
(1986) 08 KL CK 0027
In the High Court Of Kerala
Case No : MFA No. 272 of 1986

Rev. C.S. Joseph and Others

APPELLANT

Vs

T.J. Thomas and Others

RESPONDENT

Date of Decision : 26-08-1986

Acts Referred:

Companies Act, 1956 — Section 397, 398, 403

Citation : (1987) 62 CompCas 504 : (1987) 1 ILR (Ker) 295

Hon'ble Judges : M. Fathima Beevi, J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : P. Sukumaran Nayar, A.K. Chinnan and K. Padmanabhan Nair, for the Appellant; M.M. Abdul Aziz, M.M. Saidu Mohammed, Simon Luiz and C.U. Syed Mohammed Ali, for the Respondent

Judgement

Balakrishnan, J.—The miscellaneous first appeal has been preferred against an order passed by the learned single judge appointing a receiver to manage the affairs of a company.

2. Kunnamkulam Marthoma Suriyani Christiani Suvisesha Prasanga Sanghom (hereinafter mentioned as "the Sanghom" for convenience) is a company incorporated on July 30, 1082 M.E., under the Cochin Regulation (IV of 1080 M.E). The main object of the Sanghom is to propagate Christianity among the non-Christians, spread gospels and to uplift the spiritual life of Christians. The Sanghom had 19 members. The Sanghom has no share capital and the liability of the members is limited to the extent of their subscription.

3. Respondents Nos. 1 to 7 herein filed a company petition alleging oppression and mismanagement in the affairs of the Sanghom. The Sanghom has four items of properties including an item of property known as "Sadhusala Parambu". There is also a school under the management of this Sanghom. The main allegation against the management of the Sanghom was that respondents Nos. 2 and 7 had collected huge amounts by way of donations from the teachers appointed in the school and misappropriated the same for themselves. Two

bamboo clusters were cut and removed from Sadhusala Parambu and it is also alleged that steps are being taken to cause further damage to the improvements of that property.

4. The respondents entered appearance and contested the proceedings. The second respondent herein filed a separate counter-affidavit denying all the allegations raised by the petitioners. It was also contended by the respondents that the petitioners were not members of the company. The allegation of the petitioners that the accounts of the Sanghom were not audited was specifically denied by the respondents.

5. In the impugned order, the learned single judge has narrated the facts in detail and directed that a receiver-administrator be appointed to manage the affairs of the company pending disposal of the company petition.

6. The main contention urged by the appellants' counsel is that the order suffers from serious infirmity as it does not state the reasons for the appointment of the receiver. According to the appellants' counsel, a legally constituted body is now carrying on the affairs of the Sanghom and the take-over of its administration could have been done only under extreme necessity. It was also contended that the company petition was not maintainable and, therefore, the court had no jurisdiction to pass an interim order u/s 403 of the Companies Act, 1956, and that there were no just and equitable grounds to appoint an administrator-cum-receiver for the company. The respondents' counsel supported the order and it was also contended that the appeal filed against the order is not maintainable.

7. The first question that would arise for consideration is whether an appeal would lie before the Division Bench of this court against the order passed by a single judge. It was urged on behalf of the appellants that an appeal against an order passed u/s 403 of the Companies Act (Act 1 of 1956) appointing the receiver would lie u/s 483 of the Act. Section 483 of the Companies Act reads as follows:

"483. Appeals from orders,--Appeals from any order made, or decision given, in the matter of the winding-up of a company by the court shall lie to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the court in cases within its ordinary jurisdiction."

8. Section 403 of the Companies Act empowers the court to make any interim order which it may think fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to be just and equitable. Section 483 gives a right of appeal from an order or decision made or given in the matter of winding-up. In the instant case, the main company petition is purported to have been filed under Sections 397 and 398 of the Companies Act. Where a winding-up petition or other petitions under Sections 397 and 398 are pending before the company court, and an interim injunction is passed in any other proceedings, the order is one passed "in the matter of winding-up" within the meaning of Section

483 and, therefore, it is appealable. The words " in the matter of winding-up " means that the order or decision must be one pertaining to or within the scope of the winding-up jurisdiction. Every order which may reasonably be considered to be a judicial order, as distinguished from a merely administrative order, is made appealable under the above section. The distinction between an administrative and judicial order has been explained in the decision in Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, . The Supreme Court held (at page 8 of 35 Comp Cas):

"It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative order and a judicial order. That the power is entrusted to or wielded by a person who functions as a court is not decisive of the question whether the act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a *Us* between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. No doubt, it would not be possible to describe an order passed deciding a *lis* before the authority, that it is not a judicial order but it does not follow that the absence of a *lis* necessarily negatives the order being judicial."

9. From the above dictum, it is clear that if the matter involves the exercise of discretion and the decision is left to the authority and if that authority were a court, the order passed would be a judicial decision.

10. In *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, , a similar matter came up for decision of the Supreme Court. The plaintiff-appellant had filed a suit on the original side of the Bombay High Court for specific performance of a contract and prayed for an interim relief by appointing a receiver of the suit property and injunctioning the defendant from disposing of the suit property during the pendency of the suit. The single judge, after hearing" the notice of motion, dismissed the application for appointment of a receiver as also for interim injunction. The plaintiff-appellant filed an appeal before the Division Bench of the Bombay High Court, which dismissed the appeal as being non-maintainable on the ground that the impugned order of the single judge was not a judgment as contemplated by Clause 15 of the Letters Patent of the High Court. The court held that every interlocutory order cannot be regarded as a judgment but only those orders which decide matters of moment or affect vital and valuable rights

of the parties and which work serious injustice to the party concerned would be judgments. The court also held that an interlocutory order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. The Supreme Court, after elaborately discussing the case, held (at page 1818 of AIR 1981 SC:

" In the instant case, as the order of the trial judge was one refusing appointment of a receiver and grant of an ad interim injunction, it is undoubtedly a judgment within the meaning of the Letters Patent both because... Order 43, Rule 1, applies to internal appeals in the High Court and apart from it such an order even on merits contains the quality of finality and would, therefore, be a judgment within the meaning of Clause 15 of the Letters Patent... the order passed by the trial judge in the instant case being a judgment within the meaning of Clause 15 of the Letters Patent, the appeal before the Division Bench was maintainable and the Division Bench of the High Court was in error in dismissing the appeal without deciding it on merits."

11. In view of the above decision, undoubtedly an appeal would lie, u/s 483 of the Act, to the Division Bench of the same High Court.

12. Learned counsel for the respondents brought to our notice the decision in *State of Kerala v. Krishnankutty* [1985] KLT 201. The question that came up for consideration before the court was whether an order passed by a single judge of the High Court in an interlocutory petition filed in the original petitions under article 226 of the Constitution of India is made appealable u/s 5(1) of the High Court Act, 1958 (Kerala). The court held that procedural orders and interlocutory orders will not come within the sweep of Section 5(1) of the High Court Act. The above decision has no application to the instant case because the appeal has been preferred u/s 483 of the Companies Act and not exclusively u/s 5(1) of the High Court Act. Moreover, the decision in *State of Kerala v. Krishnankutty* [1985] KLT 201 deals with an order passed in an interlocutory application by the single judge exercising his "special original jurisdiction" conferred under article 226 of the Constitution, whereas the impugned order has been passed by the learned single judge u/s 403 of the Companies Act which is specifically made appealable u/s 483 of the same Act.

13. A similar question arose in *Madhava Naik v. Popular Bank Ltd*: [1960] 30 Comp Cas 501 (Ker) : [1960] KLT 581, wherein the Division Bench of this court considered whether an appeal will lie against an order passed by a, single judge u/s 45H of the Banking Companies Act. This court held (at page 506 of 30 Comp Cas):

"Liquidation proceedings under the provisions of the Banking Companies Act are carried on by a single judge of this High Court in the exercise of the original jurisdiction of the High Court and hence u/s 5 of the Kerala High Court Act, an appeal shall lie to a Bench of two judges from a judgment or order of a single

judge, passed in the exercise of such original jurisdiction in respect of liquidation proceedings. Such an order or judgment will become a final order or judgment of the High Court only with the decision in the appeal as provided for in Section 5. If no, appeal is preferred against the judgment or order of the single judge and if such order or judgment is allowed to become final, then also it would become the final judgment or order of the High Court. The appeals contemplated by Section 45H of the Banking Companies Act are appeals against the final orders or decisions of the High Court in civil proceedings under the Banking Companies Act. The present appeals are only appeals against the order of a single judge to a Bench of two judges of the same court as provided in Section 5 of the Kerala High Court Act. The right to prefer such appeals has been expressly conferred by Section 5 of that Act. Hence the appeal is competent."

14. Therefore, we hold that there is no merit in the objection raised by the respondents regarding the maintainability of the appeal.

15. The next point urged by the appellants' counsel was that the learned single judge has not given reasons for the appointment of an administrator-cum-receiver and, therefore, the order was bad in the eye of law. It was further contended that the company was managed by duly elected office-bearers of the company and that they are entitled to continue in office. Though the petitioners therein have contended that there was oppression and mismanagement, they could not produce any evidence to prove a prima facie case of mismanagement. The appointment of a receiver is in many cases a matter for the most serious consideration of the court. The court by taking possession at the instance of the plaintiff may be doing a wrong, in some cases irreparable wrong to the defendant, for, if the plaintiff should eventually fail in establishing his right, the court may by its interim interference have caused mischief to the defendant and subsequent restoration of the property may afford no adequate compensation. It has been held by various judicial authorities that the jurisdiction given to the court must not be lightly but most cautiously exercised. The relief is not one *ex debito justitiae* but one which is within the judicial discretion of the court. The court is not bound to grant such relief merely because it is lawful to do so. The power to appoint a receiver is not to be generally exercised as a matter of course and that it can do no harm to appoint a receiver, is no reason for allowing an application. It has been stated in Halsbury's Laws of England, fourth edition, volume 39, pages 426 and 427 :

" A strong case must be made out to dispossess a party who is interested and who has the legal title. As against a prior legal mortgagee in possession, for instance, a receiver will not be appointed unless the mortgagee's debt has been wholly satisfied."

" Generally, the court does not appoint a receiver if the appointment may involve grave risk of injury to the interests of other persons interested.

The court will be reluctant to risk damage to the reputation of a professional

partnership by appointing a receiver, particularly where the integrity of the partners is not in question."

16. Since the impugned order does not give the reasons for the appointment of the receiver, we set aside the same and remand the matter to the judge dealing with company matters to be considered afresh as to whether the appointment of a receiver would be necessary in the circumstances of the case.