

(2011) 05 KL CK 0121
In the High Court Of Kerala
Case No : CO. Appeal No. 9 of 2011

Sri. K. Vinod Kumar

APPELLANT

Vs

Jyoman Builders (P) Ltd. (In Liquidation) and N.R.R. Nambiar

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Citation : (2011) 05 KL CK 0121

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : G. Sreekumar, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—Petitioner is the Managing Director of the first Respondent company which is facing proceedings in liquidation. Company petition 37/98 was filed by a creditor. The said petition has not been disposed of.

2. During the pendency of company petition 37/98 a share holder of the company i.e. second Respondent herein filed yet another application for liquidation and the same is pending as C.P.27/2010 before the Company Court. We are informed that after detailed hearing both these petitions i.e C.P.37/1998 and C.P.27/2010 now stand reserved for orders. As early as on 7-2-2011 arguments have been completed and the matter was taken for orders. Orders are awaited.

3. At this stage the Appellant in his capacity as Managing Director of the first Respondent company issued notice to convene an extraordinary general body meeting of the shareholders. That meeting was scheduled to be held on 5-4-2011. The business sought to be transacted was disposal of assets of the company, proceeds of which, according to the Appellant, would be sufficient to discharge the entire debts of the company. The Appellant as Managing Director wanted to negotiate, sign agreements, sale deeds and other documents in respect of that proposed disposal of assets.

4. On coming to know of the proposed meeting to be held on 05.04.2011, the Petitioner in C.P. No. 27/2010 filed C.A.198 of 2011 for an order restraining the Appellant from conducting the said meeting. One of the creditors in C.P.37/98 also filed C.A.251/2011 for identical relief.

5. When C.A.198/11 in C.P.27/2010 came up for consideration on 18.03.11, the learned Judge of the Company Court passed an ad interim direction against the conduct of the proposed meeting, which is impugned in Co. Appeal No. 9/11. When C.A.251 of 2011 in C.P.37/98 came up for consideration before the learned Judge of the Company Court on 4.4.11, the identical order impugned in Co. Appeal No. 12/2011 was also passed. The appeals were admitted. No interim orders were granted.

6. The proposed meeting was to be held on 05.04.11. That date has gone by. The appeal has virtually become infructuous and unnecessary, contends the learned Counsel for the Respondents. No final orders have been passed in C.A. Nos. 198 and 258 of 2011. We must certainly express the opinion that it is for the Appellant now to appear before the Company Court and make appropriate submissions for the final disposal of C.A. Nos. 198 and 251 of 2011.

7. Why is the Appellant now pressing this appeal when he has not gone before the company court to argue and get C.A. Nos. 198 and 251 of 2011 finally disposed of ? The learned Counsel for the Appellant submits that though the order impugned in Co. Appeal No. 9/11 is bereft of reasons, the order impugned in Co. Appeal No. 12/11 reveals that the Company court was under the impression that the Appellant has ceased to be a Managing Director and the Board and the General Body have no surviving power to take any decision in respect of the company. This allegedly wrong approach made by the company court persuades the Appellant to press for decisions in these appeals before this Court now, contends the learned Counsel.

8. We are not certainly persuaded to feel that these appeals now deserve to be disposed of on merits. What is impugned in these appeals is only an ad interim direction. The stay granted had made the proposed meeting on 05.04.11 impossible. It is for the Appellant certainly to raise his contentions before the company court in C.A. Nos. 198 and 251 of 2011. We have no reason to assume that the company court shall not consider the contentions on merits and in accordance with law.

9. The Respondents contend that the very purpose of these appeals is only to somehow avoid and delay the proceedings further. This is evident from the nature of interim orders sought in these appeals, contend the learned Counsel. They point out that as interim relief it is claimed that all further proceedings in C.P. Nos. 37 of 1998 and 27 of 2010 be stayed. Evidently the attempt is to further protract those proceedings and to ensure that orders are not passed in those C. Ps, contend the learned Counsel for Respondents.

10. We need not go into any of those questions in detail. Suffice it to say that the

challenge against the ad interim order has now lost its significance and relevance after 05.04.2011. Ad interim directions are of no consequence and it is for the Appellant now to raise all relevant contentions in C.A.198 and 251 of 2011 before the company court.

11. With the above observations, these appeals are dismissed.