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Court : Delhi

Decided On : May-11-1973

Reported in : 9(1973)DLT357

Judge : P.N. Khanna and; Prithvi Raj, JJ.

Acts : Constitution (Thirtieth Amendment) Act, 1972 - Sections 3(1) and 3(2); [Constitution of India](#) - Article 133 and 133(1); Companies Act

Appeal No. : Second Appeal No. 266 of 1972

Appellant : Abnash Kaur

Respondent : The Lord Krishna Sugar Mills Ltd., Delhi and ors.

Advocate for Pet/Ap. : G.C. Mittal,; Ved Vyas and; S.P. Aggarwal, Advs

Judgement :

P.N. Khanna, J

(1) This order will dispose of three separate applications, SCAs 266, 267 and 268 of 1972, filed by Smt. Abnash Kaur. herein referred to as 'the petitioner', under Article 133 of the [Constitution of India](#), for the grant of a certificate of fitness for appeal to the Supreme Court, against our judgment dated May 11th, 1972, where by we disposed of three Company Appeals Nos. 8, 10 and 11 of 1971. All the three appeals were directed against the judgment dated May 27, 1971 of the learned

Company Judge, refusing the petitioner's prayer in her application for winding up of the company. Lord Krishna Sugar Mills.

(2) MR.G.C.MITTAL. appearing on behalf of the petitioner, submitted that she was entitled as a matter of right to the grant of a certificate of fitness as the amount or value of the subject matter in dispute in the court of first instance and still in dispute on appeal was and is not less than Rs 20.000.00 and the judgment involved directly or indirectly claim or question respecting property of the like amount or value : and especially as our judgment was said to have not affirmed all the material decision) and the operative part of the judgment of the learned Company Judge. The learned counsel urged that the application for the grant of the certificate having been filed before the coming into force of the Constitution (Thirtieth Amendment) Act, 1972, herein called 'the Amendment Act', which came into force on February 27, 1973, the petitioner's application was governed by Article 133 of the Constitution. as it stood before the date.

(3) The contention of the learned counsel is erroneous. Sub-section (2) of section 3 of the Amendment Act creates an absolute bar to an appeal to the Supreme Court unless the appeal satisfies the provision of clause (1) of Article 133 of the Constitution as amended by the Amendment Act. There are, however, two exceptions provided by sub-section (1) of section 3 of the Amendment Act, viz. (a) appeal, which immediately before the commencement of the Amendment Act was pending before the Supreme Court, and (b) an appeal preferred after the commencement of the Amendment Act by virtue of a certificate given before the commencement of the Amendment Act under sub-clause (a) or (b) or (c) of clause (1) of Article 133. The present case is not covered by any of the aforesaid two exceptions. Neither the appeal is pending nor has the certificate applied for been given before the commencement of the Amendment Act. The mere filing of the application for the grant of such a certificate before the commencement of the Amendment Act is of no avail. The grant of certificate of fitness shall depend upon the appeal satisfying the provisions of Article 133(1) as amended.

(4) Under clause (1) of Article 133 of the Constitution, as now amended by the Amendment Act, an appeal lies to the Supreme Court from any judgment, decree

or final order in a civil proceeding of a High Court if the High Court certifies (a) that the case involves a substantial question of law. (b) that the said substantial question of law is of general importance, and (c) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(5) By the impugned judgment, we held that the Company in question could not be said to be a partnership in the guise of a company and the question of the applicability of partnership principles for its winding up would not arise; and further that even if for any reason such principles are considered to be applicable, the case in hand was not a fit case where the same could be so applied. We held "the company after all, on incorporation, becomes an entity different from a partnership. And the rules for dissolving a partnership on just and equitable grounds cannot easily be imported in a case for dissolving a company on similar grounds. There may be cases where partnership principles may be applicable; such as deadlock cases, both apart from other things, the provision in the Articles, whereby the deadlock, if any, can be resolved and the availability of the alternative remedies, cannot be ignored. Specific provision have been made in the Companies Act, to which we will refer later, which have been made available to the shareholder, in suitable cases, remedies not open to a partner in a partnership."

(6) We were therefore, unable to persuade ourselves to agree with the view expressed by the Division Bench of the Calcutta High Court in *Raghunath Prasad Jhunjhuwala v. Hind Overseas Private Ltd* where the Calcutta Bench disagreeing with the views of the Single Judge of that Court, was of the opinion that if a private company could be fairly called a partnership in the guise of a private company, then the things which might be a ground for dissolution of a partnership will apply also in the case of a private company. Deadlock was not considered material.

(7) This question about the applicability of the principles governing the dissolution of a partnership to the winding up of a company is a substantial question of law and in our opinion of general importance. As there is a conflict of opinion, expressed by the various High Courts, we are of the view that the said question needs to be decided by the Supreme Court. We, therefore, certify that the case involves a substantial question of law of general importance, which needs to be

decided authoritatively by the Supreme Court. The necessary certificate shall be issued. There shall be no order as to costs.

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