
(1985) 12 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Company Application No. 138 of 1983 in Company Petition No. 98 of 1981

Tata Chemicals Ltd.

APPELLANT

Vs

Stepan Chemicals Ltd. and Another

RESPONDENT

Date of Decision : 20-12-1985

Acts Referred:

Companies (Court) Rules, 1959 — Rule 101(3)

Citation : (1987) 62 CompCas 855 : (1986) 89 PLR 457

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; G.R. Majithia and Arun Sanghi, for the Respondent

Judgement

S.P. Goyal, J.—Company Petition No. 98 of 1981 was filed against M/s. Stepan Chemicals Ltd., respondent No. 1, for its winding up. During its pendency, the petitioners, M/s. Tata Chemicals Ltd., moved this application for being impleaded in that petition as creditors of the respondent-company and to allow them to proceed with the petition for winding up in case the same is withdrawn. At the appellate stage, that petition was dismissed as withdrawn, vide order dated September 26, 1984. Thereafter, this petition, which had been adjourned sine die to await the decision in Company Appeal No. 8 of 1983, was revived.

2. The prayer has been opposed by learned counsel for the respondents on the sole ground that the permission could be granted prior to the disposal of the main petition and once it has been dismissed, the court has become functus officio and has no jurisdiction to pass any order in the present petition. The contention is wholly misconceived. Permission under Rule 101 of the Companies (Court) Rules, 1959, can be granted when the petitioner in the main petition consents to withdraw the same or to allow it to be dismissed. The words "allow it to be dismissed" clearly envisage that another creditor can be allowed to be substituted and pursue the petition even after it has been got dismissed by the

main petitioner.

3. The matter can be looked at from another angle also. In the present case, the company judge has allowed the petition. At the appellate stage, the present petitioner was not made a party and the petition was dismissed on an agreement of the parties to the appeal. Although the present application was pending, the present petitioner got no opportunity to seek permission to pursue the main petition at the time when the same was allowed to be dismissed. If the provisions of Rule 101 are interpreted in the manner suggested by learned counsel for the respondents, then the petition, like the present one, would always be rendered infructuous by adopting a similar course as was done in the present case. I am, therefore, of the view that the cause of action would be available to the petitioner even after the earlier petition has already been dismissed at the behest of the main petitioner.

4. For the reasons recorded above, this application is allowed and the petitioners are substituted as creditors in the main petition. The petitioner is directed to file the amended petition before January 31, 1986. No costs.