(2014) 02 KL CK 0069

In the High Court Of Kerala

Case No : Com. A. No. 11 of 2013

Tata Teleservices Ltd. APPELLANT

Vs

Tngicube Technology Resources India Ltd. RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104
Companies Act, 1956 — Section 454(5), 483
Criminal Procedure Code, 1973 (CrPC) — Section 374(1)

Citation : (2014) 2 KLJ 90 : (2014) 1 KLT 734

Hon'ble Judges : P. Ubaid, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Aswin Gopakumar, H. Praveen, Anwin Gopakumar, Kala G. Nambiar, K. Amalnath Naik and Roshini Manuel, Advocate for the Appellant; D. Kishore, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—The Company Appeal is filed by the petitioner in C.P. No. 24 of 2009, challenging the order on a Review Petition filed by the appellant. The Company Petition was filed by the appellant for winding up of the respondent-company. A learned Single Judge of this Court dismissed the Company Petition by the judgment dated 5th March, 2012. The appellant filed Company Application No. 186 of 2013 before the learned Single Judge seeking to review the order dated 5th March, 2012. The learned Single Judge dismissed Company Application No. 186 of 2013 by the order dated 19th March, 2013, which is under challenge in this appeal. The learned counsel for the respondents raised a preliminary objection that the Company Appeal is not maintainable against the order in the application for review, since the application for review was dismissed and consequently, there is no merger of the order and the original judgment.

2. We heard the maintainability of the appeal. The learned counsel for the appellant submitted that S. 104 of the CPC leaves room for appeals from applications of other kinds as well where appeal is provided under any other law. He referred to S. 483 of the Companies Act and submitted that against the

dismissal of the Review Petition as well, appeal would be maintainable.

3. The learned counsel for the respondents relied on the judgment of the Supreme Court reported in Municipal Corporation of Delhi Vs. Yashwant Singh Negi, , where the Supreme Court held that once the High Court has refused to entertain the Review Petition and the same was dismissed confirming the main order, there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the Review Petition because on the dismissal of the Review Petition the principle of merger does not apply. In DSR Steel (P) Ltd. Vs. State of Rajasthan and Others, , the Supreme held as follows:

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and any one aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

4. The learned counsel for the appellant relied on the Full Bench decision of this Court in M.F.A. No. 1059 of 2002 (P. George Philip & Anr. v. Official Liquidator, 2004 (1) KLT 85 (F.B.)). The Full Bench considered the question whether a person convicted under S. 454(5) of the Companies Act, 1956 by a Single Judge can file an appeal before a Division Bench under S. 483 of the Act or only before the Supreme Court under S. 374(1) of the Code of Criminal Procedure, 1973. The Full Bench held that an order of conviction under S. 454(5) of the Companies Act is connected with the winding up of the Company and the aggrieved person has a right of appeal under S. 483 of the Act. We are of the view that the decision in P. George Philip & Anr. v. Official Liquidator is not applicable to the question involved in the present case. It is not disputed that the learned Single Judge passed the judgment, after hearing the parties. The appellant filed a Review Petition. That Review Petition was dismissed. The order in the Review Petition does not merge with the original judgment. Therefore, the appellant cannot maintain a Company Appeal against the order passed in the Review Petition. He can only challenge the judgment passed by the Single Judge. Appeal against the order in the Review Petition as such is not maintainable, since there is no merger of that order in the original judgment, the Review Petition having been dismissed.

Accordingly, the Company Appeal is dismissed as not maintainable. This order will not preclude the appellant from challenging the judgment passed by the learned Single Judge.