(1989) 03 AP CK 0007

In the Andhra Pradesh High Court

S.A.P. Fernando APPELLANT

Vs

Rainbow Sea Foods (Pvt.) Ltd. and Others RESPONDENT

Date of Decision : 23-03-1989

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1

Citation : (1991) 70 CompCas 181

Hon'ble Judges : K.R. Ramaswamy, J

Bench : Single Bench

Advocate : P.L.N. Sarma, for the Appellant; D.V. Seetharama Murthy, for the Respondent

Judgement

K. Ramaswamy, J.—The appellant is one of the directors of Rainbow Sea Foods P. Ltd., a company registered under the Companies Act, 1956, under Certificate of Incorporation no. 9163 of 1982 dated, January 16, 1982. It consists of the four first directors under article 33(a), viz, (i) C. Pattabhiraman ; (ii) C. Renie Fernando ; (ii) M.A. Rajendran Shall be the first managing director of the company and, unless he shall voluntarily resign that office, he holds that office for five years form the date of incorporation of the company. He shall be eligible, after the expiry of the period, for reappointment on such terms as may be mutually decided by the managing director and the board of directors for a further period of five years until he voluntarily resigns or becomes incapable of acting. The Company work acquired two vessels "sunshine" and "Sunrise" for the purpose of the work of the company in terms of the memorandum and articles of association. The "Sunshine" Vessel was entrusted to the appellant and the plaintiff, C. Pattabhiraman , and the other vessel was "Sunrise" was entrusted to C. Renie Fernando and M.A. Rajendran. The plaintiff - respondent no. 4 herein, C. Pattabhiraman, has stated in the plaint that, after taking over possession of the vessel "Sunshine" he was excluded from participation in the finishing operations, etc. As a result, C. Pattabhiraman laid O.S.No.2 of 1987 for rendition of accounts. Pending the suit, I.A. no. 8 of 1987 was filed for an ad interim injunction under Order 39, rules 1 and 2, Civil procedure God, interdicting the appellant from operating the vessel "Sunshine", By an order dated April 27, 1987, the court below appointed the Company, Rainbow Sea Foods P. Ltd., as a receive to take possession of the vessel "Sunshine", manage it and deposit the sale proceeds of catches after deducting the expenses toe the credit of the suit. It was also further directed to submit every month a statement of accounts showing profit and loss, etc. The balance-sheet was directed to be prepared and submitted to the court, marking copies to the auditor concerned and also to the parties to the suit. Assailing the legality of this direction, the appeal has been filed.

2. Sri P. Sriraghuram, learned counsel for the appellant, contended that the suit itself is not maintainable in view of the fact that it is a company registered under the Companies Act, and that, therefore, the interlocutory application also is not maintainable. It is unnecessary to go into that question at this stage. Suffice it to state that it is a matter to be gone into at the trial. It is found by the court below that the possession of the vessel "Sunshine" was taken by the appellant. The claim of the plaintiff, Pattabhiraman, that he was unlawfully excluded from participation has been prima facie accepted by the Court below. THere is a scramble for possession. In that regard, what is a suitable order that could be made is the question. The court below found that the company itself could be appointed as a receiver under Order 40, rule 1, Civil Procedure Code, so that the company could manage the fishing operations of the vessel "Sunshine", submit the report of the statement of the expenditure and the profits and deposit the sale proceeds to the credit of the suit. In Kerr on the Law and Practice as to Receivers, fourteenth edition, buy Raymond Walton, at page 106, it is is stated that a body corporate is not qualified for appointment as receive of the property of a company formed and registered under the Companies Act, 1948, or preceding Companies Acts. Any such purported appointment is a nullity. This was stated following the ratio in Budgett v. Improved patent Forced Draught Furnance Syndicate Ltd. [1901] WN 23. THe reason stated therein was that, inn case of companies, an accountant is very frequently appointed. It is only in special circumstances that the court will appoint the plaintiff in a debenture holders'' action as a receiver, and then only, as a rule, subject to production of an affidavit that all the other debenture-holders consent to it. A director will not, as a rule be appointed. Thus, a chartered accountant, resident near Birmingham, appointed as receiver and manager of a company also sometimes could be appointed as a receiver. The reason is obvious. The company is a corporate body. Therefore, the appointment of a company as a receiver is clearly illegal. As stated earlier inn article 51 of the memorandum and articles of association, M.A. Rajendran has been named therein as a managing director for an initial period of five years and, thereafter for another period of five year until he voluntarily resigns or becomes incapable of acting as the managing director. Therefore, the appropriate order would be that M.A. Rajendran, managing director, shall be appointed as a receive in the place of a company as such. The order of the court below is accordingly, modified. M.A. Rajendran shall be the receiver and he shall follow the directions

referred to hereinbefore as given by the court below in the impugned order.

3. With the above modification, the appeal is allowed in part. But, in the circumstances, without costs.

