(2003) 07 AP CK 0036

In the Andhra Pradesh High Court

Case No : C.A. No''s. 160 of 1995 and 38 of 2003 and C.P. No. 68 of 1988

Suganti Alloy Castings Ltd. (In Liquidation) — APPELLANT

Vs

Edupupganti Subba Rao — RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:
Companies Act, 1956 — Section 543

Citation : (2003) 3 APLJ 415 : (2004) 120 CompCas 453 : (2004) 50 SCL 605

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : M. Chandana Muthu and Anil Kumar, for the Appellant; Nandigam Vasundhara Devi and V.S. Raju, for the Respondent

Final Decision : Allowed

Judgement

1. By this application, the Official Liquidator, who is representing the company in liquidation, namely M/s. Suganti Alloy Castings Limited, seeks permission of the Court to bring on record respondent Nos. 5 to 8 herein as legal representatives of respondent No. 4 and accordingly amend the cause title.

2. In the application C.A. No. 160 of 1995, which was filed by the Official Liquidator for recovery of a sum of Rs. 17,00,088, it was averred that the ex-Managing Director and other Directors of the company-in-liquidation, became due and liable to pay the above amount for the loss sustained by the company on account of their acts of commission, omission, misfeasance and malfeasance. During the course of enquiry, respondent No. 4 in the said application, died, and after obtaining Family Member Certificate from the Mandal Revenue Officer, he filed the present application for bringing the proposed respondents as legal representatives of the deceased.

3. On behalf of the proposed respondents counter-affidavit is filed. The learned Counsel representing them would contend that the proposed respondents are in no way concerned with the commission, omission, misfeasance and malfeasance

of respondent No. 4, inasmuch as they have not benefited anything out of the estate of the deceased, and therefore, the recovery proceedings upon the death of respondent No. 4 cannot be continued against them, and as such, the application filed by the Official Liquidator to implead them as party-respondents, is liable to be dismissed. He would next contend that personal conduct of a person can only be defended by the person concerned and not any other, and therefore, they cannot be made liable for the personal conduct of respondent No. 4.

4. The question as to whether or not the proceedings initiated against a Director of the company-in-liquidation u/s 543 of the Companies Act, 1956 for recovery of the dues of the company, can be continued after his death against his legal representatives, or not, is no more res integra, and has been long decided by the judgment of the Apex Court in Official Liquidator Vs. Parthasarathi Sinha and Others, . The apex Court answered the said question in the following terms:

The proceedings initiated against a Director of a company-in-liquidation u/s 543 of the Companies Act can be continued after his death against his legal representatives and the amount declared to be due in such misfeasance proceedings can be realized from the estate of the deceased in the hands of his legal representatives. The legal representative, of course, would not be liable for any sum beyond the value of the estate of the deceased in his hands.... (p. 188)

The Apex Court further held thus :

The liability arising under the misfeasance proceedings is founded on the principle that a person who has caused loss to the company by an act amounting to breach of trust should make good the loss. Section 543 of the Act does not really create any new liability. It only provides for a summary remedy for determining the amount payable by such person on proof of the necessary ingredients. The section authorizes the Court to direct such persons chargeable under it to pay a sum of money to the company by way of compensation. This is not a provision intended to punish a man who has been found guilty of misfeasance but for compensating the company in respect of the loss occasioned by his misfeasance. Whenever there is a relationship based on contract, quash-contract, some fiduciary relation or a failure to perform a duty, there is no abatement of the liability on the death of the wrongdoer. When once the liability is declared it is open to the Official Liquidator to realize the amount due by resorting to Section 634 of the Act and Section 50 of the Code of Civil Procedure.... (p. 189)

Again a Division Bench of the Madras High Court in N.S. Rajagopal v. Official Liquidator, Purasawalkam Hindu Santhatha Sanga Nidhi Ltd. [1993] 78 Comp. Cas. 687 having considered this very same question, held thus :

"The settled judicial view is that there is no abatement in an execution proceeding on account of the death of a judgment-debtor. Thus, any delay in the substitution of the heirs and legal representatives of the deceased judgment-debtor shall not cause any abatement." (p. 687)

The Division Bench of the Madras High Court further held thus:

"...The delay in filing the application to bring on record the legal representatives of the deceased director against whom proceedings u/s 543 of the Companies Act, 1956, for misfeasance were pending, did not bring about abatement of the proceedings, and the company judge was right in ordering substitution of the legal representatives as the respondents." (p. 687)

In view of the legal position, as set out supra, it cannot be said that no proceedings can be continued against the legal heirs of a Director of the Company in liquidation, upon his death. The Division Bench of the Madras High Court in N.S. Rajagopal''s case (supra), while holding that a duty was cast on the counsel for the deceased Director to bring the fact of death of: the deceased Director to the notice of the Court, held thus :

"...the fact that the official liquidator had not furnished particulars as to the enquiries made by her and to explain the delay in filing the application was not fatal to the substitution because (a) no abatement was involved, and (b) counsel for the deceased owed a duty under Rule 10A of Order 22 of the Code of Civil Procedure, 1908, to inform the court of the death, which had not been discharged." (p. 688)

5. In the case on hand, the counsel for the respondents did not bring the factum of death of respondent No. 4 to the notice of the Court, but it is the Official Liquidator, who on coming to know about the death of respondent No. 4, has taken steps to bring the legal heirs of the deceased as party-respondents, and therefore, no delay can be attributed to the Official Liquidator in filing the present application.

Whether or not any property devolved upon the legal heirs of the deceased Director and whether or not the legal heirs have derived any benefit out of the estate left behind by the deceased Director, is a matter for enquiry, and needs evidence to be let in by the contesting parties, and merely on the basis of oral submissions and assertions and counter-assertions made in the affidavits, sworn on oath, it cannot be conclusively said that the legal heirs of the deceased have not benefited, either materially or monetarily, out of the estate left behind by the deceased Director nor any property of the deceased Director devolved upon them. In that view of the matter, the contention of the respondents that inasmuch no property of the deceased-respondent No. 4 devolved upon them nor they benefited out of the estate left behind by the deceased Director, they cannot be made liable to pay out the dues of respondent No. 4, cannot be accepted, at this stage.

6. In the result and for the foregoing reasons, it has to be held that the death of a deceased Director of a company in liquidation does not bring about abatement of the proceedings for recovery of dues of the company in liquidation, and they

can be continued against the legal heirs of a deceased Director upon his death, and it is for the legal heirs of the deceased Director to prove beyond doubt that no property of the deceased Director devolved upon them nor they benefited out of the estate left behind by the deceased Director. Therefore, this application at this instance of the Official Liquidator to bring the proposed respondents as legal heirs of respondent No. 4, is liable to be allowed, and it is accordingly allowed. The Official Liquidator may amend the cause title accordingly. No costs.