(1960) 08 KAR CK 0001

In the Karnataka High Court

Case No : Misc. Appeal No''s. 128 and 129 of 1960

The Premier Insurance Co. Ltd. and Others	APPELLANT
Vs	
The Davanagere Cotton Mills Ltd. and Others	RESPONDENT

Date of Decision : 17-08-1960

Acts Referred:
Companies Act, 1956 — Section 202, 483
Mysore High Court Act, 1884 — Section 12, 13

Citation : AIR 1961 Kar 1

Hon'ble Judges : K.S. Hegde, J;Iqbal Hussain, J

Bench : Division Bench

Advocate : N. Bhimacharya, K. Raja Iyer and T. Krishna Rao, Party in person, for the Appellant; V.L. Narasimha Murthy, for the Respondent

Judgement

Iqbal Hussain, J.—Aggrieved by the order confirming the sale of the Kapila Textile Mills, two appeals have been filed. A.s both of them deal with the same matter a common judgment is given in respect of both the appeals.

2. In a public auction held on 18-6-1960 the Kaplia Textile Mills (hereinafter called for the sake of convenience ''the Mills'') were sold for a sum of Rs. 15,25,000/-, the highest hidden being the Deva-nagere Cotton Mills (hereinafter called the purchasers). One of the important conditions of the sale was that it was subject to the confirmation by the High Court, but the said Court is not bound to accept the highest bid. Hence the question of confirmation of the sale came up for consideration before the Hon''ble Company Judge, Sadasivayya J., who confirmed the said sale as per order dated 15-7-1960.

3. The gravamen of the charge of the appellants is that the sale price is grossly inadequate --far below the realisable value of the property put up for sale. In support of their contention they urge that the book value as indicated by the balance sheet of the said Mills of 1956 is Rs. 44,45,163. This value should be taken with some reservation and one cannot gather a true picture of the price from the figures given in the balance sheet. Even otherwise, there are a few

other circumstance''s which impel us to hold that the price fetched at the auction is inadequate. The Committee of Inspection has unanimously resolved that the highest bid of Rs. 15,20,000/- is grossly low and has no relation to the value of the property put up for sale.

One of the members of this Committee as is evident from the records is Shri B. K. Murthy, B. E,, (Mcch.) M. Sc. (Tech.) who was the former principal of the Technological Institute. Bangalore and Director of Textiles. His opinion therefore is entitled to great consideration. Even the Official Liquidator appointed by this Court has. in unmistakable terms stated that the highest bid realised is rather too low. The Textile Commissioner appointed by the Government of Mysore it is urged has valued these Mills in the year 1957 at Rs. 25,00,000. Taking into consideration all these factors we consider that there is much force in the contention of the appellants that the price realised at the auction is inadequate and low.

4. The Milts have two sets of creditors (1) the secured creditors (2) the unsecured creditors. In the former category are the Mysore Bank (now the State Bank of Mysore) to whom a sum of over 2 lakhs is due, the Government ot Mysore to whom amounts are due in respect of tuxes etc. Then there are the dues in respect of provident Fund and wages due to the labourers etc., of the Mills If the amounts due to the above is deducted from the amount realised from the sale, there will he hardly any amount left to pay even a small part of the debts, to the unsecured creditors. In fact, if the sale is confirmed they will he hard hit. This is again another consideration for not confirming the highest bid at the sale.

5. No adverse comment is made regarding the conduct of the sale. The appellants, however, content themselves by urging that the publication is not sufficient. No doubt publicity is given regarding the auction of the mills in nine newspapers and journals. Only one insertion is made in each of them. It is urged on behalf of the appellants that more than one advertisement would be necessary. Though the cost of advertisement would be fairly high, it would be in the interest of the creditors that as wide a publicity as possible is given in the leading newspapers and journals. Though a number of enquiries were received by the Official Liquidator, only three Parties bid at this auction.

The highest bid of Sri Veerabhadrachettiar was Rs. 11,50,000/-, while the Government of Mysore''s highest bid was of Rs. 15,20,000/-. The highest hid of the respondents. Davangerc Cotton Mills is Rs. 5,000/- more than that of the Government. This indicates lack of sufficient bidders at the auction. All these circumstances impel us to conclude that a resale should be held.

6. It is urged by Sri Narasimha Murthy, the learned advocate appearing for the respondent auction purchasers that this Court has no jurisdiction to sit in anneal over the orders of the Hon''ble Company Judge. Reliance is placed on Section 13 of the Mysore High Court Act which runs as follows:

"Appeals against references regarding, and applications for revision of judgment, decrees, orders or sentences passed by a Judge of the High Court, in the exercise of the original Civil and Criminal jurisdiction conferred upon it u/s 12 or vested in it under any law for the time being in force, shall, when allowed by law, be heard either by a Bench consisting of two other Judges of the High Court or by the Full Bench of the said Court, as the State Government may by notification published in the official Gazette, from time to time direct."

It is however, admitted by the learned counsel that the original jurisdiction in Company matters has been exercised by a Judge of this Court sitting singly, but he contends that there is no notification of the State Government published in the official Gazette empowering an appeal therefrom. Thus contention is without force. Under the Rules of this High Court as per Clause (2) of Rule 1 in Ch. III:

"Where any original jurisdiction conferred on the High Court by any law For the time being in force is exercised by a single Judge of the High Court any appeal or other proceeding when allowed by any such law directed against any judgment, decree, order or sentence made or passed by such single Judge shall be heard and determined by a Bench consisting of not less than two other Judges of the High Court or such number of other Judges as the law may require or specily."

Per contra it is argued on behalf of the appellants that Section 483 of the Indian Companies Act gives inherent power of appeal. That section runs as follows:

"Appeals from any order made or decision given, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

Company matters are decided by this Court in the exercise of its original jurisdiction conferred upon it by the Companies Act. If so, an appeal ''shall'' lie to the same Court. In other words, a substantive right of appeal is given to the parties. The later portions viz., ''In the same manner in which and subject to the same conditions under which'' are only the procedural part thereof. These latter which are only procedural in nature can in no way abrogate or diminish the powers of appeal given under the substantive part of the section. Hence the objection raised by Sri Narasimha Murthy is without substance.

This view is supported by the decision of the Bombay High Court in the case of Bachharaj Factories Ltd. Vs. Hirjee Mills Ltd., . His Lordship Chagla, C. J., delivering the judgment has stated as follows:

"The first part of Section 202 (section dealing with appeals under the old law) confers substantive right upon a party aggrieved by an order made or a derision given by a Company Judge in winding up, The second part of Section 202 does not in any way cut down or impair the substantive right already conferred by the first part of Section 202. The second part which deals with the manner and the conditions in which an appeal may be preferred only refers to the procedural aspect of an appeal and the forum to which the appeal would lie.''''

7. It is agreed by the appellants that they should meet the expenses to be incurred For conducting a fresh sale. It is advisable, as stated above, that there should be publications in two issues and if possible, in more prominent places in nine newspapers and journals. For costs of so advertising and other incidental expenses the appellants will have to deposit a sum of Rs. 2,000/- with the Official Liquidator within a week from this date. This sum will be paid in moiety by both the appellants as per the joint memo filed this day. It is submitted by the learned counsel for the respondent-auction-purchaser that his client has incurred expenses during the purchase and in particular, has borrowed large sums of money by paying interest at rates ranging from 6 1/2 to 7 1/2 per cent.

It is just and equitable that he should be compensated suitably. The Official Liquidator has invested the amount realised at the auction in the State Bank of Mysore. The interest so realist on the principal as well as on the amount of interest which have thus been invested in the State Bank of Mysore by the Official Liquidator will be paid to the auction-purchaser. Besides he will he entitled to the refund of the bid amount, as well. The appellant M/s. Premier Insurance Company (Appellants in M. A, 128/1960) will pay an extra sum of Rs. 6000/- to the auction-purchaser towards loss of interest within a week from this date as per the joint memo. The sale is set aside subject to these conditions. The amount of Rs. 8,000/. will be a charge on the assets of the Company subject to (1) any prior charge made during the liquidation proceedings; (2) the claims of the secured creditors.

8. Taking into consideration all the facts and circumstances of the case, we are of the view that the sale should be set aside and these appeals allowed, aS regards costs, however, we order that under the circumstances of the case each party should bear their own costs of this appeal.

9. Call for further orders on 23-8-1960.

Hegde, J.

10. I had the benefit of going through the order prepared by my learned brother. I agree with that order, but I would like to add a few words.

11. In deciding whether the sale held should be confirmed or not, the primary consideration is whether the Court is satisfied that the price fetched is adequate. This is also the view taken in the decided cases read to us at the time of the hearing. Taking into account the book value of the property sold, valuation made by the experts in the re cent past, the quality of the machinery as well as its availability in the market, there are good reasons to think that the price fetched is not adequate. It is pointed out to us that the sale in question had not been adequately advertised. The method and manner of advertisement was decided upon after consultation with the learned counsel appearing for the parties.

Hence it cannot be said that there was any omission on the part of the Official

Liquidator. But that aspect is not relevant for our purpose. The learned counsel appearing for the appellants appear to be right in their contention that it would have been proper to have advertised the sale by making more than one insertion in the papers concerned. No doubt this is being wise after the event. We are mindful of the fact that we should not lightly refuse to confirm a sale on inadequate grounds and thus deprive the bidder, the fruits of his bid made in pursuance of an order of this Court. We are equally, if not more, anxious to protect the interest of the creditors, particularly the unsecured creditors.

In the circumstance of this case we are convinced that there is no chance of the bid going down if the property is re-auctioned. The amount realised from the auction held is just sufficient to pay off the secured creditors and the secured creditor (particularly the State of Mysore) are interested in seeing that the bid does not go below the mark reached on the last occasion.

12. I agree with my learned brother that the contention of Sri V. L. Narasimha Murthy, challenging the maintainability of the appeal is without force. Section 483 of the Indian Companies Act provides for an appeal against every order passed or decision made by the Court in the exercise of its ordinary jurisdiction. The order under appeal is one such.

13. The nest question is how to implement the provision, providing for an appeal. Section 13 of the Mysore High Court Act, says that appeals against decrees, orders or sentences passed by a Judge of the High Court, in the exercise of the original civil and criminal jurisdiction conferred upon the High Court u/s 12 or vested in it under any law for the time being in force, shall, when allowed by law, be heard either by a Bench consisting of two other Judges of the High Court or by the Full Bench of the said Court as the State Government may by notification published in the official Gazette, from time to time direct.

Sri Narasimha Murthy, the learned counsel for the auction-purchaser naturally makes much of the fact that the State Government has not published any notification as required by that section (Section 13). But the Rules framed by this Court and published in the official Gazette do provide (under Rule I Clause (2) of those Rules) that a Bench of two Judges shall hear all appeals coming within the scope of Section 13 of the Mysore High Court Act. These Rules were made and published with the consent of the State Government. Therefore in substance, if not in form, they may he considered as having been published by the Government by notification in the official Gazette. The true scope of Section 483 of the Indian Commutes Act, if I may say so with respect, is as laid down by Chagla C. J., in the case of (S) Bachharaj Factories Ltd. Vs. Hirjee Mills Ltd., .

14. In the result, these appeals are allowed in the manner indicated in the leading judgment delivered by my learned brother.

15. Appeals allowed.

