

(1978) 08 KL CK 0020

In the High Court Of Kerala

Case No : M.F.A. No's. 166 and 167 of 1976

Poomuli Manakkal Anujan Nambudiripad

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 07-08-1978

Acts Referred:

Companies (Court) Rules, 1959 — Rule 125

Companies Act, 1956 — Section 2(30), 451, 454, 454(2), 454(3)

Citation : (1979) 49 CompCas 81

Hon'ble Judges : P. Narayana Pillai, J;George Vadakkal, J

Bench : Division Bench

Advocate : N.N. Venkitachalam, T.L. Viswanatha Iyer, P.S. Narayanan and K.S. Menon, for the Appellant;

Final Decision : Dismissed

Judgement

George Vadakkal, J.—The appellants are ex-directors of the Mahdoor Jupiter Chits (P.) Ltd. However, they were not directors of the company on October 11, 1973, when a provisional liquidator was appointed to that company nor on December 20, 1973, when that company was ordered to be wound up. The appellant in M.F.A. No. 166 of 1976 was not a director of that company after November, 1, 1970, and the two appellants in the other case were not directors of the said company after March, 1972, and April, 1972, respectively. While so, the learned judge by his order of November 4, 1975, on Report No. 74 submitted by the official liquidator directed him to call for statements as contemplated by Section 454 of the Companies Act, 1956, from, amongst others, the former directors. The official liquidator requested each of the appellants as per his letter of November 14, 1975, to file within a month thereof a statement of affairs of the company as on the date the concerned appellant ceased to be a director of the company. On receipt of these letters, the appellants filed Company Applications Nos. 613 and 620 of 1975 on 18th and 17th of December, 1975, respectively. In the former of the two applications the reliefs sought for are, to direct the official liquidator to withdraw his " notices " dated November 14, 1975,

and to declare that the two applicants therein are not liable to file statement of affairs of the company, and in the other the prayer is, to exempt the applicant therein from filing statement of affairs. By the common order under appeal the learned judge dismissed the two applications.

2. It is contended that the official liquidator did not apply to the court for an order directing the appellants to submit a statement of affairs as envisaged by Rule 125 of the Companies (Court) Rules, 1959, that he required them to file statement of affairs not after forming an opinion that they are liable to furnish such statements but as per the direction of the court and that the appellants were thus denied the opportunity to satisfy that they are not liable to furnish statements, which they are entitled to under Rule 125 of the Rules. There is no merit in any of these contentions. Under the first part of Section 454(2) of the Companies Act, persons who were directors on the "relevant date" --date of appointment of provisional liquidator and where no such appointment has been made, date of winding up order--and the person, who on that date was the manager, secretary or other chief officer of the company have to perform to submit and verify to the official liquidator the statement of affairs of the company. The latter part of that Sub-section enables the official liquidator, "subject to the direction of the court" to require the persons mentioned in Clauses (a) to (d) therein to submit and verify the statement. The court has, therefore, power to direct the official liquidator to call for such statements from all or any of the persons mentioned in Clauses (a) to (d), and the official liquidator is empowered by the section itself to require all or any of them to submit and verify a statement of affairs of the company. Even otherwise u/s 451 of the Act the liquidator is bound to perform such duties as the court may impose on him. Rule 125 enables the official liquidator to move the court for an order directing any person who, in his opinion, is liable to furnish a statement of affairs u/s 454, to prepare and submit such a statement or concur in making the same, and the court, to pass such an order after giving notice to the person against whom the order is sought. A requisition made by the official liquidator is clearly different from an order passed by the court under Rule 125 which, as is seen from Form 56, is issued from the court and under the signature of the Registrar of this court. Rule 125 appears to have been framed with the object of compelling a person who is recalcitrant to submit the statement, or to concur thereto, be he one who has to perform to submit the statement unrequired by the official liquidator, or one who is obliged to submit it only on being required by the official liquidator to do so. Rule 125 neither limits the power of the official liquidator to require the persons mentioned in Clauses (a) to (d) of Section 454(2) to submit and verify a statement of affairs of the company, nor curtails the jurisdiction of the court to give direction to the official liquidator in that behalf, and, at this stage no question of hearing the person who is required to submit the statement arises.

3. The next question raised is as to whether the appellants who ceased to be directors some time before "relevant date" October 11, 1973, can be said to be

"persons who have been officers of the company" so as to attract Clause (a) of Section 454(2) of the Act. It is not disputed, and rightly so in view of Section 2(30) of the Act, that the term " officer " normally includes a director also. The argument is that the use of the present perfect tense: " have been ", would indicate that unless a person was an " officer " on the relevant date or one immediately preceding that date, he could not be said to " have been an officer ", and since persons who were directors on the relevant date are obliged to submit the statement even without the official liquidator asking for it, Clause (a) should, so far as directors are concerned, be confined to such of them who were directors just before the relevant, date. The words : " have been " are used in Clause (a)--to borrow the language of Fry. L.J. in *In re Pratt* [1884] 12 QBD 334 (CA) as did the Supreme Court in *The State of Maharashtra Vs. Vishnu Ramchandra*, --" to express a hypothesis, without regard to time ", namely, the proposition that the persons mentioned in the above said clause, shall have been officers of the company at some time or other, as where one says that "he is one who has been convicted", meaning thereby that that person is one who was at some time or other convicted. The hypothesis or assumption may be right; or it may be wrong. Neither about a person who has not been convicted at all nor about one whose conviction has been superseded or set aside, can it be said that he is one who has been convicted. That the hypothesis, that is, the supposition turns out to be wrong on facts in a given case would not make it any the less a hypothesis or supposition, though that would be a case not covered or governed by it. It is this aspect that was pointed out by Raman Nayar J. when he in *Kunhammad Keyi v. Premalatha* [1962] KLT 366 said on behalf of the Full Bench that when the present tense " refers to a past action it denotes an action the effect of which continues to the present", a passage on which much reliance was made by the learned counsel for the appellant in M.F.A. No. 166 of 1976. A passage from the judgment of Knight Bruce L.J. in *In re Storie's University Gift* and *In re The Charitable Trusts Acts, 1853 and 1855* [1860] 30 LJ Ch 193, at page 198, can with advantage be read here :

" Now, I have no doubt it may well be said of a boy who has left a school, that he has been three years at the school if he has been there for three years at any time during the period of his education ; but I do not think it can be well said of a boy that he has been three years at a school at a given time unless he had been there for the three years immediately preceding that time ". (Emphasis by underlines by us).

4. While Clauses (b) to (d) of Sub-section (2) of Section 454 mention a period of one year preceding the relevant date as the period during which the persons referred to therein shall have fulfilled the requirements stated therein, Clause (a) does not specify any such period nor does it refer to any date. There can be no doubt that Clause (a) is comprehensive enough to rope in any person who at any time was an officer of the company.

5. In support of the contention advanced on behalf of the appellants their learned

counsel invited our attention to Sub-sections (3) and (5) of Section 454 of the Act. Sub-section (3) prescribes a time-limit of 21 days from the relevant date or such extended time not exceeding three months from that date for submitting the statement. Sub-section (3) makes non-compliance of any of the requirements of Section 454 without reasonable excuse an offence. The argument is that the official liquidator may choose not to require the persons mentioned in Clauses (a) to (d) of Sub-section (2) of Section 454 within 21 days of the relevant date or within the extended time of 3 months from that date to submit the statement and thus make them defaulters punishable u/s 454(5) of the Act. We need only point out that Sub-section (3) proceeds on the basis that the obligation to file the statement arises on the relevant date, which is so only so far as those persons mentioned in the earlier part of Section 454(2) who are bound to submit the statement even without any requisition by the official liquidator are concerned. Sub-section (3) would, therefore, govern only those whose obligation to submit the statement arises on the relevant date, and not those who become bound to do so only on the official liquidator requiring, them to do so.

6. Dismissed. No costs.