

(1924) 08 MAD CK 0067
In the Madras High Court

P. Satyarazu

APPELLANT

Vs

Guntur Cotton, Jute and Paper Mills Co., Ltd.

RESPONDENT

Date of Decision : 18-08-1924

Acts Referred:

Citation : AIR 1925 Mad 199 : (1925) 21 LW 136

Judgement

1. Respondents represent a company called "The Guntur Cotton, Jute and Paper Mills Company, Ltd." The appellant Pjda Satyarazu is the wife of one of the Directors who is also the Secretary of the Company. She is stated to have a mortgage, dated 2nd January, 1918, for Rs. 1,23,354 upon the assets of the firm, Rs. 74,000 out of this sum having been paid towards interest and principal, about Rs. 90,000 remains to be paid. Three suits have been brought in the Guntur Courts which raise questions as to the validity of this mortgage and none of these suits has been finally settled. One is O.S. No. 42 of 1919, on the file of the Additional Sub-Court for accounts in which the appellant's husband was charged with misfeasance in his capacity as Company director.

2. We are informed that the appeal in this suit is still pending. The other two are O.S. No. 15 of 1923, brought for a declaration that the debt is not binding on the Company, and O.S. No. 21 of 1924, the mortgagee's suit for the enforcement of the terms of her mortgage. In a meeting of December the 30th, 1917, the shareholders passed a resolution terminating the office of Secretary held by the appellant's husband to take effect from the 31st March, 1918. The mortgage in favour of the appellant was executed on the 2nd January, 1918, by the appellant's husband as Secretary of the Company in favour of his own wife and by his brother-in-law.

3. During the pendency of O.S. No. 42 of 1919, the Sub-Court appointed a Receiver. The appellant sent a notice to the Company on the 10th January, 1920, demanding the payment of the balance due on her mortgage with interest within one month. The Sub Court refused to permit the Receiver to pay up the debt. At a meeting of the share-holders a resolution was passed on the 18th November,

1922, refusing the winding up of the Company and declaring that the appellant was not a creditor of the Company.

4. In these circumstances, the appellant and two others applied on the Original Side of this Court for an order for winding up the said Company. Kumaraswami Sastri, J., who heard the petition, upon the Advocate-General who appeared for the Company admitting that there was a sum of Rs. 60,000 belonging to the Company in Court, ordered that this sum should be paid to the appellant upon her furnishing security for its repayment if she might be ordered to do so in any proceedings in appeal or suit, and be adjourned the matter for some time in order to allow the appellant to produce a statement of accounts showing the exact amount due to her.

5. Upon the adjourned date the learned Judge ordered the Company to pay into Court Rs. 65,000, the amount to stand to the credit of the appellant and to be paid over to her in the event of her being successful in the suit filed by the Company to declare her mortgage to be invalid, and the amount was ordered to be invested meanwhile in War Bonds.

6. Now the appellant appeals on the ground that the learned Judge had no power to alter his first order because the money was not paid into her hands but was allowed to be deposited in Court. The respondents have filed a memorandum of objections in which they maintain that the appellant's petition should have been summarily dismissed.

7. I will deal with the memorandum of objections first. Mr. T.R. Ramachandra Aiyar has raised the preliminary point that it should have been in form an appeal against the original order of Mr. Justice Kumaraswami Sastriar bearing date 29th January, 1924, and no appeal having been filed against that order, it became final and it was not open to the respondent to attack that order or the grounds thereof, by an appeal against the later order of the 26th of April, and also that in any case any appeal from the order of the 29th January was out of time. With regard to this objection it seems to us sufficient to observe that with respect to all Courts, more especially Courts of Record, such as the Original Side of the High Court, the order of Court is the order that comes to be embodied in the formal order drawn up and issued by the Court, and that secondly, when the first order of Court is in the nature of a preliminary order, an appeal against the final order would undoubtedly be held to include any principles decided for purpose of the preliminary order.

8. As regards the merits the law is perfectly clear that petitions for winding up which are put in order to obtain an unfair advantage over other creditors at a time when the Company is not known to be insolvent amount to an abuse of the process of the Court and should be dismissed. See Buckley on The Companies and Limited Partnerships Act, para. 4, page 313. In Palmer's Company Precedents, para. 2, Chapter III, p. 52, it is stated:

It is now well settled that a petition for winding up with a view to enforcing

payment of a disputed debt is an abuse of the process of the Court and should be dismissed with costs. A winding up petition is not to be used as machinery to try a common law action.

9. In *re London and Paris Banking Corporation* (1875) 19 Eq. 444 Jeseel, M.R., observed:

I should be bound by authority (even if I entertained a different opinion which I do not) to hold that if the debt is bona fide contested and there is no evidence other than non-compliance with the statutory notice to show that the Company is insolvent, and the Company denies its insolvency (as this Company does) I ought to dismiss this petition.

10. Having further found that the petition in that case had not been presented bona fide, that is, not with the view of obtaining a winding up order, but with the object of extorting from the Company a larger sum than they thought was fairly due, under pressure of threat to present the winding up petition, he dismissed the petition with costs.

11. In *Tulsidas Sallubai v. Bharat Khand Cotton Mill Co. Ltd.* (1914) 39 Bom. 47 two learned Judges of the Bombay High Court observed I that if a party presenting a petition to wind up a Company had the object of bringing pressure to bear upon the Company in order to make it pay cheaply and expeditiously a heavy debt which it desired to dispute in the Civil Courts,, he commits one of the worst abuses to which the winding up sections of our statute law could be perverted.

12. The learned Judge who beard this petition on the Original Side stated that tie could not hold that the claim was a fraudulent one or one made with an indirect motive to establish by a short cut an otherwise unsustainable claim. Without going so far as to say that the claim was a fraudulent one, we feel no doubt in raying that no order for payment should have been made. The debt is disputed, suits are pending contesting the validity of the mortgage; the shareholders have passed a resolution denying the status of the appellant as a creditor. She is the wife of one of the Directors, whose conduct has been condemned.

13. The Company is not admitted to be insolvent and there is no reason why the appellant, if the amount is due, should not get her remedy in the usual course by obtaining a decree in the suit instituted by her. It is urged on her behalf that the order was made by consent and therefore that the respondents are not in a position to object to it. In the Order it is stated, that the Advocate-General offered to bring the money into Court. I do not think that this implies that he was ready to submit the case of his client to any order that the Court might pass. If he did make any admission that would enable the appellant to abuse the process of the Court, then I think that the learned Judge should not have acted upon it.

14. The only order that can be made upon this appeal and the memo, of objections is so cancel the learned Judge's order for payment of Rs. 65.000 into

Court and to dismiss the petition for winding up with costs to be paid to the respondent Company both here and in the Original Court. The memo, of objections is allowed with costs. The appeal is dismissed with costs.