
(1996) 07 KAR CK 0023
In the Karnataka High Court
Case No : C.R.P. No. 52 of 1992

N. Venkoba Rao

APPELLANT

Vs

B.K. Shreenivasa Iyengar and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Companies Act, 1956 — Section 11 (4), 587, 590

Citation : (1997) 88 CompCas 383 : (1996) ILR (Kar) 3203

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : S.N. Bhat, for the Appellant; S. Srishaila, for the Respondent

Judgement

M.F. Saldanha, J.—I have heard the petitioner's learned Advocate and the respondents learned, Advocate.

2. The facts in this case are distressing. The Short point urged by the petitioner's learned Advocate is that his client was proceeded against in the execution proceedings for recovery of certain amounts which were invested by the respondent and against which the respondent-decree holder had obtained a decree. The learned Advocate submits that the business had collapsed and that an application for winding up of the concerns has been entertained by the High Court and a liquidator has been appointed. He has submitted that having regard to the provisions of Section 587 of the Companies Act that once such a development takes place, that it is not competent for any Court to either commence or continue with any legal proceedings in relation to recoveries either against the concern or persons who have contributed to it. He therefore submits that this revision is entitled to succeed in so far as by virtue of the provisions of Section 587 of the Companies Act it will have to be held that no further steps can be taken in the execution proceedings.

The respondents Learned Advocate has seriously contested this position. In the first instance he draws the Court's attention to Section 11(4) of the Companies

Act and he submits that the individual liability of the present petitioner is absolute and that it is something which the respondent is entitled to enforce. Learned Advocate submits that there are certain special facts in the present case which this Court must take cognizance of, viz, that the present petitioner had paid an amount of Rs. 15,000/- and that he had undertaken to pay off the balance amounts after which the present revision has been filed. Learned Advocate submits that there is no bar to his client proceeding with the execution proceedings because the suit was instituted and a decree passed long before the orders were made for winding up of the Company. Secondly he submits that having regard to the decision of the Supreme Court reported in Vasantrao alias Baburao and Another Vs. Shyamrao and Others, that the provision of Section 590 of the Companies Act will apply and the Learned Advocate submits that this is a saving provision whereunder his client would be entitled to proceed with whatever coercive steps the Executing Court is permitted by law to enforce. In this regard, I need to point out that the liabilities that arise, if they are individual liabilities are neither affected nor are they extinguished by virtue of Section 590 of the Companies Act. All that the Section prescribes is that the liquidator be afforded a free hand so that all claims can be consolidated before that authority. The Section however takes cognizance of the fact that there may be situations in which it is undesirable or inadvisable for the Company Court to prohibit the proceedings from going on. A typical example would be a situation wherein the change of the affairs of the companies are demonstrated to have indulged in massive frauds or acts of misappropriation or other criminal offences and in any situation such as this, the Company Court would not only refuse to stop any such proceedings but to my mind would be fully justified in directing that they should either be commenced or proceeded with expeditiously.

One needs to take note of the fact that the scheme envisaged under these provisions of the Companies Act is only a resource gathering exercise in so far as the liquidator is required to ensure collection of amounts that are due to the Company and is also required to liquidate various assets to ultimately determine as to how much money is available for distribution for various claimants and creditors. This proceeding does not necessarily take into account situations wherein frauds have taken place or misappropriation is committed, though the law does permit the liquidator to commence action in that behalf also. That however will not prohibit such actions or prosecutions from continuing but the only requirement is that they should be done under the sanction of the Company Court. In my considered view, having regard to the present situation that is prevalent of which judicial notice will have to be taken, the Company Court would be fully justified in not only permitting such actions to continue but in appropriate cases, a direction should be given to commence such actions in the public interest.

3. It is in this background that the only direction it is competent for this Court to issue would be that the respondent is given the liberty of applying to the Company Court for sanction to proceed with the execution proceedings in the

special facts and circumstances of this case.

Learned Advocate points out to me that the respondent is a retired school teacher and that being an aged person. He was also gullible and that he was completely taken in by the representations made by the petitioner and other members of his family and that he has invested his entire life savings which have now become difficult to recover. Learned Advocate submits that in these circumstances the respondents should be permitted to carry on with the execution proceedings and if he is unsuccessful there, he should be permitted also to take appropriate proceedings by way of prosecution against the petitioner if the same is competent on the facts of this case. Those aspects are within the ambit of the Company Court and if the respondents satisfy the Court that this is a valid case in which the litigation should be permitted to continue or that further steps be sanctioned, the Court will examine the application and pass appropriate orders. The respondents are however granted the liberty of moving that Court for this purpose.

With these directions, the present C.R.P. to stand disposed of.

It is clarified that if the Company Court sanctions it, the execution proceedings before the Trial Court may then be continued with.

C.R.P. disposed of.

No order as to costs.