(2015) 02 KAR CK 0079

In the Karnataka High Court

Case No : Review Petition No. 412/2006 in O.S.A. No. 12/2000

The Karnataka Vyavasaya Varthaka Sangha Ltd. APPELLANT

Vs

M. Divakar Bhat and Others RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0079

Hon'ble Judges : N. Kumar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : Ravi, Adv. for Ravi and Ravi, Associates, for the Appellant

Final Decision : Disposed Off

Judgement

N. Kumar, J.—This review petition is filed for review of the order dated 02.03.2006 passed in O.S.A No. 12/2000.

2. Brief facts leading to the review petition is as under:

"The Karnataka Vyavasaya Varthakara Sangha Ltd., is a public limited company registered under the Companies Act, 1956. The petitioners in the company petition No. 83/1993 were all members of the company. The main object of the company was to carry on the activity as Commission Agent for the purpose of selling agricultural produce on commission basis. The petitioner supplied arecanuts to the company. After sale of the arecanuts, the Company has failed to credit the sale proceeds to the respondents even though in their accounts books, entries are made to the effect that the respondents are entitled to such amounts. When the said amounts were not paid in spite of the issue of statutory notices, they were constrained to file a petition under Section 433(e) and (f) of the Companies Act, 1956 for winding up of the company."

3. After service of notice, the company entered its appearance and filed a detailed statement of objections. It did not deny the liability, but contended that they have entered into an agreement with all the creditors including the

petitioners. The Company intend to sell the building at Mangalore and complete the construction of the building at Puttur and from the income derived from such property, they intend discharging the debt to the creditors. In fact accepting the said contention, the company petition came to be dismissed.

4. Aggrieved by the said order, the petitioner preferred an appeal in O.S.A. No. 12/2000. In appeal, this Court took note of the fact that though the company petition was dismissed on 02.03.2000, even after six years, there is no progress made insofar as the construction is concerned. The Contractor who had promised to put up construction has backed out. The company was also unable to complete the construction. Therefore, this Court was of the view that amply the company is unable to pay its debts and therefore, liable to be wound up and accordingly, the appeal was allowed. The order of winding up was passed.

5. During the pendency of the review petition, a sum of Rs. 1,62,563/- came to be paid to respondents 1 to 6, who accepted it without prejudice to their rights. As further amounts were not paid, the review petition also came to be dismissed. Today, the revision petitioner has filed the following memo which reads as under:

"MEMO

The above named Petitioner submits that, the petitioner Company having paid the principal amount payable to the Respondent will not claim any amount in the event of petitioner being unsuccessful to implement the scheme of revival of the petitioner company.

The Petitioner further submits that, upon revival of the Company as per scheme the Petitioner Company intends to liquidate all liabilities of the Company including payment of interest, when the Respondent may be intended to claim."

6. The respondents have filed the statement of objections to the application for recalling. It is as under:

"The allegations made in para-3 of the affidavit filed in support of the application filed by the petitioners and sworn to by the petitioner No. 3 are false and certain statements made therein are incorrect. The respondents have received the payments made during the pendency of the case, without prejudice to the rights of the respondents and subject to adjusting the payments towards interest and cost incurred and balance, if any, towards principal it is not correct to say that the respondents have agreed to receive the said amounts as principal it is further false to say that the respondents have agreed to receive the interest subsequently and that the parties have agreed that once the Company is revived, the petitioner would make arrangements to pay reasonable interest to the respondents as alleged. It is false to say that the alleged proposal was accepted by the respondents and accordingly the respondents received the principal amount. It is incorrect to say that there was improper instructions to the Counsel of the respondents and it is further incorrect to say that the respondents counsel submitted that the interest is not paid and as such the petition was dismissed.

2. The respondents who are the petitioners in the Company Petition have incurred cost towards making publications in News Papers as per the orders of this Hon''ble Court and have also paid to the Official Liquidator amounts as per the orders of this Hon''ble Court, apart from incurring the court expenses in respect of the above Company Petition and the Original side Appeal (OSA). The principal amounts due are the price of the Arecanut crop which was belonging to the respondents and sold by the petitioner Company as Commission Agent and not paid bys the petitioner Company to the respondents and the amounts were due in 1990-91. The respondents are agriculturists whose Arecanut Crops were sold by the Petitioner Company as Commissioner Agent and the Petitioner failed to pay the amounts realized by the Company inspite of demands and so far the claim has not been settled.

3. It is a matter of record that even on earlier occasion the petitioner company had undertaken to revive the Company by putting forward a scheme to revive the Company but failed to implement the same. There is no bonafides on the part of the Directors of the Company and on the part of the persons managing the Company''s affairs.

4. Without prejudice to the above, the respondents submit as under:--

The respondents would have no objection for reviving the Company and to frame a proper scheme in that regard and to implement the same and to settle the balance dues to the respondents, in case and on the condition that all the amounts paid so far to the respondents are not claimed back either by the petitioner or by the Official Liquidator or anybody else and the respondents who have already appropriated the amounts received are not asked to refund any portion of the said amounts. With the said condition, suitable orders may be passed by this Hon''ble Court."

7. As substantial amount is already paid and the review petitioner i.e., the company has filed a memo duly signed by the Managing Director of the Company undertaking that they will not claim any amount paid in these proceedings to the respondents in the event of they being unsuccessful to implement the scheme of revival, the respondents have no objection for setting aside the order passed in appeal and restoring the company petition to its original file. However, they have objection to the statement that the entire principal amount has been paid, as is clear from the statement of objections set out above. Whether the amount paid by the company to these respondents during the course of these proceedings fully discharges the principal amount due and what is the amount due towards interest and cost, are all matters, which could be gone into by the learned Company Judge. The whole object is to give an opportunity to the company to revive in terms of the scheme they have formulated, so that all persons to whom the company owes money would get the benefit. Of course if they do not make use of this opportunity, the learned Company Judge shall proceed to pass orders

in accordance with the company law.

8. It is submitted that the official liquidator is in possession of some funds, which was by way of rent due to the company, which he has collected. The learned Company Judge after hearing the parties and taking note of the amount which is in his hands, may pass appropriate orders in the interest of justice.

9. In fact a request is made for a direction to the learned Company Judge to release the amount so that the terms of the scheme can be implemented and the company can come out of indebtedness. That is a request to be made by the Company before the learned Single Judge, who in turn after hearing all the parties, shall pass appropriate orders. Accordingly, review petition is disposed of.

