
(1985) 04 AHC CK 0032
In the Allahabad High Court
Case No : Company Petition No. 17 of 1983

Ram Govind Misra

APPELLANT

Vs

Allahabad Theaters (P.) Ltd. and Others

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Companies Act, 1956 — Section 428

Citation : (1989) 66 CompCas 358

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : Janardan Sahai, for the Appellant; R.K. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—Sri Ram Govind Misra, claiming himself to be a contributory of the company, known as Allahabad Theatres Pvt. Ltd., has filed this petition praying for the winding up of the company. The petitioner claims that the company has suspended its business and has become commercially insolvent. Neither has the company held its annual general meetings, nor has it filed its annual returns with the Registrar of Companies. Consequently, it is expedient and in the interest of justice that it should be wound up.

2. The petition was admitted on September 30, 1983. The court directed that the notice should be issued to the company and other persons arrayed as respondents in the case. On January 9, 1984, one Shri Bhagwan Das Jaiswal, claiming to be a director of the company, filed a counter-affidavit questioning the right of the petitioner to file the winding up petition and asserting that the petition is mala fide and has been filed for ulterior reasons. He also controverted the other allegations made in the petition. Subsequently on November 10, 1984, an application (Paper No. A-12) was filed on behalf of the company wherein it was prayed that the order admitting the petition be revoked and that the petition be not advertised as the same is not maintainable and has been filed for ulterior reasons.

3. I have heard learned counsel for the parties on the question regarding the right of Sri Ram Govind Misra to maintain the present petition.

4. Briefly stated, the facts bearing on this controversy are that the authorised share capital of the company is Rs. 1,20,000 divided into 160 equal shares of Rs. 750 each. The issued share capital of the company is Rs. 45,000 divided into 60 equity shares of Rs. 750 each fully paid-up. Two of such fully paid-up equity shares were held jointly by Sri Mahadeo Prasad, father of the petitioner and Sri Purushottam Dat. Sri Mahadeo Prasad died and the petitioner claims that he, having succeeded to the right of his father, has become a contributory and is entitled to file the present petition for the winding up of the company. This claim made by the petitioner is resisted on behalf of the company and it is urged that the petitioner, whose name does not yet find place in the register of members of the company, cannot be considered to be a contributory entitled to maintain the winding-up petition.

5. The principal question, therefore, that arises for consideration in this case is as to whether the petitioner has become a " contributory " within the meaning of Section 428 of the Indian Companies Act (hereinafter referred to as the Companies Act).

6. The expression " contributory " has been defined in Section 428 of the Companies Act as under :

"The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and includes the holder of any shares which are fully paid up....."

7. It is not the case of the petitioner that he is a person who is liable to contribute to the assets of a company. He claims that after the death of his father, Sri Mahadeo Prasad, who jointly held two fully paid-up shares of the company along with Sri Purushottam Dat, the interest of his father has devolved upon him and that he has become entitled to the shares held by his father. Inasmuch as he holds certain fully paid up shares of his father and he is a " contributory " within the meaning of the expression used in Section 428 of the Companies Act he is, as laid down in Section 439(1)(c) of the Act, entitled to maintain the petition.

8. Section 28(2) of the Companies Act lays down that, in the case of any company limited by shares which is registered after the commencement of this Act, and in so far the articles do not exclude or modify the Regulations contained in Table "A" of Schedule-1 of the Companies Act, those regulations shall, so far as, applicable be the regulations of the company in the same manner and to the same extent as if they were contained in a duly registered articles. Similar provisions existed in the corresponding Sections 17 and 18 of the Companies Act, 1913 as well. Regulation 25 of Table " A " to Schedule I to the Companies Act, 1956 and corresponding Regulation 21 of Table "A" to Schedule I to the Companies Act, 1913 lay down that on the death of a member, the survivor or

survivors where the member was a joint holder and his legal representative where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the share. There is nothing on the record of this case to show that there was anything in the articles of the company which excluded or modified the applicability of Regulation 25 of Table " A ", Schedule I to the Companies Act, 1956 or of Regulation 21 of Table " A " Schedule I of the old Companies Act. According to the aforementioned regulation, where shares are held jointly and one of such joint shareholders dies, it is the survivor who alone is to be recognised as having title to the said shares. The question of a legal representative of a shareholder becoming entitled to the shares arises only in a case of a sole shareholder.

9. In the instant case, admittedly, the shares were held jointly by Shri Mahadeo Prasad, the father of the petitioner and Sri Purushottam Dat. Accordingly, after the death of Sri Mahadeo Prasad, it was Sri Purushottam Dat, who alone became entitled to those shares and no title in respect of those shares passed to the heir and the legal representative of Sri Mahadeo Prasad. In this view of the matter, it cannot be said that after the death of Sri Mahadeo Prasad, any interest or title to the shares held jointly by Sri Mahadeo Prasad and Sri Purushottam Dat devolved upon the petitioner. As the petitioner has failed to establish that, in law, he was entitled to hold the shares jointly held by Sri Mahadeo Prasad and Shri Purushottam Dat, he cannot be said to be a holder of those shares or a " contributory " as defined in Section 428 of the Companies Act.

10. During hearing of the case, learned counsel for the company also submitted that even if it be assumed that the interest of Sri Mahadeo Prasad in the shares held jointly by him and Sri Purushottam Dat did, after the death of Sri Mahadeo Prasad, devolve upon the petitioner as his heir and legal representative, the petitioner was, as laid down in Sub-section 4(b) of Section 439 of the Companies Act, not entitled to maintain this petition inasmuch as those shares did not stand registered in his name for a period of six months. For this purpose, he placed strong reliance on a decision of the Madras High Court in the case B. Nagalakshmi Vs. Mannargudi Transports (Pvt.) Ltd. and Others, Mad wherein it was held that u/s 439(4)(b), it was necessary that the shares which a person claims to have devolved upon him must also stand registered for a period of six months before he can maintain a petition for the winding up of the company.

11. Learned counsel appearing for the petitioner seriously disputed this proposition and urged that the decision in the aforementioned Madras High Court's case is wrong. In support of his contention, he relied upon the decision in the case Re Bayswater Trading Co. Ltd., [1970] 1 All ER 608, where Buckley J. while interpreting similar provisions contained in Section 224 of the English Companies Act ruled that there is nothing therein to indicate that a person on whom the shares devolve on the death of any holder must have been registered as a holder of those shares before he becomes entitled to maintain the winding up petition. Although I feel that there is force in the submission made by learned

counsel for the petitioner that the decision in the case of the Madras High Court, in Nagalakshmi (B.) v. Mannargudi Transports (P.) Ltd. [1968] 38 Comp Cas 147 is of doubtful validity, it is in view of my finding that in a case where shares are held jointly, the interest of the deceased shareholder passes to the survivor and not to the heir of the deceased and that the said heir neither becomes a holder of a share nor a contributory within the meaning of Section 428 of the Companies Act, it is not necessary for me to go into this question.

12. Inasmuch as the petitioner has failed to satisfy me that after the death of his father, Sri Mahadeo Prasad, he (the petitioner) became a contributory, the present petition filed by him in such capacity for the winding up of the company should be dismissed as not maintainable. The petitioner does not claim to maintain this petition in any other capacity.

13. In the result, the application (paper No. A-12) filed on behalf of the company is allowed and the Company Petition No. 17 of 1983 is dismissed as not maintainable.

14. The parties shall bear their own costs.