

State of Kerala Vs. Official Liquidator, Sitaram Spinning and Weaving Mills Ltd. (In Liquidation)

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Court : Kerala

Decided On : Nov-22-1971

Reported in : [1972]42CompCas628(Ker)

Judge : T.C. Raghavan, C.J. and; P. Unnikrishna Kurup, J.

Acts : Indian Companies Act, 1913 - Sections 185

Appeal No. : A.S. No. 295 of 1966

Appellant : State of Kerala

Respondent : Official Liquidator, Sitaram Spinning and Weaving Mills Ltd. (In Liquidation)

Advocate for Def. : T.S. Venkiteswara Iyer, Adv.

Advocate for Pet/Ap. : Government Pleader

Disposition : Appeal dismissed

Judgement :

Raghavan, C.J.

1. The State of Kerala is the appellant and the official liquidator, Sitaram Spinning & Weaving Mills Ltd. (in liquidation), Trichur, the respondent.
2. In July, 1953, a creditor of the mills filed a petition for winding up ; and the Government, to prevent a large number of labourers, about 2,500, being thrown out of employment, approached the company court and applied for allowing the Government to manage the mills under orders of the court. In September, 1953, the court passed an order ; and in October, the mills were handed over to the Government. In January, 1954, the order for winding up was also passed. Subsequently, on a suggestion by the court, the Government agreed to advance up to Rs. 8,25,000, if a mortgage with possession was executed by the liquidator in favour of the Government. This was sanctioned by the court ; and in March, 1956, a mortgage with possession was also executed. The Government, in terms of a provision contained in the mortgage deed, insured the mills for Rs. 5,53,820, the book value of the assets. A fire broke out in the mills ; and a good portion of the mills was gutted. After the fire, the company court was moved for an order that the Government was liable since they committed breach of the provisions in paragraph 10 of the mortgage deed by not insuring for the value of the assets of the mills on the relevant date, which came to about Rs. 20,00,000, and insuring, instead, for the book value of the assets. The Government objected to the jurisdiction of the company court to investigate and decide that question under Section 185 of the Companies Act, 1913. The lower court overruled the objection and the State has appealed against that decision.
3. Section 185 of the Companies Act provides that at any time after making the winding-up order, the court may require any contributory, any trustee, receiver, banker, agent or officer of the company to pay, deliver, surrender or transfer forthwith, etc., to the official liquidator any money, property or documents in his hands to which the company is prima facie entitled. Since some of the decisions cited before us refer to Section 188 of the Companies Act as well, we shall point out that, under this section, the court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the account of the official liquidator in any scheduled bank as defined in the relevant section of the Reserve Bank of India Act instead of to the official liquidator himself.

The relevancy of this section is that the expression ' other person ' in this section is interpreted to mean persons from whom money is due under Section 185. Section 185 contemplates two things : that the court can direct only such persons mentioned in the section to pay or deliver money or property or documents to the official liquidator, and (2) such an order could be passed only if the court finds that such money, property or documents the official liquidator is prima facie entitled to.

4. A few decisions have been brought to our notice by the counsel on both sides on the interpretation of Section 185. The first decision is the Division Bench ruling in *John Bros. v. Official Liquidator, Agra Spinning and Weaving Mills Co. Ltd.*, [1936] 6 Comp. Cas. 219 ; A.I.R. 1936 All, 808 wherein it has been laid down that there is no provision in the Companies Act which enables the company judge to recover or authorise recovery of money in the hands of or recoverable under contracts entered into by the liquidator during liquidation from persons not expressly mentioned in Section 185 by summary procedure ; and that, in cases other than those mentioned in Section 185, the only course open to the liquidator is to institute suits in the regular way. The next decision is again of the Allahabad High Court, by a single judge, in *Official Liquidators, Gorakhpur Electric Supply Co. Ltd. v. Siemens (India) Ltd.*, [1941] 11 Comp. Cas. 17 ; A.I.R. 1940 All. 514 where the learned judge has observed that Section 185 does not give the court any power to pass orders against persons other than those mentioned in the section ; and that Section 188 does not give the court power to direct payment from persons other than those mentioned in Section 185. The next two decisions are of the Madras High Court, the first in *Jagannath Sowcar v. S. V. Sripathibabu Naidu*, A.I.R. 1945 Mad. 297. This case was not under the Companies Act, but the decision has been cited for the purpose of claiming that a mortgagee in possession is not a trustee in the strict sense of the term, though he holds a fiduciary character. From this it is sought to be argued that, in the case before us, where the State is a mortgagee, the State cannot be said to be a trustee even though the State holds the property in a fiduciary character. The next decision is more relevant ; and that was a case under Section 185 of the Companies Act--the decision in *P. S. Venkatarama Ayyar v. K. P. Sarvothama Rao*, [1937] 7 Comp. Cas. 66 ; A.I.R. 1937 Mad. 401. There, Varadachariar J., who spoke for the Division Bench, has observed that Section 185 of the Companies Act does not

contemplate an elaborate enquiry, but the discretion must be left to the court to decide whether any particular claim can or cannot be conveniently dealt with under that section. And then comes the decision of the East Punjab High Court in *Liquidators, Janda Rubber Works Ltd, v. Collector of Bombay*, [1950] 20 Comp.Cas. 141; A.I.R. 1950 E.P. 204. In this case as well, a Division Bench of the East Punjab High Court has laid down that the power under Section 185 of the Companies Act to order delivery of property of a company to the official liquidator can only be used against the persons specified in the section and not against third parties ; and that the Companies Act does not give any power to the court to adjudicate upon questions of title which are in dispute between a liquidator and third parties.

5. Regarding these propositions, there cannot be any doubt, because the language of the section itself is clear on that point. The only problem is as to how to find out whether a particular case comes within the scope of Section 185. We may also, in this connection, refer to the decision of the Supreme Court in *Gaya Sugar Mitts Ltd. v. Nand Kishore Bajoria*, [1955] 25Comp. Cas. 2 1/2; A.I.R. 1955 S.C. 441. In that case, there was a suit by a director of a company against its managing director ; and pending suit, the parties, under an agreement, framed a scheme regarding the future working of the company. They also agreed to pay off the debenture holders and the preference shareholders and thus reduce the capital of the company. Two persons were appointed as trustees for the purpose of selling the shares of another company belonging to the company and to utilise the proceeds for redemption of the preference shares. Somehow, neither a meeting of the creditors was held, nor sanction of the court was obtained for reduction of the capital, with the result that the proposed scheme was never implemented. The two persons who were styled as preference trustees sold the shares of the other company and came by the sale proceeds. Subsequently, the company went into liquidation ; and the official liquidator sought to recover the moneys in the possession of the trustees under Section 185 of the Companies Act. The Supreme Court upheld the claim and observed that the trustees were agents of the company and, hence, they were amenable to the proceeding contemplated by Section 185. The Supreme Court observed :

' The relationship of principal and agent need not be expressly constituted and can be brought about by implication of law on a particular situation arising or from the necessity of a case.'

6. In the circumstances pointed out by us hereinbefore, where we narrated the facts of the case, it is clear that the State is an agent of the company. The State, as already indicated, came into the picture on its own in 1953, to prevent the throwing out of the workers and undertook to manage the company under orders of the company court. And the State managed the company as well under orders of the court submitting accounts and also depositing into court amounts received by them. It was thereafter that the mortgage came to be executed. We do not find anything in the mortgage, wherefrom we can hold that the position of the State became different after the execution of the mortgage. There is also a decision of this court in *State of Kerala v. T. B. Seetharama Iyer*, (A.S. No. 216 etc., of 1963) wherein this court has stated in unequivocal terms that the Government was in the position of an agent functioning under the orders of the company court. That decision remains, and the position too. And it is clear that the Government is amenable to the jurisdiction of the company court under Section 185.

7. The next argument is that the question raised involves an investigation to find out whether any amount is due to the company and, therefore, the case will not come within the expression ' to which the company is prima facie entitled ' in Section 185. To that, our short answer is the answer Varadachariar J. gave in the Madras decision already noted. The learned judge observed :

' It is true the section does not contemplate an elaborate enquiry, but the discretion must be left to the court to decide whether any particular claim can or cannot be conveniently dealt with under that section.'

8. The lower court has thought that this is a question which that court can conveniently consider ; and we do not also feel otherwise.

9. In the result, the decision of the lower court is confirmed and the appeal is dismissed with costs.

