

Shanta Genevieve Pommerat and Another

Vs

Sakal Papers Private Limited and Others

Civil Appeal No. 91 of 1983

(D.A. Desai, R.B. Misra JJ)

11.01.1983

ORDER

1. Special leave granted.

2. Petitioners filed Company Petitioner No. 306 of 1980 in the High Court of Judicature at Bombay complaining about the oppression by the respondents in their management of the affairs of the 1st respondent-Company Sakal Papers Pvt. Ltd. The matter came up before the learned Company Judge, who by its judgment and order dated February 2/3, 1981 dismissed the petition and directed the petitioners to pay Rs. 10,000 as and by way of costs to the respondents. Petitioners preferred an appeal against the decisions of the learned Company Judge under the Companies Act, 1956. This appeal was placed for admission before a Division Bench of the Bombay High Court and it was dismissed in limine. Appellants have preferred this appeal by special leave against the order dismissing their appeal by Division Bench in limine.

3. As we are of the opinion that it was not open to the Division Bench of the Bombay High Court to dismiss the appeal in limine, we are at this stage not inclined to examine other contentions on merits.

4. Section 483 of the Companies Act provides that appeal from any order made or decision given in the matter of the winding up of a company by the Court shall lie to the same court to which in the same manner in which and subject to the same conditions under which appeals lie from any order or decision of the court in cases within its ordinary jurisdiction. The company petition filed by the appellants was under section 397, 398 and 403 of the Companies Act. This group of sections is included in Chapter VI headed "Prevention of Oppression and Mismanagement" which in turn falls within Part VI bearing the heading "Management and Administration". Provision for winding up are grouped together under Part VII. Section 483 is placed in Chapter II of the VII. Therefore, at the first blush it would appear that section 483 provided for appeals from any order made or decision given, in the matter of winding up of the company by the Court. Expression 'court' is defined to mean with respect to any matter relating to a company (other than any offence against this Act) the court having jurisdiction under the Act with the respect to that matter relating to that Company as provided in Section 10. Section 10 provides that the court having jurisdiction under this Act shall be

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(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate except to the extent to which jurisdiction has been conferred on any District Court of District Courts subordinate to that High Court in pursuance of sub-section (2); and

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Section 483 confers the right to appeal and forum for the same in respect of any order made or decision given, in the matter of the winding up of a company by the High Court having jurisdiction in the matter. The appeal shall lie to the same court to which in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

5. Now an order under section 397, 398 and 403 of the Companies Act on the face of it. It cannot be said to be an order made or decision given, in the matter of the winding up of a company. Relief undoubtedly under section 397 and/or 398 is in fact an alternative to winding up. No doubt order under Section 397, or 398 could be an order made or decision given by the High Court having jurisdiction under the Companies Act and therefore, an appeal will lie to the Division Bench of the same High Court. This is not disputed.

6. Chapter XLII of the Bombay High Court rules provides for appeals to appellate Court. The Rules make provisions for certain type of appeals to be placed in the first instance, for admission before a bench of the High Court to be appointed by the Chief Justice. It is not in dispute that the appeal which can be placed for the admission under Rule 966-A and it follows from this Rule that the appeal other than those mentioned in that Rule are not to be placed for admission. This point is no more res integra in view of the decision of this Court in Golcha Investment (P) Ltd. v. Shanti Chandra Bafna wherein after considering the provision contained in Rule 966-A it was held that appeals other than those set out in the Rule are not to be placed for admission and they were entitled to be admitted as a matter of course. This Court accordingly quashed the order dismissing the appeal in limine observing that the appellate court erred in summarily dismissing the appeal because it was bound to entertain the same and dispose it of on merits. This observation will mutatis mutandis apply to the present appeal.

7. According this appeal must succeed on this limited ground. We Division Bench of Bombay High Court and remit the case to the appellate bench for the disposal of the same according to law. In other words, the appeal shall not come up for admission but shall be fixed for hearing on merits and disposed of according to law as expeditiously as possible. There shall be no order as to costs of hearing of the appeal in this Court.

8. Mr. R. K. Jain, learned counsel for the appellants urged that this Court should make some order of interim nature. As we have disposed of the matter on a preliminary ground and as we have not heard any contention on merit. It would not be proper for us to examine the question of granting of interim relief. Parties may appear after expiry of two weeks from today before the High Court and seek appropriate relief.

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