

# ANDHRA PRADESH HIGH COURT

Godavari Sugar and Refineries Ltd

Vs.

Kambhampati Gopalakrishnamurthy

A.A.O. No. 179 of 1955

(Chandra Reddy, C.J. and Srinivasachari, J.)

24.03.1955. 05.03.1959

## JUDGMENT

### **Chandra Reddy, C.J.**

1. This is an appeal against the order of Subordinate Judge, Eluru, overruling the objection of the Official Liquidator, the Godavary Sugars and Refineries Ltd., Madras, in an execution petition filed by the respondents (Decree holders) for sale of the appellant's property.
2. The Execution petition was opposed by the appellant, the Official Liquidator, on the ground that permission under Sections 171 and 232 of the Indian Companies Act was necessary before the decree could be put into execution.
3. The circumstances that have led up to this appeal may be briefly stated. The respondents sold Ac. 1-91 cents of land to the Godavary Sugars and Refineries Ltd., for a sum of Rs. 3,800/- under a registered sale deed. Since the vendee failed to pay the sale price, the respondents instituted O. S. No. 2 of 1950 on the file of the Subordinate Judge's Court, Eluru, for recovery of the money due to them. Pending the suit, the company was wound up on a creditor's petition by the High Court of Madras (Original Side) on 29th September, 1952 and one Sri K. R. Vepa was appointed the Official Liquidator. Thereupon, the first respondent filed application No. 3425 of 1953 (Original Side) for leave to continue the suit against the company in liquidation on 10th September, 1953. This Petition was ordered on the 29th September, 1953. The suit ultimately ended in a decree for the amount prayed for on 18th March, 1954. Execution was taken out by the decree-holders in E. P. No. 130 of 1954 on 16th September, 1954. The petition was resisted by the Official Liquidator on the ground stated above.
4. The only question for consideration in this appeal is whether leave of the court is a condition precedent to the respondents proceeding with the execution. The answer to this turns upon the true interpretation of sections 171 and 232 of the Indian Companies Act. Section 171 reads thus :

"When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the

company except by leave of the court, and subject to such terms as the court may impose."

Section 232 is in these terms :

"Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force, without leave of the court against the estate or effects or any sale held without leave of the court of any of the properties of the company after the commencement of the winding up shall be void."

It is seen that it is section 171 that requires the obtaining of the permission of court for purposes indicated in that section, while section 232 only states the consequence of the failure to obtain leave as mentioned in section 171. Thus, section 232 is only supplementary to section 171. It visits the non-observance of the conditions mentioned in Section 171 with penal consequence, in that it renders the sale void. Section 171 requires permission not only for the filing of a suit against a company which has been wound up by a court but in regard to all other proceedings, be they original proceedings or those analogous to suit. It applies to proceedings of all kinds. This is made clear by the judgment of the Federal Court in Governor-General in *Council v. Shiromani Sugar Mills, Ltd<sup>1</sup>*. There, their Lordships have unequivocally laid down that execution petitions are also within the contemplation of section 171 of the Indian Companies Act.

5. The crucial question is whether the fact that leave has been obtained for institution of the suit makes any difference. We feel that the leave obtained under that section for continuing the suit would not enure to the execution of the decree. What is prohibited by section 171 is the institution of not only a suit but all other proceedings. In considering whether fresh leave is necessary at the stage of execution, it is useful to bear in mind that section 232 plainly says that

"any attachment, distress or execution put in force, without leave of the court ....."

would be void. This implies necessarily that leave of the court is essential in the case of a company in liquidation, if attachment, distress or execution resulting in a sale should be put in force. The main purpose and the object of this section seem to be that there should be one agency for the distribution of the assets of the company. If one creditor is permitted to execute his decree and realise the fruits of it, it might result in detriment to the other creditors. In this context, the remarks of their Lordships in 1946-1 Mad LJ 415 at p. 421 : (AIR 1946 FC 16 at p. 21) are apposite and may be quoted :

"Moreover, the scheme of the application of the company's property in the pari passu satisfaction of its liabilities envisaged in Section 211 and other sections

<sup>1</sup>1946-1 Mad LJ 415

of the Act, cannot be made to work in co-ordination, unless all creditors (except such secured creditors as are "outside the winding up" in the sense indicated by Lord Wrenbury in his speech in *Food Controller v. Cork<sup>2</sup>* are subjected as to their actions against the property of the company to the control of the court."

That being the intendment of these sections, we think that leave of the court is a condition precedent to the levying of execution of decree even in a case where leave had already been obtained for continuing the suit. It may be that the case of a secured creditor realizing his decree is outside the winding up. But, if he seeks the aid of the court, he has to conform to the provisions of section 171. So long as he realizes his security without the leave of the winding-up court, he is not under an obligation to apply to the court under section 171. But, if he wants to take legal proceedings for the realization of the decretal amount, he has to comply with the terms of Section 171. For these reasons we think that the view of the subordinate Judge that

"no permission under section 232 of the Indian Companies Act is necessary as there is leave under order dated 29-9-1953 in C. M. P. No. 3425 of 1953 in O. P. No. 112 of 1953 on the file of the High Court, Madras," is unsound. In the result, the order of the lower court is set aside and the appeal is allowed. If the respondents want to proceed with the execution petition, they have got to obtain the leave of the winding-up Court. The appellant will get his costs of the appeal.

Appeal allowed.

<sup>2</sup>1923 AC 647 at p. 671