

(1992) 11 KAR CK 0044
In the Karnataka High Court
Case No : Original Side Appeal No. 5 of 1992

Miland Exports Private Ltd.

APPELLANT

Vs

A.V. Venkatanarayana and others

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

Companies (Court) Rules, 1959 — Rule 96
Companies Act, 1956 — Section 483

Citation : (1994) 80 CompCas 521 : (1992) 4 KarLJ 758

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : Sreevatsa, for the Appellant; B.S. Somashekar, D. Vijayakumar, Nissar Ahmed and Iqbal Ahmed, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The appellant is aggrieved by the order admitting the company petition.

2. It should be noted that the learned company judge has not yet ordered advertisement of the petition. The question of advertisement is postponed, to be decided after hearing the parties again. The order under appeal reads thus :

"Head. Admit. To hear regarding issue of advertisement, call on July 2, 1992."

3. The question is whether this order is appealable u/s 483 of the Companies Act. Sri Sreevatsa, learned counsel for the appellant, contended that section 483 of the Companies Act provides for an appeal against any order made or a decision given in the matter of winding up of a company by the court.

4. The relevant rule is rule 96 of the Companies (Court) Rules, 1959, which provides for admission of the petition and directions as to advertisement. The said rule states that upon the filing of the petition, it shall be posted before the Judge in Chambers for admission of the petition and fixing a date for hearing thereof and for directions as to the advertisement to be published and the persons, if any, upon whom copies of the petition are to be served. The judge

may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition.

5. Learned counsel relied on the decision of the Supreme Court in *National Conduits (P) Ltd. Vs. S.S. Arora*, , the Supreme Court observed thus (at page 788)

"A petition for winding up cannot be placed for hearing before the court, unless the petition is advertised; that is clear from the terms of rule 24(2). But that is not to say that as soon as the petition is admitted, it must be advertised. In answer to a notice to show cause why a petition for winding up be not admitted, the company may show cause and contend that the filing of the petition amounts to an abuse of the process of the court. If the petition is admitted, it is still open to the company to move the court that the in the interest of justice or to prevent abuse of the process of court, the petition be not advertised. Such an application maybe made where the court has issued notice under the last clause of rule 96, and even when there is an unconditional admission of the petition for winding up."

6. The above observation, in fact, does not support the contention of learned counsel that the order admitting a company petition would be final as far as the parties are concerned before the learned company judge. It is still open to the company to move the same court not to proceed with the matter to advertise the petition.

7. In fact, admission of a petition, by itself, would not affect the company immediately. What affects the company is the advertisement since such an advertisement would expose its name to the public giving rise to suspicion about its credibility, thereby adversely affecting its reputation. It is in these circumstances it has been held that the court, before ordering advertisement of a company petition, should consider all aspects of the matter and shall not advertise a petition as a matter of course.

8. The words "any order" in section 483 of the Companies Act shall have to be understood as an order which affects the right of the person who invokes the appellate jurisdiction of the court. Unless the right of a party is affected, the question of invoking the appellate jurisdiction would not arise. The relevant principle is the one stated by the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, , the Supreme Court held thus :

"In a pending proceeding, the Controller may pass any interlocutory order under sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing an the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The

Legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed u/s 37(2) is an order passed under the Act and is subject to appeal u/s 38(1) provided it affects some right to liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal.

9. In the context of section 483 and the procedure prescribed for advertisement of a company petition after admission, an order admitting a petition could be construed as an order governing procedure matters only. That is why the Supreme Court has also, in National Conduit's case [1967] 37 Comp Cas 786, pointed out that even after the petition is admitted, it is open to the company to move the court that the petition shall not be advertised.

10. It is needless to point out that it is open to the company to place all the materials before the learned company judge while urging that the petition shall not be advertised, as otherwise the very purpose of giving an opportunity to the company in the light of the observations of the Supreme Court, as stated above, will become useless.

11. The appeal is accordingly dismissed.