
(1987) 03 KAR CK 0023
In the Karnataka High Court

P.K. Varghese

APPELLANT

Vs

J.T.V. Metal Finishers (P.) Ltd.

RESPONDENT

Date of Decision : 26-03-1987

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1987) ILR (Kar) 1934 : (1987) 2 KarLJ 145

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : S.P. Khanna, for the Appellant; Jayaram, for the Respondent

Judgement

M.P. Chandrakantaraj URS, J.—This is a petition u/s 433 of the Companies Act, 1956. The petitioner has alleged in the petition that the respondent company, M/s J. T. V. Metal Finishers P. Ltd., owes to him a sum of Rs. 29,356.36 which he had advanced to the company as a loan. He also claims that he has pledged his fixed deposit receipt for Rs. 50,000 with the Karnataka State Financial Corporation to the respondent company. He has further claimed that Rs. 1,000 invested by him in 10 shares is also liable to be refunded to him. Thus, he has made a total claim for Rs. 80,356.36. It is alleged that he was a director of the company till he resigned some time in late June or early July of the year 1986. As there were differences between him and other shareholders and directors, he got a notice issued demanding payment of Rs. 29,326.36 and that not having been paid, he has approached this court with the petition for winding up the respondent company as it is unable to pay its debts.

2. Respondent company has entered appearance through counsel and contested the prayer for winding up. It is pleaded by the respondent company that the petitioner is a shareholder of the company; it contends that a sum of Rs. 80,356.36 is not due by the company to the petitioner. It is stated that the sum of Rs. 50,000 is not an amount lent by the petitioner to the company, but is only a receipt of a fixed deposit in the bank which has been offered as collateral security to get the loans advanced by the Financial Corporation and that since

the filing of the petition, he has been relieved of his pledge and the fixed deposit receipt has been returned to him. The company contends that the share money of Rs. 1,000 invested by him cannot be reimbursed by the company as claimed by the petitioner. It, however, admits that a sum of Rs. 29,356.36 is due and liable to be paid by the company to the petitioner subject to the conditions to which the petitioner himself agreed at a board meeting on June 4, 1986. It is alleged that the agreement was that the company would repay the said sum of Rs. 29,856.36 after two years from the date it goes into production and in token of his acceptance of that condition, the petitioner is alleged to have affixed his signature at the board meeting when he was a director of the company.

3. In that circumstances, the respondent company has prayed that the petition is misconceived and not maintainable and is liable to be rejected.

4. Before the enquiry commenced, the respondent company made available the minutes of the board meetings maintained in loose sheets of paper which was given for inspection of counsel for the petitioner as well as the petitioner himself. Petitioner denied that he had signed at the place his signature was found on the minutes of the meeting of the board of directors held on June 4, 1986. In that circumstance enquiry was commenced for ascertaining whether the signature was genuine or a forgery.

5. The petitioner has examined himself in support of the allegation made in the petition. Briefly stated, his deposition is to the following effect : He was a director of the respondent-company to him. He admits that exhibit P-1 is the statement given by the respondent-company to him. He admits the accuracy of the statement. He has been confronted with exhibits P-2, P-3, P-4, P-5 and P-6 which are all copies of minutes of the board meetings of the directors of the company held on various dates indicated therein. He admits the signature at exhibit P-3(a) which is the minutes maintained of the meeting held on June 12, 1986. However, he contends that at a meeting held on June 12, 1986, of the board of directors, he objected to the recording of the alleged agreement in the matter of repayment of his investment in the sum of Rs. 29,000 odd as no such agreement was reached. But in the cross examination, it is elicited that he did not protest in writing on June 16, 1982, at the meeting called subsequent to September 12, 1986.

6. As against this evidence, one of the directors of the company has examined himself as R. W. 1. Through him the various minutes of the meetings of the board of directors were marked. He has spoken about maintaining the minutes on loose sheets, getting the same typed and at the next meeting getting the signatures of the participants as evidence of ratification of the earlier proceedings. He has also spoken to the fact that though a meeting was scheduled to be held on June 12, 1986, it was cancelled at the request of one of the directors and that the petitioner was informed of the same and that no meeting took place on June 12, 1986, but the meeting took place on June 16, 1986, at which the petitioner was present. That subsequently, after two other

meetings, the petitioner resigned from his directorship. He also admits the liability to repay the sum of Rs. 29,000 odd but only after the lapse of two years from the date the company goes into production. He has stated in his evidence that the company is likely to go into production within about one month or two from the date on which he gave evidence which was on March 5, 1987.

7. All that this court at this stage may determine on the pleadings and the evidence is whether the company has immediate liability to discharge its obligation to repay the amount. The board resolutions dated June 4, 1986, are as follows :

"... 2. Once the above proposal is materialized, Mr. P. K. Varghese has agreed to resign his directorship from M/s. J. T. V. Metal Finishers (P.) Ltd. and shall not be involved in any of the company's affairs. As regards balance amount of Rs. 26,442.36 (Rupees twenty-six thousand four hundred forty-two and paise thirty-six only) already invested by Mr. P. K. Varghese, it shall be repaid within two years after commencement of the plant.

3. It is decided that a profit and loss account and balance-sheet will be drawn up as on the date of resignation by Mr. P. K. Varghese from directorship and 1/4 the share of the profit/loss will be either credited or debited to Mr. P. K. Varghese's account.

4. In case K. S. F. C. fails to release further loan, the assets of the company whatsoever will be sold and liabilities cleared to the extent of funds available. "

8. Once the petitioner admits his signature at exhibit P-3(a), this court has no choice but to come to the conclusion that he was aware of the resolution passed as recorded. His contention that it was not so passed and that he objected to that at the meeting held on June 12, 1986, is not supported by any other evidence except his own assertion in the witness box. A person who is deprived of nearly Rs. 30,000 for a period of two years and more will not react in the manner the petitioner did having regard to nature of human conduct. If his objections were not recorded and resolution No. 2 at the meeting on June 4, 1986, was rescinded, he would have taken steps to recover the loan advanced by filing a suit. The fact that he has waited for some time going about issuing lawyer's notices which were not marked as exhibits in the course of recording of oral evidence, it cannot be said that the respondent has no tenable defence had he gone to the civil court.

9. The tenability of the defence depends on the evidence led by the parties. If in this regard, no evidence is led to support the assertion that there was no agreement reached on June 4, 1986, in regard to the repayment in the manner indicated, then, it is likely that the respondent company would succeed in postponing its liability even if a suit was filed having regard to the fact that the present petition must be construed by this court as a petition filed to coerce the repayment of the amount which is not immediately due to be paid to the petitioner, as laid down by the Supreme Court in the case of M/s. Madhusudan

Gordhandas and Co. v. Madhu Woollen Industries P. Ltd. [1972] 42 Comp Cas 125 (SC). Section 433 cannot be made use of to coerce a company to make payments (not immediately due) even though the liability is admitted. This is the position in England as well.

10. In any event, as there is an admission by the company of the liability, the petitioner is bound to wait out that period and recover his dues; if there is unreasonable delay in the commencement of production, he is free to take legal steps to attach the assets of the company in order to secure repayment of his loan. That is possible only if he files a civil suit and seeks attachment before judgment if he is apprehensive that he may be defrauded by the activities of the other directors with whom he has obviously fallen out.

11. In this view of the matter, I have no hesitation to come to the conclusion that this petition is not maintainable and the petitioner may, if he is so advised, recover the amount admitted to be due to him in a civil suit.

12. Without prejudice to that right, this petition is dismissed.