

Hiralal Kalyanmalji Seth and Another

Vs

The Gendalal Mills Ltd. and Others

Civil Appeal No. 1229 of 1968

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

28.04.1975

JUDGMENT

GUPTA, J. –

1. The appellants question the propriety of an order under Section 195 of the Indian Companies Act, 1913 made by the District Judge, Jalgaon, on November 22, 1967 summoning the appellants before him for the purpose of examining them concerning the trade, dealings, affairs and property of the respondent company, the Gendalal Mills Limited (in liquidation), Jalgaon. The winding-up of the company had been ordered by the Court on November 3, 1954.

2. The relevant facts are these. On December 31, 1953 the former management of the company executed in favour of the appellants and several other persons a debenture trust deed for rupees fifteen lacs; the immovable property of the company and its fixture including machinery were given as security. On June 24, 1954 the management of the company executed an unattested deed of hypothecation to the tune of rupees ten lacs in favour of the second appellant; the movables of the company were hypothecated under this deed. Sometime in July, 1954 the debenture trustees proceeded to enforce the security and appointed the first appellant as receiver on their behalf. The receiver took possession of the entire property of the company and worked the mill till July 29, 1954 when one Indulal Girdharilal Lakhia made an application to the court for the winding-up of the company. On November 3, 1954 the court passed the order for winding-up. The debenture trustees had the properties of the company sold in enforcing the security after the winding-up order had been made. The official liquidator whom the court first appointed having resigned, the respondents before us were appointed joint official liquidators on June 7, 1955. The impugned order under Section 195 of the Indian Companies Act, 1913 was made on the prayer of the official liquidators. In their application asking the court to exercise its powers under Section 195, the official liquidators also alleged the debenture trust deed was a sham document executed to defraud the unsecured creditors, and that the debenture trustees had the properties of the company sold after the winding-up order was made without the knowledge and permission of the court.

3. On the application of the official liquidators containing the said allegations and the facts summarized above, the District Judge, Jalgaon, made the impugned order under Section 195(1) on the view that the appellants were persons capable of giving information concerning the trade, dealings, affairs and the property of the company. The appeal taken against this order was dismissed summarily by a learned Single Judge of the Bombay High Court. The Letters Patent appeal preferred from the decision of the learned Single Judge was also dismissed summarily by a learned Single Judge of the Bombay High Court. The Letters patent appeal preferred from the decision of the learned Single Judge was also dismissed summarily but with certain observations. Referring to

the contention raised on behalf of the appellants appellants that the debenture trust deed could not be challenged by the liquidators at this stage, the learned Judges observed that it was not clear from the trial Court's order whether a finding on that point was invited, and directed the District Judge that if the question was raised he should allow the appellants to argue that the sale effected by the appellants could not be challenged in the liquidation proceedings. The High Court overruled the other contention that the application made by the liquidators asking the court to exercise its powers under Section 195 was mala fide. The learned Judges observed that on the allegations made by the liquidators in their application it was clear that the liquidators wanted to ascertain how the appellants, who were secured creditors, had dealt with the security, and whether any surplus remained for the unsecured creditors. The appeal before us is by special leave from the decision of the Bombay High Court summarily dismissing the Letters Patent appeal.

4. The only submission made before us on behalf of the appellants is that the application made by the liquidators to the court invoking its powers under Section 195 was not maintainable. We do not find any substance in this contention. In their application the liquidators stated certain facts on which the court thought that the appellants were capable of giving information concerning the trade, dealings, affairs and property of the company. This is what the court said :

Unless the information regarding the debenture trust deed, dated December 31, 1953. The unattested hypothecation deed dated June 24, 1954, the affairs of the company during the possession of the receiver (opponent No. 1) on behalf of the debenture trustees, the alleged sales of properties of the company by the opponents and other trustees, the sale prices thereof, their utilisation, etc., is collected it is well high impossible to proceed with this winding-up proceedings in this Court in the interest of other creditors of the company whose debts are to the tune of rupees twenty-six lacs.

Under Section 195 the Court may, after it has made a winding-up order, summon before it persons whom it thinks capable of giving such information. It cannot be said, in the circumstances outlined above, that the discretion was arbitrarily or capriciously exercised.

5. On behalf of the appellants a prayer was made that in any event we should ask the court to determine the questions it proposed to ask the appellants before their examination started. We do not think that this is possible. The matter is in the discretion of the court that has the control of the Winding-up and it is for that court only to define the area of examination and decide what would be the necessary questions for the appellants to answer. Of course the court will not allow the powers under the section to be used for the purposes of vexation and oppression. The enquiry under Section 195 must be just and beneficial for the purposes of the winding-up and must not be aimed at harassing or annoying the persons summoned for examination.

6. The appeal has no substance and is dismissed with costs.

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