

B. Matha Gowder Vs. M.S. Kada Gowder

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Court : Chennai

Decided On : Apr-26-1960

Reported in : AIR1961Mad172; [1962]32CompCas643(Mad)

Judge : P.V. Rajamannar, C.J. and ;Veeraswami, J.

Acts : [Companies Act, 1913](#) - Sections 185 and 195

Appeal No. : A.A.O. No. 13 of 1957

Appellant : B. Matha Gowder

Respondent : M.S. Kada Gowder

Advocate for Def. : Pais, ;Lobo and ;Alwares, Adv.

Advocate for Pet/Ap. : K.S. Sankara Iyer, Adv.

Disposition : Appeal dismissed

Judgement :

Rajamannar, C.J.

1. This is an appeal against the order of the learned District Judge, Coimbatore, in I. A. No. 433 of 1954 on his file in O. P. No. 225 of 1952 on the file of the High Court, Madras.

2. Kundah Trading Co., Ltd., was directed to be wound up by an order of this court dated 22-9-1953 in the said O. P. No. 225 of 1952. On the 28th January 1954 the above interlocutory application was filed by the appellant purporting to be under Sections 185 and 195 of the Indian Companies Act, 1913 against the respondent herein for the following reliefs: namely, for a direction to the respondent to render an account of his management of the company during his period as managing director, to pay all sums that may be found due by him to the company and to restore to the company the unlawful gain to the tune of Rs. 49000 illegally made by him in the matter of purchase of the tea factory belonging to the company and to pay other sums, namely, Rs. 7500, being the price of tea taken by the respondent and Rs. 21,000 alleged to be due as consideration for the assignment to the respondent of a promissory note executed by the appellant in favour of the company.

The affidavit filed in support of the application contained the following allegations. On 19th May 1948 the tea factory, at Hibbada together With its fixtures was agreed to be sold by the company to the appellant on the understanding that the appellant would take over the outstandings (Rs. 73007-11-4) found due to the company and discharge the company's debts which amounted to Rs. 184951-1-3. In other words the sale was for a consideration of Rs. 1,12,000.

The transaction, however, fell through, On 5th July 1946 the same factory was agreed to be sold to the respondent herein for a sum of Rs. 70700. The respondent had been the managing director of the company from 30th July, 1945 upto 5th July 1946 on which date he resigned from the said office, though he continued to be a director till 29th July 1947 on which date he resigned from that office also. The said price of Rs. 70700 was further reduced to Rs. 63,200.

The tea stock worth about Rs. 20,000 was taken for Rs. 7500 and even this amount had not been paid. The sale deed executed by the company in favour of the respondent directed the respondent to discharge certain debts, which he did not discharge. On the other hand, the directors had to borrow monies to make part payments towards the said debts. The company assigned in favour of the respondent a promissory note which the appellant had executed in favour of the

company on 5th September 1946, as security for any deficit which may be due to him in the course of his management of the company.

There was no consideration for the assignment in favour of the respondent, but he filed a suit on the foot of the said promissory note against the appellant, O. S. No. 16 of 1947 and obtained a decree therein. On these allegations the appellant charged the respondent with misfeasance as the company had lost by the reduction of the sale price to an extent of Rs. 49000 and as quantities of tea worth nearly Rs. 29000 had been taken by the respondent for a sum of Rs. 7500.

The respondent was also said to be guilty even of other acts of misfeasance committed by him as managing director and as director of the company. The respondent pleaded inter alia that the appellant had no locus standi to file the application and that the proper person to file the application was the Official Liquidator, that the appellant was a bitter enemy of his and that the application had been filed out of spite and to wreak his vengeance on the respondent for having obtained a decree against him in O. S. No. 16 of 1947. The respondent further stated that the resolution which sanctioned the sale in his favour was passed at a meeting of the shareholders.

The respondent further denied the several allegations made by the appellant that he had caused loss to the company. He stated that he had actually discharged debts and had paid Rs. 7500 for the tea stock. Regarding the promissory note executed by the appellant in favour of the company which had been assigned to him, the respondent stated that the allegations were all irrelevant for the purpose of the present application. The respondent also relied on the fact that the appellant was a party to the several resolutions in pursuance of which the sale in his favour was concluded and he also relied on an order of consent passed in C. M. A. No. 71 of 1951 on the file of this court.

3. The learned District Judge of Coimbatore held that the appellant was entitled to maintain the application but that he had failed to establish that the company had lost by any act of misfeasance on the part of the respondent. If any money was due to the company from the respondent it was for the Official Liquidator to take proper proceedings. He also held that the assignment of the promissory note

executed by the appellant in favour of the company was not relevant to this application.

The learned Judge's conclusion was that the appellant had not proved any of the charges levelled against the respondent to make him liable to make good any money to the company which he had retained or which he had secured utilising his position as a director of the company. He therefore dismissed the application and hence the present appeal. The appellant's application, as already mentioned, purports to be under the two sections of the Companies Act of 1913, namely, Sections 185 and 195. In so far as they are material they run thus:

Section 185 : 'The court may at any time after making a winding up order require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the court directs to the official liquidator any money, property or document in his hands to which the company is prima facie entitled.'

Section 195(1): The Court may, after it has made a winding up order summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company or any person whom the court deems capable of giving information concerning the trade, dealings, affairs or property of the company.' It is not necessary to embark on a discussion of the question whether a person in the position of the appellant who is a fully paid shareholder can maintain an application under either section. It is clear that under either section the court has discretion to make the order sought and we have no hesitation in holding that in this case the application should not be granted at the instance of a party like the appellant. The appellant was himself a director at all material times relating to the transaction.

If there was any loss to the company the appellant was as much liable to the company as the respondent himself as both were directors. It is highly undesirable that the powers of the Court under Sections 185 and 195 of the Indian Companies Act should be allowed to be invoked by one director against another director.

There can be no doubt that the application is actuated by personal spite and hostility towards the respondent. As a fully paid shareholder the appellant need not be afraid of any liability being cast on him. Having regard to the facts alleged by him it is most unlikely that there will be any surplus assets of the company in which the appellant may be expected to share.

4. There is another circumstance also which we have to take into consideration and that is the part which the appellant played as one of the directors along with the respondent. The appellant now says that the respondent as director occupied a fiduciary position vis-a-vis the company and he used his position as such to obtain undue advantage to himself by purchasing the factory. Evidently he overlooks the fact that he himself had entered into a similar transaction of purchase but only it was not concluded.

The resolution of the Board of directors dated 5th July 1946 was passed unanimously that the tea factory belonging to the company should be offered for sale for Rs. 70700, and sold to the respondent. The appellant was a party to this resolution. The appellant was also a party to the subsequent resolution regarding the reduction of the price. Having regard to the conduct of the appellant it is most undesirable that he should be allowed to proceed with this application and obtain any relief against the respondent.

5. At the same time we feel, having regard to the grave allegations made by the appellant that there should be further investigation with the help of a qualified auditor. The main difficulty is lack of funds to enable the Official liquidator to take further steps. If, however, any person is prepared to place funds at the disposal of the Official liquidator he may employ a qualified auditor to help him in further investigation about the allegations made by the appellant and submit a report to the learned District Judge.

If as a result of the investigation the learned District Judge is of the opinion that a misfeasance application should be filed by the Official liquidator he may direct him to do so. We propose to say nothing on the merits at this stage. One thing we must say, namely, that in any misfeasance application which may be taken out by the official liquidator the appellant should be a party along with the other directors.

6. In the result the appeal is dismissed with costs.

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