
(1973) 07 DEL CK 0008
In the Delhi High Court
Case No : Civil Petition No. 14 of 1973

Roshan Lal Sethi	Vs	APPELLANT
Madan Mohan Sethi		RESPONDENT

Date of Decision : 31-07-1973

Acts Referred:

Citation : (1974) ILR Delhi 97

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Satish Chander, M.L. Bajaj, D.D. Sharma and Sabharwal, for the Appellant;

Judgement

Dalip K. Kapur, J.

(1) I have heard the petition at great length on the maintainability of the petition. Learned counsel have referred to the judgment of the Gujarat High Court, reported as Colaba Land and Mills Company Ltd. v. Vasant Investment Corporation Ltd. and others 1963 CLJ 89. In that case there were certain observations showing that a petition u/s 543 made in connection with a petition u/s 397 or 398 may be filed even after the petition u/s 397 or 398 has been decided. That decision was arrived at during the course of arguments in a pending petition u/s 397 and 398 of the Companies Act 1956.

(2) In the present case there was a petition u/s 543 filed during the pendency of a petition u/s 397 and 398 of the Act but for some reason, the petition u/s 397 and 398 was withdrawn and this petition remained pending. The question that has now arisen is whether the petition u/s 543 can continue to be heard, decided, and disposed of on the merits in view of the express language of Section 543 as applicable to a case like the present one. The provisions of Section 543 appear in the Companies Act 1956 in relation to a winding up proceedings. The language of the section has been the subject matter of interpretation in numerous cases in relation to winding up. However, the

provisions of Section 543 as applicable to a petition u/s 397 and 398 are varied because of the language of section 406. That section provides that in relation to petitions u/s 397 and 398, the provisions of Section 543 will be applicable, not as enacted in the Act, but as reproduced in schedule Xi of the Act. That provision shows, among other things, that such a petition is related to "the course of a petition u/s 397 and 398". I reproduce a part of the language, namely, the beginning of the amended section as applicable to the present case. The language is "if in the course of the proceedings of an application made to the court u/s 397 or 398, it appears that. . .". Now this provision would indicate that something must appear to the court in the course of proceedings u/s 397 and 398. The learned counsel for the petitioner has referred to the aforementioned judgment of Justice Miabhoy, where the court had framed four points for determination. One of the points for determination was "at what stage it had to appear in the course of proceedings u/s 397 or 398". Learned counsel has also referred the judgment of Rangarajan J., disposing of C.P. 80 of 1969, in which his Lordship has indicated, though not directly, that the withdrawal of that petition will not affect the pending petition u/s 543.

(3) In my view, whatever the law may be, one of the factors which has to be taken into consideration is whether there has appeared, in the course of proceedings in an application u/s 397 or 398 such circumstances that would show some default by persons named in Section 543 (as amended) which are mentioned in the substantive portion of that section. It is only on this indication that the power of the Court u/s 543 can be exercised. That is a view shared by Miabhoy J., in the aforementioned judgment of the Gujarat High Court and Rangarajan J., in the judgment of this court in C.P. 80 of 1969. Therefore, one of the primary factors, which has to be determined in this case is whether there was anything in the section 397 or 398 proceedings, which gives rise to an inference that a person of the type mentioned in Section 543 had committed defaults of the type enumerated in that Section. This means that the proceedings u/s 397 and 398 will have to be examined for a consideration of this primary jurisdictional fact. I need not, at this stage, reproduce the observations of Miabhoy J., on this aspect. I. Therefore revise the issues already framed to that extent, and indicate that the first issue, namely, "Whether the petition is maintainable?" will be decided on a consideration of the previous petition u/s 397 and 398, namely, C.P. 80 of 1969 and after allowing the parties to refer to that petition, I think it will be convenient if this issue is decided as a preliminary issue. To make it more clear, the first issue, with regard to maintainability, will be treated as a preliminary issue, but for deciding that issue reference will be made to the records of the already decided petition u/s 397 and 398, namely, C.P. 80 of 1969. I may observe that there already is an order by Rangarajan J., directing that the records of that case may be placed before the court today. That order was passed in C.A. 421 of 1973, and , in accordance with that order, the record of that Company Petition has been placed before me at the time of hearing today. C.P. 14 of 1973 will now be posted for hearing on a date to be indicated on

8th August, 1973, on 8-8-1973 C.A. 113 of 1973 and C.A. 385 of 1973 will also be considered. The witnesses, who have been summoned for today, are discharged for the present.