

(1960) 08 KAR CK 0002
In the Karnataka High Court

Premier Insurance Co. Ltd.

APPELLANT

Vs

Davanagare Cotton Mills Ltd. and Others

RESPONDENT

Date of Decision : 17-08-1960

Acts Referred:

Companies Act, 1913 — Section 483

Mysore High Court Act, 1884 — Section 12, 13

Citation : (1962) 32 CompCas 168 : (1960) ILR (Kar) 1055

Hon'ble Judges : Mir Iqbal Hussain, J;K.S. Hegde, J

Bench : Division Bench

Judgement

Hegde, J.—I had the benefit of going through the order prepared by my learned brother. I agree with that order, but I would like to add a few words.

2. In deciding whether the sale held should be confirmed or not, the primary consideration is whether the court is satisfied that the price fetched is adequate. This is also the view taken in the decided cases read to us at the time of the hearing. Taking into account the book value of the property sold, valuation made by the experts in the recent past, the quality of the machinery as well as its availability in the market, there are good reasons to think that the price fetched is not adequate. It is pointed out to us that the sale in question had not been adequately advertised. The method and manner of advertisement was decided upon after consultation with the learned counsel appearing for the parties. Hence it cannot be said that there was any omission on the part of the official liquidator. But that aspect is not relevant for our purpose. The learned counsel appearing for the appellants appear to be right in their contention that it would have been proper to have advertised the sale by making more than one insertion in the papers concerned. NO doubt this is being wise after the event. We are mindful of the fact that we should not lightly refuse to confirm as sale on inadequate grounds and thus deprive the bidder of the fruits of his bid made in pursuance of an order of this court. We are equally, if not more, anxious to protect the interest of the creditors, particularly the unsecured creditors. In the circumstances of this case we are convinced that there is no chance of the bid going down if the

property is re- auctioned. the amount realised from the auction held is just sufficient to pay off the secured creditors and the secured creditors (particularly the State of Mysore) are interested in seeing that the bid does not go below the mark reached on the last occasion.

3. I agree with my learned brother that the contention of Sri V.L. Narasimha Murthy, challenging the maintainability of the appeal is without force. Section 483 of the Indian Companies Act provides for an appeal against every order passed or decision made by the court in the exercise of its ordinary jurisdiction. The order under appeal is one such.

4. The next question is how to implement the provision providing for an appeal. Section 13 of the Mysore High Court Act says that appeals against decrees, orders or sentences passed by a judge of the High Court, in the exercise of the original, civil and criminal jurisdiction conferred upon the High Court u/s 12 or vested in it under any law for the time being in force, shall, when allowed by law, be heard either by a Bench consisting of two other judges of the High Court or by the Full Bench of the said court as the State Government may, by notification published in the official gazette, from time to time direct. Sri Narasimha Murthy, the learned counsel for the auction-purchaser, naturally makes much of the fact that the State Government has not published any notification as required by that section (section 13). But the rules framed by this court and published in the official gazette do provide (under rule 1, clause (2) of those rules) that a Bench of two judges shall hear all appeals coming within the scope of section 13 of the Mysore High Court Act. These rules were made and published with the consent of the State Government. Therefore, in substance, if not in form, they may be considered as having been published by the Government by notification in the official gazette. The true scope of section 483 of the Indian Companies Act, if I may say so with respect, is as laid down by CHAGLA C.J. in the case of Bachharaj Factories Ltd. v. Hirjee Mills Ltd.¹

5. In the result, these appeals are allowed in the manner indicated in the leading judgment delivered by my learned brother.

6. Appeals allowed.