC, read with r. 101 of Companies (Court) Rules for impleading it as petitioner No. 2 in the petition for winding up. The said application was opposed. But the company judge has allowed the said application by his order dated July 4, 1980. It is the said order that is challenged in this appeal under s. 483 of the Companies Act (hereinafter called "the Act").

2. It was contended by the learned counsel for the appellant that the language of s. 483 of the Act is so wide as to entitle the aggrieved party to prefer an appeal against every order made by the company court. Section 483 of the Act reads as follows :

"Appeals from any order made, or decision given, in the matter of the winding up of a company by the court shall lie to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the court in cases within its ordinary jurisdiction".

3. Though s. 483 of the Act reads as though an appeal is competent from any order or decision of the company court, it is obvious that it is only such orders which have the effect of affecting the rights of the parties that can be appealed against under s. 483 of the Act. Orders of procedural character which do not affect the rights of the parties are not orders against which appeals are contemplated under s. 483 of the Act. A provision similar to s. 483 of the Act, i.e., s. 118 of the Mysore Land Reforms Act, 1961, came up for consideration before a Division Bench of this court in Govinda v. Mary Fernandes [1970] 2 Mys LJ 466 . The language of s. 118(1) of the Mysore Land Reforms Act is in pari materia with the language employed in s. 483 of the Act. The Division Bench, following the decisions in Central Bank of India Vs. Shri Gokal Chand, and Bant Singh Gill Vs. Shanti Devi and Others, had held that order which does not affect the rights liabilities of the parties is not one which can be appealed against under s. 118(1) of the Mysore Land Reforms Act. The order appealed against in the case on hand is one permitting respondent No. 1, the Canara Bank, to be impleaded as petitioner No. 2 in the winding up petition. Merely because respondent No. 1 has [been permitted to come on record as petitioner No. 2 in the winding-up petition, it does not follow that the said order has the effect of affecting any of the rights and liabilities of the appellant. That being the position, it is not possible to accede to the contention of Sri Dwaraka Nath, learned counsel for the appellant, that the impugned order of the company judge is liable to be appealed against under s. 483 of the Act. Hence, this appeal is rejected as not maintainable.