

(2010) 11 KAR CK 0149

In the Karnataka High Court

Case No : Company Application No. 778 of 1999

Ramya Housing Ltd.

APPELLANT

Vs

Sri R. Amrith

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Companies Act, 1956 — Section 454 (5), 454 (5A)

Citation : (2011) 107 SCL 100

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : V. Jayaram, for the Appellant; Tony Sebastian, Vasanth Madhav, Sundaraswamy Ramdas and Anand, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—This application is filed against the Respondents to punish them for the offence committed u/s 454(5) of the Companies Act, 1956 ("the Act") for not filing the statement of affairs.

2. It is not in dispute that Respondent No. 1 died on 2-11-2004 and Respondent No. 3 died on 17-6-2008. Therefore the petition insofar as it relates to Respondent Nos. 1 and 3 is liable to be dismissed as abated.

3. Admittedly Respondent No. 2 was the Vice-Chairman of the Company in liquidation. This Court vide order dated 10-2-1999 appointed a provisional liquidator in Co. P. No. 80/1996. Thereafter on 30-9-2002 winding up order came to be passed. Subsequent to the appointment of provisional liquidator, he called upon the Respondents to file statement of affairs as per notice dated 28-5-1999 - Ex.P-2- Since the Respondents failed to comply the demand made in Ex.P.2, the Official Liquidator has filed the present petition u/s 454(5) and (5A) of the Act. After service of notice Respondent No. 2 entered appearance and filed additional objections inter alia contending that by rotation in the annual general meeting of the company in liquidation held on 31-1-1994 he retired as Director of the

company in liquidation. He further contends that on 30-9-1996 he resigned as Vice-Chairman of the company in liquidation as per resignation letter dated 30-9-1996. Further it is not in dispute that between 2-7-1997 and 31-7-1998 Respondent No. 2 was in Jail in connection with the affairs of the company. From this material on record it is clear that Respondent No. 2 was not involved in the management, administration, business and affairs of the company-in-liquidation from 31-3-1994 to 27-8-1999. Further it is seen from the record that it was Respondent Nos. 1 and 3 who were incharge of the affairs of the company in liquidation between 1994 and 1999. Thus it is manifest that Respondent No. 2 was not involved in the affairs of the company in liquidation between 1994 and 1999 and he did not had the access to the books of the company in liquidation. Therefore the question of Respondent No. 2 filing statement of affairs will not arise.

4. For the reasons stated above, the application is hereby rejected. Respondent No. 2 is hereby discharged.