
(2005) 08 CAL CK 0001
In the Calcutta High Court
Case No : A.P.O. No. 799 of 1992

Nepal Chandra Banik

APPELLANT

Vs

Refiulla Tea and Industries (P) Ltd. and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Companies Act, 1956 — Section 434, 446, 446(1)

Citation : (2006) 4 CHN 630

Hon'ble Judges : Pravendu Narayan Sinha, J; Pinaki Chandra Ghosh, J

Bench : Division Bench

Advocate : S.B. Mookherjee, for the Appellant; Ranjan Deb, for the Respondent

Final Decision : Allowed

Judgement

Pinaki Chandra Ghose, J.—This appeal is directed against an order dated 26th November, 1986 passed by the Hon'ble First Court whereby the Hillinen Tea and Trading Co. Ltd. (hereinafter referred to as the said company) has been wound up.

2. The appellant herein claiming himself to be the shareholder of the said company and has filed the appeal from the said order dated November 26, 1986.

3. Appeal has been filed on the ground that the statutory notice u/s 434 of the Companies Act, 1956 (hereinafter referred to as the said Act) was not served on the registered office of the company. As such the order of winding up is not sustainable in law and the impugned order should be set aside.

4. It further appears that on 26th August, 1987 an application was filed by the appellant hereinbefore the Hon'ble First Court for recalling of the said winding up order and the order was stayed. Subsequent thereto the application was filed by the Rafiulla Tea & Industries (P) Ltd. (hereinafter referred to as the Rafiulla) (respondent herein) to vary the interim order passed by the Court on, 31st August, 1987. The said application was dismissed on 7th September, 1989 which

was filed by the appellant herein.

5. Mr. S.B. Mookherjee, learned Senior Advocate appearing on behalf of the appellant/petitioner contended that Maijonga Tea Estate was fraudulently transferred in the year 1961 by the company's Secretary to his own relations in breach of fiduciary relationships and the said alleged transfer was without the knowledge of shareholders of the company. Thereafter, two other transfers were supposed to have been taken place. On March 20, 1975 the Sharmas are alleged to have sold the tea estate to Kamini Tea Co. Pvt. Ltd. and the said Kamini Tea Co. Pvt. Ltd. in March, 1975 purportedly transferred the tea estate to Rafiulla, the respondent herein. He further submitted that all these transfers are illegal, void and fraudulent.

6. He further contended that challenging the said transfer the company filed a suit in the Court of District Judge, Dhubri, Assam and was decreed on March 2, 1983 in favour of the company and against the Rafiulla and others. Decree was executed on March 14, 1983, possession of the tea estate was handed over to Hillmen in execution of the decree. The said decree was passed in ex parte. The application was filed for setting aside of the said decree by the respondent herein. The application was allowed on September 20, 1983 and the ex parte decree was set aside and restoration of possession was directed in favour of the Rafiulla. Company applied before the Gauhati High Court against the said order and the Gauhati High Court on June 4, 1984 appointed two Joint Receivers to manage properties and parties were directed to apply before the Trial Court for appointment of the Joint Receivers. Additional District Judge, Dhubri did not pass any order as a result whereof on 29th August, 1984 the Gauhati High Court called upon the Additional District Judge, Dhubri to explain the circumstances for non-compliance with the order dated 4th June, 1984 passed by the Gauhati High Court and further proceedings in the said suit being Title Suit No. 4 of 1983 was stayed on 12th September, 1984.

7. In the meantime, Rafiulla without serving any statutory notice at the registered office of the company filed an application in the Calcutta High Court for winding up of the company and the said company being Hillmen was directed to be wound up and thereafter application filed for recalling and setting aside of the said order since the said application was dismissed, the appeal has been filed.

8. Two other applications were filed by Rafiulla under Order 7 Rule 11 of the CPC (hereinafter referred to as the CPC) and also u/s 151 of the CPC for dismissal of the suit and the Additional District Judge, Dhubri dismissed the said title suit being Title Suit No. 4 of 1983. Mr. Mookherjee further submitted that such steps were taken without taking any leave u/s 446 of the said Act and accordingly he submitted that the dismissal was ex parte and no leave had been obtained by the respondents u/s 446(1) of the said Act to file the said application for dismissal. In these circumstances, he submitted that the interim order passed in this matter shall continue for a few weeks so that the petitioner can take steps in the suit which is pending before the Dhubri Court.

9. In these circumstances, he submitted that the interim order should continue for a particular period.

10. Mr. Ranjan Deb, learned Senior Advocate appearing on behalf of the respondent submitted that the statutory notice u/s 446(1) of the said Act was not served at the registered office of the company and as such the order should be set aside and appeal should be allowed. He further submitted that the appellant in this appeal has also taken out an application and on the said application being AGO No. 64 of 2003 orders were passed on January 25, 2005 directing the Official Liquidator to take physical possession of the Maijonga Tea Estate situated at Goalpara, Assam and further to seize records, registers, books and other relevant documents and to keep the same in his safe custody. On February 7, 2005 the said order has been carried out by the Official Liquidator and he submitted that upon the appeal being allowed the said order should be vacated and the Official Liquidator be directed to restore the possession of the tea garden and the documents as it was prior to February 7, 2005.

11. In our opinion, since the respondents themselves fairly conceded the statutory notice was not served on the registered office of the company, we do not have any other alternative but to set aside the impugned order of winding up and we are disposing of this appeal. However, we make it very clear since the Court has no jurisdiction and the appeal has been disposed of, the Court has no power also to direct to continue with the interim order passed in the appeal and we vacate this interim order. The Official Liquidator is directed to take steps to restore the possession of the tea garden and the documents, registers, records which are lying under his custody, should be returned to the said company within a period of 4(four) weeks from date.

12. For the reasons stated hereinabove this appeal is allowed.

P.N. Sinha, J.:

I agree.