

(2011) 05 CAL CK 0007

In the Calcutta High Court

Case No : A.C.O. No.130 of 2010; A.P.O.T. No. 477 of 2010; C.A. No. 490 of 2007; C.P. No. 225 of 1970

Rakesh Macwan

APPELLANT

Vs

Official Liquidator, High Court, Calcutta

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Citation : (2011) 4 CHN 691

Hon'ble Judges : Shukla Kabir (Sinha), J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Dhruba Ghose, V. Base, for the Appellant;

Judgement

Pinaki Chandra Ghose, J.—Instead of taking up the stay petition, by consent of the parties the appeal is taken up by us.

2. This appeal is directed against an order passed by the Hon''ble Company Judge on 28th of January, 2010 whereby the present appellant filed an application before the Hon''ble Single Judge seeking the following orders:-

a) The order of winding up dated 15th January, 1981 be recalled and/or set aside and/or vacated and/or stayed permanently upon such terms and conditions as to this Hon''ble Court may deem fit and proper.

b) Permanent stay of all proceedings arising out of and in connection with Company Petition No. 225 of 1970 (In re: Pandam Tea Company Limited).

c) Injunction restraining the Respondent Nos. 3 and 4 from dealing with and/or disposing of and/or alienating and/or transferring and/or selling and/or parting with possession in any manner whatsoever with the assets and effects of the Pandam Tea Estate including its present and future crop and stock and store in hand except in the usual course of business until further order of this Hon''ble Court.

d) Mandatory direction on the respondent Nos. 3 and 4 to file before this Hon''ble

Court within 7 days from the making of the order herein complete accounts of its dealings with the assets and effects of the Pandam Tea Estate for the period the said tea estate has been in illegal occupation of the said respondents.

e) An order be passed directing the applicant to make an advertisement inviting the claims of the creditors of Pandam Tea Company Limited and the same be adjudicated by the Hon''ble Court.

f) Leave be given to the applicant to pay the dues of the creditors of the company (Pandam Tea Company Limited) by easy quarterly instalment until the dues are paid off.

g) An order be passed directing the respondents to hand over the assets and tea estate of Pandam Tea Company Limited to the applicant on such terms and condition as the Hon''ble Court may deem fit and proper.

3. The facts of the case briefly are as follows:-

4. By an order dated 15th January, 1981 the winding up order was passed in company petition No. 225 of 1970. The Pandam Tea Company (now in liquidation) was incorporated under the provisions of the Companies Act, 1913 having its authorized share capital of Rs. 10 lacs consisting of Rs. 1 lac equity share of Rs. 10 each. The paid up capital of the said company is Rs. 1,62,770/- consisting of 16,277 equity shares of Rs. 10 each.

5. The majority of the shares of the said company in liquidation were owned by the members of the family of Late Ranjani Mohan Roy who are the registered shareholders of the said company (now in liquidation).

6. For non-payment of a loan of Rs. 3 lacs, a winding up petition was initiated by the respondent No. 2. On such ground on 15th January, 1981, the Court was pleased to wind up the said company.

7. It is stated that the official liquidator did not take any steps to take possession of the assets of the company (in liquidation). After such winding up order a power of attorney was executed on 14th August, 1991 by Sabita Ranjan Roy (alias Swapna Roy), Munmun Shah, Prabir Roy and Pushpa Roy claiming themselves to be the majority share holders of the said company (in liquidation) and appointed one S.K. Agarwalla as their Constituted Attorney. Power was granted to said S.K. Agarwalla to act on their behalf in respect of the said company (in liquidation).

8. On August 1992, an application had been made by the said constituted attorney for the recalling of the said order dated 15th January, 1981. On February 25, 1983 the said application was dismissed for default. No steps were taken for recalling of the said dismissal order.

9. It is stated that the appellant purchased 1900 equity shares of the said company from S.K. Agarwalla, being the Constituted Attorney, acted in terms of the said Power of Attorney and sold the said shares. It is stated that the

appellant herein moved with a desire to revive the said company (in liquidation) and to run the said business, filed an application before the Hon''ble Company Judge. Pursuant to the order of the Hon''ble Single Judge, the said petition was published in the newspaper. Thereafter, the application was taken and by the impugned judgment and/or order dated 28th January 28, 2010 the said application was dismissed by the Hon''ble Company Judge.

10. The Hon''ble Single Judge dismissed the said application on the ground that the possession of the tea guardian lies with the West Bengal Tea Development Corporation Limited which is a Government Company.

11. The said Government Company appears to have invested money both for the purpose of cultivating tea as also for paying the dues of the workeRs. His Lordship also held that granting the prayers of the applicants would necessarily mean that the State shall stand denuded of the investment already made for the benefit of these private applicants who are also seeking to reap the benefit of the order of winding up. His Lordship further held that the applicants are strangeRs. Long 25 years, after the company was wound up, applicants appeared to have purchased the shares of the original shareholders at the rate of Rs. 1.10 paisa. Therefore, investing less than Rs. 6,000/- they want to take possession of a flourishing tea garden and the present lessee is a Government company.

12. His Lordship further held that the individual creditors of the company in liquidation after the lapse of 30 years may hardly be expected to be alive or active. His Lordship further held that the Official Liquidator is unable to disclose to the Court as to the liability of the company in liquidation.

13. In these circumstances it is held that by staying the order of winding up neither the creditors of the company would be benefited nor there is any scope for the payment of the dues of the workeRs. His Lordship further held that only beneficiary would be the applicants who have invested less than Rs. 6,000/- for purchasing the shares of the original shareholders of the company in liquidation. It is held that by purchasing the said shares they cannot become a shareholder of that company. The name of the share holders would only appear from the records of the company. In these circumstances, the Hon''ble Single Judge held that this application is a speculative one and mala fide steps have been taken calculating to obtain orders to the prejudice of the State of West Bengal and on those grounds His Lordship dismissed the application.

14. Pursuant to the order passed by this Court the advertisement also given in the newspaper in respect of this appeal and it is a fact that none appeared before us on behalf of the any other interested person in support of the company.

15. But after considering the facts of the case which has already stated in the proceeding paragraphs we do not find any reason to recall the said order of winding up dated 15th January, 1981. The recalling order would only give benefit to the petitioners and furthermore there is no records of the company was produced to substantiate the following questions: -

- (a) Who are the registered share-holders of the company (in liquidation)?
- (b) Whether the said share-holders had a right to sale those shares?
- (c) Whether the Constituted Attorney had any power to sale said shares?

16. All these questions are not answered by the appellant,

17. Therefore, after 30 years, when a Government company is running the said tea garden and the position has already been settled. In our opinion, after 30 years such settled position should not be unsettled by an order of this Court and that too in favour of persons who have only invested Rs. 6,000/- in respect of a company (in liquidation).

18. On the contrary, it appears to us after analyzing the facts that the appellants are trying to have possession of a Tea garden by paying Rs. 6,000/- and without a scheme being placed before the Court to the effect that how they will run the company, how they will invest in the company or what amount they will invest to run the business. No particulars have been disclosed in the application.

19. In our considered opinion, by this process the appellants are trying to get a benefit out of their mala fide intention. The very purpose of this application to have the benefit out to the said share transactions. No copy of the Power of Attorney was produced before us. Therefore, in our considered opinion, the whole transactions is nothing but a speculative one and purposefully done.

20. For the reasons stated hereinabove, we find that the order and/or judgment of the Hon"ble Single Judge does not suffer from any illegality or irregularity.

21. Xerox certified copy of this order, if applied for, be supplied to the parties on usual undertakings.

Shukla Kabir (Sinha), J.

22. I agree.