

Roymon vs R.Velu

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Court : Kerala

Decided On : Nov-02-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/38157/2022

Appellant : Roymon

Respondent : R.VELU

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 2ND DAY OF NOVEMBER 2023 / 11TH KARTHIKA, 1945 PETITIONERS: 1 ROYMON G., AGED 50 YEARS, S/O JOHN, CHARUVILA PUTHEN VEEDU, KUNDARA, MULAVA P.O., KOLLAM-691 503 2 RAVEENDRAN PILLAI, AGED 59, S/O MURALIDHARAN PILLAI, KOLLARAZHIKATHU VEEDU, CHERUMOODU, KUNDARA, VELLIMON P.O., KOLLAM-691 511 3 R FRANCLIN, AGED 56, S/O ROBERT, 218(1/243) KUNNUM PIRATH WADAKKTHIL VELLIMON WEST P.O., KUNDARA, KOLLAM-691 511 4 KAMALAMMA, AGED 60, W/O MOHANAN PILLAI, VADAKKEKALLUVILA VEEDU, KUNDARA, VELLIMON WEST P.O.,

KOLLAM-691 511 5 JAGADAMMA, AGED 59, W/O BABU, JAYA BHAVANAM, KUNDARA, VELLIMON WEST P.O., KOLLAM-691 511 6 ANITHA KUMARI, AGED 61, W/O SIVANKUTTY, SUDHA BHAVAN, VELLIMON WEST P.O., KOLLAM-691 511 7 THULASIDHARAN PILLAI AGED 68, S/O VASU PILLAI, ULLAS BHAVAN, KUNDARA, VELLIMON WEST P.O., KOLLAM-691 511 8 DINESH CHANDRAN, AGED 53 , S/O RMACHANDRAN NAIR, SREE VILASAM, PADINJATTINKARA, KOTTARAKKARA P.O., KOLLAM-691506 9 SUBHA LEKSHMI, AGED 39, S/O NARAYANA PILLAI, PADMAVILASAM, THERIKKUNNU, KARAVALOOR P.O., KOLLAM-691333 10 M RADHAKRISHNAN NAIR, AGED 59 S/O MURALIDHARAN PILLAI, VAISHNAVAM, NEDUVATHOOR, NEELESWARAM P.O., KOTTARAKARA, KOLLAM - 691505 PRADEEP JOY DHARMYA M.S ANJALY ANN JOSEPH RESPONDENTS:

1 R.VELU, LIQUIDATOR FOR PALM LAGOON BACKWATER, RESORTS PRIVATE LIMITED, VELLIMON, WEST P.O, KUNDARA , KOLLAM DISTRICT, PIN-691511 HAVING OFFICE AT NEW NO.28, OLD NO.22, MENOD STREET, PURASAWALKAM, CHENNAI- 600007

2 THE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH, COMPANY LAW BHAVAN, BMC ROAD, THRIKKAKARA P.S. KAKKANAD, KOCHI, KERALA -682021, REPRESENTED BY DEPUTY REGISTRAR 3 THE LABOUR COURT TD NAGAR, VIDYA NAGAR, KOLLAM, KERALA - 691013 REPRESENTED BY ITS REGISTRAR 4 THE TAX RECOVERY OFFICER CENTRAL 3RD FLOOR, ROOM NO. A- 309, AAYAKAR BHAVAN, AHMEDABAD, GUJARAT - 380009. 5 THE TAHSILDAR (REVENUE RECOVERY) TALUK OFFICE, KOLLAM, KERALA - 691 001 6 THE KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM. VIJAY V. PAUL G.KEERTHIVAS THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners, who are stated to be the employees of the company in liquidation - namely Palm Lagoon Backwater Resorts Private Limited - impugn Ext.P1 order issued by the National Company Law Tribunal (NCLT), vacating the attachment over the assets of the said company, thus permitting the Liquidator, appointed by it, to sell them.

2. To cut the story very short, Sri.Pradeep Joy - learned

counsel for the petitioners, submitted that when the attachment was so lifted, his clients had been left without any remedy, but to approach this Court; however, then conceded that, under the interim orders of this Court, an amount of Rs.20,00,000/- (Rupees twenty lakhs only) - which is more than the claim made by his clients - has been ordered to be placed in deposit. He, however, added that no such Fixed Deposit receipt has been produced before this Court by the Liquidator until now; and further complained that the Liquidator has taken a stand against the status of his clients, in spite of the fact that he had no competence to do so. The learned counsel, on such imputations, went to the extent of raising suspicion about the integrity, honesty and bona fides of the Liquidator.

3. Sri.Joseph Kodiyanthara - learned senior counsel,

instructed by Sri.Vijay Paul, appearing for the first respondent -Liquidator, submitted that the amount of Rs.20,00,000/- has already been deposited with the Bank, with a lien marked in favour of the Registrar General of this Court; and therefore, that there is no reason for the petitioners to continue with the challenge against Ext.P1 order. He submitted that since they themselves admit that their claims are sufficiently secured by this deposit, he leaves it to this Court to issue appropriate orders, including to the NCLT, to consider their claims and offered to maintain the said deposit intact until such time. The learned senior counsel was also fair in submitting that, since the petitioners are only employees of the company in liquidation, their claim may be directed to be considered by the NCLT, with the empathy that it deserves; explaining that solely because of the pendency of this writ petition, further liquidation has been held up.

4. The files of this case reveal that summons to the other

respondents have been dispensed with; and, in any event, I am also of the view that it is not necessary, in the nature of the directions that I propose hereunder.

5. As is evident from the afore narrative, the petitioners'

claims are now sufficiently secured by the Fixed Deposit mentioned above. However, the said deposit will have to be now altered to carry the lien in favour of the NCLT, since it is now for the said Tribunal to consider their claims.

6. Sri.Joseph Kodiyanthara, learned senior counsel, being

aware of this, submitted that his client will make a fresh Fixed Deposit from a Nationalised Bank in Kerala; marking lien over it in favour of the NCLT and produce it before the said Authority. In the afore circumstances, this writ petition is ordered in the following manner:

(a) The challenge of the petitioners to Ext.P1 is not answered, as being unnecessary.

(b) I order the first respondent to book a Fixed Deposit,

for a sum of Rs.20,00,000/- in a Nationalised Bank in Kerala, with lien marked to the Registrar, NCLT, Kochi; and this shall be furnished to the said Tribunal, within a period of ten days from the date of receipt of a copy of this judgment.

(c) The NCLT is directed to consider the

claims/application of the petitioners under the Regulations and take a decision as to their entitlement, following due procedure and after affording them necessary opportunities of being heard.

(d) For the afore purpose, the petitioners are allowed to

make an application before the NCLT in terms of Regulation 42; and if this is done within a period of two weeks from the date of receipt of a copy of this judgment, the same shall be accepted by it, as having been filed in time.

(e) Until such time as the directions in (c) and (d) are

complied with and the resultant order communicated to the petitioners as per the Rules, the Fixed Deposit ordered in direction (b) above, shall remain without being acted upon and will be thereafter dealt with in terms of the said decision.

(f) Needless to say, in view of the afore directions, the

first respondent is given full liberty to act in terms of the orders of the NCLT and to continue with the liquidation of the company in terms of law. Sd/- DEVAN RAMACHANDRAN JUDGE stu APPENDIX OF WP(C) 38157/2022 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE IMPUGNED ORDER OF NCLT, KOCHI DATED 24.06.2022 IN IA(IBC)/ 61(KOB)/ 2022 IN IA(IBC)/159(KOB)/2021 IN TIBA/09(KOB)/2019 UNDER SECTION 60(5) READ WITH SECTION 32A, SECTION 35(1)(N) OF THE INSOLVENCY AND BANKRUPTCY CODE 2016 AND READ WITH RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 SETTING ASIDE THE

ORDER OF ATTACHMENT ON THE ASSETS OF PALM

LAGOON BACKWATER RESORTS PRIVATE LIMITED PASSED BY LABOUR COURT, KOLLAM IN P.W.A NO.1/2016 DATED 10.05.2016 PURSUANT TO AN APPLICATION FILED BY THE PETITIONERS HEREIN UNDER SECTION 15 OF THE PAYMENT OF WAGES ACT 1936. Exhibit P2 A TRUE COPY OF THE ATTACHMENT ORDER DATED 10.05.2016 GRANTED BY HON'BLE LABOUR COURT, KOLLAM IN P.W.A NO.1/2016 PURSUANT TO AN APPLICATION FILED BY THE PETITIONERS HEREIN UNDER SECTION 15(2) & 16 OF THE PAYMENT OF WAGES ACT,1936.

Exhibit P3 THE APPLICATION FILED UNDER SECTION 15(2) AND 16 OF THE PAYMENT OF WAGES ACT 1931 AS P.W.A. NO. 01/2016 Exhibit P4 A TRUE COPY OF THE CERTIFICATE FOR RECOVERY OF SUM OTHER THAN PUBLIC REVENUE DUE ON LAND DATED 06.07.2021 Exhibit P5 A TRUE COPY OF THE DEMAND NOTICE DATED 26.07.2021 Exhibit P6 A TRUE COPY OF THE APPLICATION FILED BY PETITIONERS HEREIN REPRESENTED BY

PETITIONER NO. 1 TO THE DISTRICT LABOUR OFFICER, KOLLAM Exhibit P7
A TRUE COPY OF THE LIQUIDATION ORDER DATED

16.11.2021 BY NCLT KOCHI IN IA(IBC)/159(KOB)/202 IN TIBA/09(KOB)/2019
FOR LIQUIDATION OF THE CORPORATE DEBTOR Exhibit P8 A TRUE COPY
OF THE INTERLOCUTORY

APPLICATION DATED 08.03.2022 FILED BY RESPONDENT NO.1
HEREIN AS LIQUIDATOR OF PALM LAGOON BACKWATER
RESORTS PRIVATE LIMITED BEARING NUMBER IA(IBC)/159
(KOB)/2021 IN TIBA/09(KOB)/2019 UNDER SECTION 60(5) READ
WITH SECTION 32A, SECTION 35(1)(N) OF THE INSOLVENCY AND
BANKRUPTCY CODE 2016 AND READ WITH RULE 11 OF THE
NATIONAL COMPANY LAW TRIBUNAL RULES, 2016

Exhibit P9 TRUE COPY OF THE LETTER DATED 03.12.2021 ISSUED BY
RESPONDENT NO.1 /LIQUIDATOR TO THE PETITIONERS. Exhibit P10 TRUE
COPY OF THE WRIT PETITION FILED BY THE PETITIONERS WPC 12867 OF
2022 Exhibit P11 TRUE COPY OF THE INTERIM ORDER DATED HON'BLE
HIGH COURT OF KERALA Exhibit P12 TRUE COPY OF THE JUDGMENT
DATED 31/5/2022 IN WPC 12867/2022 PASSED BY THE HON'BLE HIGH
COURT OF KERALA RESPONDENT'S EXHIBITS: Exhibit R1(a) True copy of the
sale deed for the parcel of land owned by the Corporate Debtor Exhibit R1(b) True
copy of the order dated 20.09.2019 in TIBA/9/KOB/19 (CP No. 1312 of 2018-
NCLT Chennai) Passed by NCLT, Kochi Exhibit R1(c) True copy of the order
dated 16.11.2021 in I.A (IBC)/159/KOB/2021 passed by NCLT, Kochi. Exhibit
R1(d) True copy of the order dated 10.05.2016 in PWA No.1/2016 passed by the
Labour Court, Kollam. Exhibit R1(e) True copy of the order dated 26.04.2019 in
CP(IB)/127/7/NCLT/AHM of 2017 passed by NCLT , Ahmedabad. Exhibit R1(f)
True copy of the Interim Application filed by the 1st respondent herein IA/
(IBC)/61/KOB/2022 IN IA(IBC)/159/KOB/2021 in TIBA/9/KOB/2019. Exhibit R1(g)
True copy of the order dated 24.06.2022 in I A(I BC)/61 /KOB/2022 in IA
(IBC/159/KOB /2021 in TIBA/9/KOB/2019 passed by NCLT, Kochi. Exhibit R1(h)
True copy of writ petition W.P. (C.) No. 12867 of 2022 filed by 1st Petitioner herein

in the Kerala High Court Exhibit R1(i) True copy of the Counter filed by the 1st Respondent herein in W.P. (C.) No. 12867 of 2022 in the Kerala High Court filed without enclosures/exhibits

Exhibit R1(j) True copy of the Judgment in W.P. (C.) No. 12867 of 2022 passed by the Kerala High Court Exhibit R1(k) True copy of the Interim Application IA No.192/2022 in PWA 1 of 2016 filed by the 1st Respondent herein in Labour Court, Kollam Exhibit R1(l) - True copy of the letter dated 08.12.2019 sent by the 1st Respondent to the 1st Petitioner at the CIRP stage Exhibit R1(m) True copies of the letter dated 03.12.2021 sent by the 1st Respondent to the 1st Petitioner at the Liquidation stage Exhibit R1(n) True copies of the letters dated 28.01.2022 sent by the 1st Respondent to the Petitioners rejecting their claims Exhibit R1(o) TRUE COPY OF INTERIM APPLICATION I. A. (I

B C) NO 307 OF 2022 IN 1 A (IBC)/159(KOB)/2021 IN T1BA/09/KOB/2019 (WITHOUT ANNEXURES). FILED BY THE PETITIONER HEREIN IN NCLT. KOCHI. Exhibit R1(p) - TRUE COPY OF ORDER DATED 26-02-2020 IN P.W. A. NO. 01 OF 2016 PASSED BY THE 3RD RESPONDENT IN THE ABOVE WRIT PETITION

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