HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Company Application No. 6 / 2014

O/L Of M/S Thar Cements Ltd (iIn Liquidation) Village Sitapur Jhajad, Tehsil- Nawalgarh, Distt. - Jhunjunu (Rajasthan) 333304

----Petitioner

Versus

1. Shri Ram Niwas Agarwal 17, Khanpur Extension, New Delhi.

1/1. Smt. Santosh Devi W/o Late Sh. Ram Niwas Agarwal R/o 17, Khanpur Extension, New Delhi

1/2. Sh. Ashok Goyal S/o Late Sh. Ram Niwas Agarwal R/o 17, Khanpur Extension, New Delhi

1/3. Sh. Sanjay Goyal S/o Late Sh. Ram Niwas Agarwal R/o 17, Khanpur Extension, New Delhi

2. Shri Ashok Gupta, E-14, Bhagwan Das Nagar, East Punjabi Bagh, New Delhi.

3. Smt. Saroj Goyal, 16, Khanpur Extension, New Delhi.

4. Shri Ramesh Chandra Goyal, 16 , Khanpur Extension, New Delhi

----Respondents

For Petitioner(s) : Mr. Vijay Choudhary, Adv. for OL.

For Respondent(s) : Mr. Amol Vyas, Adv.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

25/01/2018

1. The case comes up on an application moved by the legal representatives of respondent no.1 praying for recalling of the order dated 24/04/2015 passed by t his Court.

2. Earlier also, an application to this effect was moved but the same was withdrawn as it was not supported by requisite documents and therefore, the present application has been filed alongwith death certificate of respondent no.1.

3. Case of the applicants is that the respondent no.1 had expired on 17/12/2007 while the instant company application under Section 543 of the Companies Act, 1956 has been moved by the Official Liquidator in the year 2014 and was registered as S.B. Company Application No.6/2014. In the instant company application itself, originally name of the respondent no.1 was mentioned although he had already expired.

4. Mr. Amol Vyas, learned counsel for the applicants submits that the company application under Section 543 of the Companies Act, 1956 against a dead person would not lie and was a nullity and therefore, the subsequent application moved under Order 22 Rule 4 CPC for taking on record the legal heirs of the respondent no.1 was not maintainable and the order passed by this Court, allowing application under Order 22 Rule 4 CPC and taking legal representatives on record of the respondent no.1, who had expired prior to filing of the original application, was not in accordance with law and is required to be recalled.

5. Learned counsel for the applicants relies on the judgment passed by Bombay High Court in the case of Umashankar Vs. Rai Bahadur Shreeram Durgaprasad Company Limited: 2012(2) BomCR 157 as well as Official Liquidator, Bombay High Court Vs. Taru Jethmal Lalvani: AIR 1994 Bom 74.

6. Learned counsel for the applicants thus submits that the proceedings against the legal representatives in the present company application cannot be continued and they are required to be deleted from the array of respondents.

7. On the other hand, Mr. Vijay Choudhary, learned counsel for

the Official Liquidator submits that the provisions of Section 543 of the Companies Act relate to any person as well as to the Directors, Managers, Liquidators or officers of the Company who may have misapplied, or retained, or become liable or accountable for, any money or property of the company; or have been guilty of any misfeasance or breach of trust in relation to the company. The said persons, Directors, Managers, Liquidators or officers of the Company would also include their assignee's, legal heirs, legal representatives etc. and the Company through Official Liquidator would be entitled to recover any money to which the erstwhile Director was responsible or his legal heirs or legal representatives and therefore, the order dated 24/04/2015 does not call for any interference and is not required to be recalled.

8. Having heard counsel for both the parties, this Court finds that the Bombay High Court, while taking into consideration the law laid down by the Apex Court in the case of Official Liquidator, Supreme Bank Ltd. Vs. P.A. Tendolkar (dead) by L.Rs. And others: AIR 1973 (SC) 1104 as well as the law laid down by the Apex Court in the case of Official Liquidator Vs. Parthasarthi Sinha and others: (1983) 53 Company Cases 163 (SC), has correctly and succinctly reached to the position that the proceedings under Section 543(1) of the Companies Act, 1956 cannot be initiated against a dead person. In the case of Official Liquidator, Bombay High Court Vs. Taru Jethmal Lalvani (supra), the Bombay High Court has held as under:-

> "6. Under Order I Rule 10 of the Code of Civil Procedure the Court has the power to strike out or add parties to the suit. However, where the suit is brought

> against a person who is found to have died before institution of the suit (he being the only defendant), the plaint cannot be amended by bringing, his legal representatives on record though the suit may have been filed in ignorance of his death. This is because a suit against a dead man is a nullity. Of course if a suit is against several defendants and only one of them is found to have died before its institution, the entire suit will not fail and can proceed against the other defendants. The legal representatives of the deceased defendants can be joined, provided a fresh suit could have been filed on that date. Therefore, on analogous principles, if a misfeasance summons is instituted against several Respondents and some of them are dead, the heirs of the dead Respondents can be joined as party Respondents by amendment, provided that a fresh misfeasance summons could have been taken out against the heirs on the date on which they are sought to be joined. In the present case, on the date of the Company Application No. 75 of 1988 no misfeasance summons could have been taken out against the heirs of Respondent Nos. 1 and 16, because the time for taking out such misfeasance summons prescribed u/S.543(2) of the Companies Act had expired long prior to the taking out of Company Application No. 75 of 1988. "

9. In view thereof, the original proceedings initiated by the Official Liquidator under Section 543 of the Companies Act, 1956 against a dead person do not lie and Section 543 proceedings, therefore, could not have been subsequently initiated against the legal representatives by bringing them on record under under Order 22 Rule 4 CPC. Therefore, the order dated 24/04/2015 is recalled.

10. While the aforesaid order is recalled, it is noted that in the case of Official Liquidator, Supreme Bank Ltd. Vs. P.A. Tendolkar (dead) by L.Rs. And others (supra), the true doctrine, propounded by the Apex Court, is as under:-

> "The true doctrine" noted by Apex Court is stated to be "whenever you find that the deceased person has by his wrong diverted either property or the proceeds of the property belonging to some one else into his own estate, you can then have recourse to that estate through his legal representatives when he is dead, to recover it."

11. Keeping in view the aforesaid true doctrine, the Official Liquidator is allowed to take up all remedies which are available under law and in terms of Section 543 against those who have received or benefited of the assets of the deceased Director which may include his legal heirs. The said proceedings would be subject to all objections which the concerned respondents may take and would be examined independently.

12. With the aforesaid observations, the application filed by the legal heirs of the respondent no.1 is allowed.

13. However, so far as the other respondents-Directors are concerned, the proceedings shall continue.

(SANJEEV PRAKASH SHARMA)J.

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