

PUNJAB HARYANA HIGH COURT

Lord Krishna Sugar Mills Ltd

Vs

Abnash Kaur

(G Khosla, C.J. D Falshaw, J.)

27.02.1961

JUDGMENT

Falshaw, J.

1. This is an appeal under Clause 10 of the Letters Patent against an order passed by Mr. S. B. Capoor as Liquidation Judge on the 27th of January, 1961.

2. The facts are that a Petition was filed by Shrimati Abnash Kaur on the 25th of November, 1960, for the winding up of the present appellant company, the Lord Krishna Sugar Mills Ltd. The petitioner claimed to be holding shares of the value of Rs. 72,000/- out of the total paid-up capital of Rs. 12,00,000/- and also that her minor son Kanwal Kishore who was under her guardianship was holding 7.100 shares valued at Rs. 71,000/- and the winding up of the company was sought on the ground that it was just and equitable on account of the alleged oppression of the minority share-holders and various allegations of mismanagement. 2a. The petition came before my Lord the Chief Justice for admission on the 30th of November, 1960, when he ordered the issue of notice to the company. Mr. Ved Vyas, Advocate, who was present at the time accepted notice on behalf of the company and it was ordered that the matter should be posted for preliminary issue without issue of citation on the 9th of December, 1960. The case actually came before Tele Chand J. on the 15th of December when he passed the following order :

"Admitted. Mr. Ved Vyas accepts notice on behalf of the company. Case to come up on 6th January, 1961, to consider issue of citation etc. Written application has been filed by the company and Mr. C. K. Daphtary accepts notice. Written reply may be filed by 3rd of January, 1961. This application will also be heard on 6th January, 1961."

3. It appears that on the 15th of December, 1960, the company had filed an application praying that the winding up petition should be dismissed in limine, or in other words for the revocation of the order of admission and since then further applications have been filed that the winding up petition should be rejected on the ground that it has been filed mala fide and also praying for an

order under Sec. 443 (2) of the Companies Act, 1956, which provides that where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy. These applications are still pending and a date is said to have been fixed in March for evidence on the question of mala fides,

4. In these circumstances that learned Single Judge passed the order under appeal on the 27th of January, 1961, for the issue of citation regarding the winding up petition in the official Gazette and two newspapers. The learned Single Judge was of the opinion that the issue of citations was mandatory and that he had no option or discretion in the matter.

5. It may be mentioned that although the company is nominally a public company it is stated without contradiction that substantially it is a private and family company in which, apart from a few shares held by outsiders, roughly 2/9th of the shares are held by the petitioner and her minor son while about 7/9th of the shares are held by the opposite party which consists of sons of the late husband of the petitioner by his first wife and the case of the company, which virtually consists of these sons, is that the company is prosperous and that the petition has been filed mala fide because of other disputes between the parties with the object of forcing the sons to buy the shares of the petitioner and her minor son at a very much higher price than their market value.

6. The relevant rules regarding the issue of citations, or in other words advertisement, are as follows. Rule 24 reads :

"(1) where any petition is required to be advertised, it shall, unless the Judge otherwise orders, or these Rules otherwise provide, be advertised not less than fourteen days before the date fixed for hearing, in one issue of the Official Gazette of the State or the Union Territory concerned, and in one issue each of a daily newspaper in the English language and a daily news-paper in the regional language circulating in the State or the Union Territory concerned, as may be fixed by the Judge, (2) Except in the case of a petition to wind up a company, the Judge may, if he thinks fit, dispense with any advertisement required by these Rules."

This rule appears in Part I of the Rules framed by the Supreme Court which is headed 'General'. The other rules appear in Part III relating specifically to winding up. Rule 96 reads :

"Upon the filing of the petition, it shall be posted before the Judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. The Judge, may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition."

Rule 99 reads :

"Subject to any directions of the Court, the petition shall be advertised within the time and in the manner provided by Rule 24 of these Rules. The advertisement shall be in Form No. 48."

In addition to these rules, the learned counsel for the company has also relied on the provisions of two of the general rules. Rule 6 provides that save as provided by the Act or by these Rules, the practice and procedure of the Court and the provisions of the Code so far as applicable, shall apply to all proceedings under the Act and these Rules. Rule 9 reads :

"Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

7. The alternative argument has been advanced on behalf of the company either that even on the terms of rules 24 and 96 as they stand the Court has the discretion to refrain from ordering the advertisement of the petition in a fit case or else that in any case rule 9 empowers the Court to refrain from ordering the advertisement of the petition Immediately on admission where the circumstances justify such a course and it is necessary for the ends of justice.

8. It certainly appears From the second Part of Rule 24 that in whatever other case advertisement of a petition can be dispensed with it cannot be dispensed with in the Case of a winding up petition but advertisement of the petition is to be ordered automatically immediately on the admission of such a petition. This is clear from the concluding portion of Rule 96 according to which the Judge may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition.

9. It is, however, contended on behalf of the respondents, the petitioners in the winding up petition, that the purpose of this part of the rule is merely to enable the company to be consulted regarding the manner in which the petition is to be advertised, or in other words regarding the selection of newspapers. This contention appears to me to be very doubtful indeed, and it seems to me that it may equally well be for the purpose of allowing the company to raise any preliminary objections it may have regarding the maintainability of the petition. I am of this opinion because of the serious effects which the advertising of a winding up petition may have on the affairs of even a prosperous company. It may be reasonable to Order the immediate advertisement of a winding-up petition in a case where the petition is filed by a creditor on the ground that the company is insolvent and unable to pay its debt, but the position appears to be somewhat different in the case of a company which is practically a family affair and the petition is by a contributory for winding-up on just and equitable grounds. The effect may be very serious

indeed since the persons who read the advertisement cannot be expected to know what is the nature of the dispute or to realise the difference between a winding-up petition on the ground of inability to pay debts and a winding-up petition based on disputes between share-holders.

10. In these circumstances I am not prepared to hold that the last part of Rule 96 has the restricted meaning placed on it by the respondents, but in any Case there is Rule 9 which does not appear to have been brought to the notice of the learned Single Judge, and which gives the Judge the widest power to disregard the rules in a suitable case where it is considered necessary for the ends of justice or to prevent abuse of the process of the Court.

11. I am therefore of the opinion that the advertisement of the petition should be suspended for the time being, at least until the Petitions for revoking the order of admission and for the rejection of the petition on the ground that it has been filed mala fide had been disposed of. I would therefore accept the appeal accordingly but make no order as to costs.

Khosla, C.J.

12. I agree