

(2017) 01 DEL CK 0168
In the Delhi High Court
Case No : CO. APP. 1 of 2017

V.K Sharma

APPELLANT

Vs

Nemo

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Companies Act, 1956 — Section 478
Companies Act, 2013 — Section 300

Citation : (2017) 140 SCL 347

Hon'ble Judges : Pradeep Nandrajog and Yogesh Khanna, JJ.

Bench : Division Bench

Advocate : Mr. Deepak Khosla, Advocate, for the Appellant; Mr. Rajiv Bahl, Official Liquidator, for the Respondent; Ms. Swati Setia, Advocate, for the Reserve Bank of India

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—The appellant is aggrieved by the fact that concerning an application for public examination of the persons named in the application the learned Single Judge has issued notice to the persons concerned applying the principle of natural justice audi alteram partem.

2. Learned counsel for the Official Liquidator does not dispute the position that the Serious Fraud Investigating Office, under the Union Government has submitted reports concerning land of the company in liquidation in the State of Andhra Pradesh and also by the Income Tax department.

3. The appellant may not have a right to take the lead role in the public examination of any person, but as the ex-Director of the company in liquidation would have a stake in the assets of the company being available to pay the creditors. Learned counsel for the Official Liquidator concurs by stating that public examination of persons is at the discretion of the court, to be exercised as per law and that while conducting the public examination the court can take assistance of any person. Section 478 of the Companies Act, 1956 envisages that

any person can be examined publicly to disclose the assets of a company in liquidation and such other relevant information as would be helpful in the liquidation of the company.

4. We note the facts which are brought to our notice, making it clear that we are not opining on the correctness or otherwise of the said facts because the facts are very hazy and that is why public examination of the persons concerned is prayed for.

5. The case of the appellant is that one Kolla Madhava Reddy had some kind of an arrangement with owners of land in Hyderabad. He was possessed of some documents executed by the land owners. These documents empowered him to interact only with some government authorities concerning the land. No interest in the land was created in favour of Kolla Madhava Reddy. It is further the case of the appellant that Mr. Kolla Madhava Reddy got in touch with the company in liquidation and facilitated sales, agreements to sell etc. by the land owners in favour of the company in liquidation. These lands are the assets of the company. But on the strength of documents and by manipulating record has started taking possession of the land of the company and had started alienating the same. Shri Rajiv Behl learned counsel for the Official Liquidator states that even the Official Liquidator has filed an application for public examination of Mr. Kolla Madhava Reddy.

6. We find that public examination of six persons is prayed for. Four of them appear to be the family members and relatives of Kolla Madhava Reddy.

7. Two other persons Col. M.J. Ganapathy and Mr. N. Durgaiah whose public examination is prayed for are stated to be the ex-Director of the company in liquidation and an agent respectively of the land owners.

8. The issue is no longer res integra. Decision of the Supreme Court reported as (1962) 32 Comp.Cas. 0097 Satish Churn Law v. H.K. Ganguly holds that the court has to decide the application filed before it without the involvement of the person whose public examination is prayed for. No doubt, if a person is summoned for being publicly examined he/she would have to be made known the subject matter and the issues on which the person would be examined. The person would also be entitled for the complaint filed against the person.

9. The position therefore would be that the decision whether or not to publicly examine a person is a decision to be taken by the court with the assistance of only the Official Liquidator or the person who has moved the application. Needless to state that the Official Liquidator or the applicant person would have to prima facie satisfy the court with reference to objective facts that case is made out to publicly examine the person named. The said person cannot participate in said decision making process. Only if the court summons the person would the person have a right to know the material in respect of which the person is being examined so that the person can respond. Proceedings by their very nature are not adversarial and are intended at gathering relevant facts

which would facilitate the assets of a company to be recovered so that the dues of the creditors can be paid in accordance with law.

10. Accordingly we modify the impugned order and direct the learned Single Judge to decide the applications filed before the Company Judge seeking public examination of persons guided by the law declared by the Supreme Court in Satish Churn's case (supra).

11. Shri Deepak Khosla urged that the learned Company Judge be directed to in turn direct public examination of the persons, if directed by the learned Company Judge to be so done, before a Registrar or a Joint Registrar of this Court, a request which was vehemently opposed by Shri Rajiv Behl, learned counsel for the Official Liquidator as according to him that would defeat the purpose of a public examination.

12. We do not deal with said request and leave it open for the appellant to make it before the learned Company Judge who would decide what further course has to be chartered.

13. The appeal is disposed of in terms above.

14. No costs.

15. Dasti under the signatures of Court Master today itself.