
(1972) 09 MAD CK 0064

In the Madras High Court

Case No : Company Petition No. 83 of 1968 and Company Application No. 232 of 1972

R. Chidambaranathan

APPELLANT

Vs

Gannon Dunkerly and Co. (Madras) Ltd.
Syed Mohiddin
Vs Official Liquidator (Gannon Dunkerly and Co. (Madras)
Ltd.)

RESPONDENT

Date of Decision : 29-09-1972

Acts Referred:

Companies Act, 1956 — Section 446(1)

Citation : (1973) 43 CompCas 500

Hon'ble Judges : Gokulakrishnan, J

Bench : Single Bench

Advocate : S.B. Fazluddin, for the Appellant; Official Liquidator in person, for the Respondent

Final Decision : Dismissed

Judgement

Gokulakrishnan, J.—This is an application filed for the purpose of getting permission to implead the official liquidator, High Court, Madras, as party-respondent in Claim Petition No. 229 of 1969, which is now pending before the Additional Labour Court, Madras. The application is by one of the labourers of the liquidated company called Gannon Dunkerly & Co. It is under the administration of the official liquidator. High Court, Madras. The petition has been filed u/s 446(1) of the Companies Act, 1956. It states as follows :

"446. Suits stayed on winding-up order.--(1) When a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or (sic) at the date of the winding-up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose."

2. The applicant herein has admittedly filed the claim petition before the labour court subsequent to the winding-up order. According to the official liquidator,

obtaining sanction from this court to proceed against the liquidated company is a condition precedent and, as such, the application has to be dismissed. According to the applicant, getting sanction from this court is not a condition precedent and he can get the sanction from this court in order to ratify the action. In the decision given by Palani-swamy J. in Company Application No. 328 of 1970 in C.P. No. 2 of 1970 and Company Application No. 404 of 1970 in C.P. No. 83 of 1968, dated February 23, 1971, the learned judge after adverting to the decision in *Bansidhar Shankarlal v. Mohd. Ibrahim*, held that the Supreme Court decision arises u/s 171 of the Companies Act, 1913, while the present petition is u/s 446(1) of the Companies Act, 1956 (1 of 1956), that the wordings in both these sections are completely different and that according to Section 446(1) of the Companies Act getting leave of the court is a condition precedent for filing any legal proceedings against the liquidated company. But the Supreme Court in the decision in *Bansidhar Shankarlal Vs. Mohd. Ibrahim and Another*, has held that :

" Failure to obtain leave before institution of the proceeding did not entail dismissal of the proceeding : the suit or proceeding instituted without leave of the court would be ineffective until leave was obtained, but once leave was obtained the proceeding would be deemed instituted on the date of granting leave. "

3. If the Supreme Court decision has to be applied, according to the learned counsel for the applicant herein, the leave has to be granted. According to the official liquidator the decision rendered by Palaniswamy J. is not contrary to the Supreme Court decision, since Palaniswamy J.'s decision is based upon the Companies Act, 1956 (1 of 1956), while that of the Supreme Court is based on the Companies Act, 1913. According to the official liquidator, getting leave of this court is a condition precedent for taking proceedings against the liquidated company and, as such, the petition has to be dismissed.

4. For the purpose of disposing of the present application, I do not think it is necessary for me to scrutinise both the judgments. According to Section 446 of the Companies Act, leave of this court has to be given for taking legal proceedings against the liquidated company. The present application is for getting one such leave. The claim petition was filed by one labourers of the company before the labour court. If leave is grant would open the floodgate of litigation before the labour court and ever of the labourers will be filing petitions before the labour court and (sic) official liquidator to each of these labour courts for the purpose of defending the case of the company. The purport and intention of the legislation seems to be that all these types of claims have to be decided by the official liquidator who is the responsible officer and vested with the powers to decide such claims. Taking the intendment of the Companies Act, I am of the view that such types of petitions have to be filed only before the official liquidator and, if aggrieved, the party concerned has ample opportunity and scope to file an appeal to this court. Taking all these aspects into consideration, I am of the view that the prayer for getting leave of this court to proceed with the petition before

the labour court is misconceived. In these circumstances this application is dismissed. It is open to the applicant to withdraw the proceedings before the labour court and file the same before the official liquidator to get appropriate reliefs.