

(2012) 03 KAR CK 0096

In the Karnataka High Court

Case No : Co. Application No's. 672 of 2005, 185 of 2008 and Co. Petition No. 91 of 2002

Official Liquidator of Mercara Curers (P.) Ltd. (In Liquidation)

APPELLANT

Vs

J.D. Sritharan

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Companies Act, 1956 — Section 454
Criminal Procedure Code, 1973 (CrPC) — Section 313
State Financial Corporations Act, 1951 — Section 29

Citation : (2012) 113 SCL 240

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Judgement

A.S. Bopanna, J.—At the outset, it is to be noticed that the application in CA. No. 672/2005 is filed in Co.P. No. 91/2002 u/s 454 of the Companies Act. The Company-in-liquidation was ordered to be wound up by this Court in Co. P. No.91 /2002 by its order dated 04.04.2005. In the regular course as provided in law, the erstwhile Directors of the Company-in-liquidation were required to file their statement of affairs within 21 days from the date of the order of winding up. In the instant case, admittedly, the statement of affairs has not been filed by the respondents within the period of 21 days. In that context, the Official Liquidator has initiated the proceedings in CA. No. 672/2005. The respondents have appeared before this Court and had also filed their objections. It is seen that pursuant to the application, the charge was framed against each of the respondents and on the respondents pleading not guilty, the matter had been set down for evidence, The witness on behalf of the applicant was examined as P.W. 1 and the documents at Exhs.P1 to P11 were marked. The statement of affairs filed on 30.05.2007 is the document which is marked as Ex.P2. The matter had thereafter been set down for recording Section 313 Cr.P.C. statement of the respondents, On the earlier date, for the said purpose, the matter had been referred to the learned Civil Judge (Sr.Dn.) (Leave Reserve) (OOD) for the

purpose of recording the statement, However, since all the respondents were not present, the same could not be done. Accordingly, the matter has been listed before this Court today.

2. Considering that an application u/s 454 has been pending from the year 2005, the records were perused by this Court in-depth to find out as to whether any purpose would be served in retaining the main application in C.A. No. 672/2005 on file without proceeding further in the matter when the statement of affairs has been filed subsequently. The said exercise was done keeping in view the fact that ultimately, even if this Court comes to the conclusion that the respondents had committed the offence and that they had not filed the statement of affairs in time, this Court could consider the explanation put forth by the respondents as to whether reasonable cause has been made out. Even if no good cause is shown and are held guilty, a discretion is available to this Court to impose fine even though imprisonment is provided as a punishment. In that view, while examining the records, it is found from the order sheet that an application in C.A. No. 185/2008 had been filed by the respondents herein seeking condonation of delay in filing the statement of affairs. The said application though not listed in the cause-list today, on the perusal of the subsequent order sheet, it is found that the same has not been disposed of. In my view, the same requires consideration at the outset as it goes to the root of the matter. Only if this Court does not condone the delay, the further action would arise.

3. In that regard, a perusal of the order dated 16.12.2009 would indicate that this Court keeping in view the said application and also considering the fact that the statement of affairs had thereafter been filed by the respondents had permitted the Official Liquidator to point out the defects if any, in the statement of affairs to enable the same to be complied by the respondents. In that regard, a clarification sought from the learned counsel representing the Official Liquidator would reveal that the Official Liquidator in fact by the communication dated 19.01.2010 had pointed out certain discrepancies in the statement of affairs bringing it to the notice of the respondents that the details of certain statements made in the statement of affairs relating to bank balance, loans and advances, sundry debtors and marketable securities were to be furnished by the respondents.

4. The learned counsel for the Official Liquidator would contend that the said requirements have not been satisfied by the respondents and in any event, no other materials were placed before this Court to indicate that the same have been complied by the respondents. The respondents however do not seem to be in possession of such particulars and that need not linger as a statement as the necessary consequences would follow. In that regard, considering the nature of deficiencies pointed out by the Official Liquidator, if the respondents have not complied with the requirement and if the Official Liquidator finds that there is material to prove misfeasance on the part of the respondents, the respondents would be liable if the same stands established and if it is shown that they have

acted detrimental to the interest of the Company-in-liquidation. It would still be open for the Official Liquidator to take action in accordance with law, if the same is within limitation and is permissible. Therefore, the non-compliance with the deficiencies pointed out in the statement of affairs alone need not hold up the proceedings initiated u/s 454 of the Companies Act, inasmuch as the primary question for consideration in a proceedings of the present nature is as to whether the statement of affairs has been filed within the time and as to whether the respondents have made out any sufficient cause for the delay, if it is found that it is filed belatedly.

5. If the said aspect is kept in view, the very fact that the respondents have filed an application in CA.No. 185/2006 under Rule 128 of the Companies (Court) Rules, 1959, would indicate that the respondents would accept that the statement of affairs has been filed beyond time, but they have reasonable excuse for doing so. Therefore, the delay in filing the statement of affairs is sought to be condoned. In that regard, I am of the opinion that insofar as the facts of the instant case are concerned, the order to be passed on CA.No. 185/2008 would answer the main application in CA.No.672/2005, as it depend on the satisfaction of this Court about the explanation offered for the delay.

6. In that view of the matter, a perusal of the reasons assigned in the application supported by an affidavit seeking condonation of delay would indicate that apart from the amount which was due and payable to the creditors who had initiated the winding up petition in Co.P.No.91/2002, the Company-in-liquidation was also due certain amounts to KSIIDC. At the first instance, when the unit was seized u/s 29 of State Financial Corporation Act, the books and records were also taken over and the statement of affairs could not be filed. Further, the Company-in-liquidation even after the order of winding up passed on 04.04.2005 had made certain efforts to satisfy the loans of KSIIDC and to revive the company and in that regard, the undisputed fact which is borne out from the records is that the respondents had filed an application in CA.No. 869/ 2005 before this Court immediately after the order of winding up was passed. In the said application, the respondents had sought for recalling the order dated 04.04.2005 whereby this Court had ordered the winding up of the Company-in-liquidation. This act on the part of the respondents in filing the said application in itself would indicate that the filing of the statement of affairs immediately thereafter was not possible in view of the fact that the application for recalling if allowed would have made a difference to the situation.

7. The further averments in the said application would also disclose that ultimately when the efforts to settle the matter did not fructify, the respondent's were forced to withdraw the application in CA.No. 869/2005 which was accordingly disposed of on 30.05.2007. The respondents have thereafter tiled the statement of affairs for the first time before the Official Liquidator on 30.5.2007 itself and since further requirements were to be complied with, a revised statement was filed on 23.10.2007. The manner in which the statement of affairs

has been filed on 30.05.2007 and the revised statement on 23.10.2007 would indicate that immediately on C.A. No. 869/2005 being disposed of, necessary steps have been taken by the respondents for filing statement of affairs. However, in effect since withdrawal of C.A. No. 869/2005 resulted in the fact that the order dated 04.04.2005 had taken effect from the said date, there is delay in filing the statement of affairs, if reckoned from the said date.

8. Therefore, in such circumstance, when there was conscious efforts on the part of the respondents to revive the company even though the order of winding up had been passed and subsequent thereafter when the efforts had failed, the respondents had filed the statement of affairs, a reasonable cause in any event is made out for the delay.

9. Be that as it may, the respondents have acknowledged the delay in filing the statement of affairs for the reasons indicated above and in that circumstance have sought for condonation of delay. As already noticed, the deficiencies in the statement of affairs in any event would entail its consequence in accordance with law and this proceedings cannot be held on, as it would have to conclude with its consequences.

10. In that view of the matter, I am of the opinion that keeping in view the explanation put forth, the delay in filing the statement of affairs requires to be condoned, however, subject to certain terms. In that regard, the respondents shall pay the costs of Rs. 10,000/ (Rupees ten thousand only), which shall be deposited before the Official Liquidator. As amongst the respondents, there is no dispute that the first respondent was in-charge of the affairs of the company, when it was a going concern and the statement of affairs was required to be filed by him providing all details. Therefore, the costs of Rs. 10,000/- shall be deposited by the first respondent in the office of the Official Liquidator within four weeks from the date of receipt of a copy of this order. Since the delay in filing the statement of affairs in the facts noticed above is condoned, in my view, the application in C.A.No. 672/2005 also requires to be disposed of, subject to the above condition of depositing the costs. Since the condonation of delay is made subject to payment of costs, it is made clear that if the costs is not deposited within the said period indicated above, it would be open for the Official Liquidator to seek revival of the proceedings against the respondents.

In terms of the above, C.A.No. 185/2008 is allowed. Consequently, the respondents are discharged and C.A. No. 672/2005 stands disposed of in the above terms.