

ITEM NO.2

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).2034/2005
(From the judgement and order dated 10/12/2004 in CA No.1338/2004
in CP No. 8/1981 of The HIGH COURT OF KERALA AT ERNAKULAM)

SUDARSAN TRADING CO. LTD.

Petitioner(s)

VERSUS

OFFICIAL LIQUIDATOR & ANR.

Respondent(s)

(With appln(s) for directions,vacating stay, impleadment and
prayer for interim relief and office report)

WITH

SLP(C) NO. 4498 of 2005

(With prayer for interim relief and office report)

SLP(C) NO. 5765 of 2007

(With office report)

Date: 15/07/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. V. Giri, Sr.Adv. (in SLP(C) No.4498/05)
 Mr. K.P.Dandapani, Sr.Adv.(in SLP(C) No.2034/05)
 Mr. E.M.S. Anam,Adv.
 Mr. Fazlin Anam, Adv.
 (For Sudarshan Co.Ltd. and
 Sudarsan Chits (India) Ltd.)

 Mr. A. Mariarputham, Sr.Adv.
 Mrs. Aruna Mathur, Adv.
 Mr. Amarjeet Singh Girsra, Adv.
 For M/S Arputham,Aruna & Co., Adv.
 (For A.I.S. Assn. Of Sudarsan Trading Co. Ltd.)

For applicant(s) Mr. M. Gireeshkumar, Adv.
 Mr. Vijay Kumar, Adv.
 Mr. Kh. Nobin Singh, Adv.

For Respondent(s) Mr. Romy Chacko,Adv.

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Mr. R. Ayyam Perumal ,Adv

Mr. K. Rajeev ,Adv

UPON hearing counsel the Court made the following
O R D E R

SLP(C)No.5765/2007:

Shri A. Mariarputham, learned senior counsel

for the petitioner says that the issue involved in this
special leave petition is slightly different from the
one raised in other two special leave petitions.

In view of the statement made by the learned counsel, we direct that this special leave petition shall no longer be treated as tagged with SLP(C)Nos.2034/2005 and 4498/2005 and be listed after one week.

SLP(C)No.2034/2005 and 4498/2005:

These petitions are directed against order dated 10.12.2004 passed by the Division Bench of Kerala High Court in Company Application No.1338 of 2004 in C.P. No.8 of 1981.

We have heard learned counsel for the parties at length and perused the records including the judgment of the Division Bench of the High Court in Sudarsan Chits (India) Ltd. versus G.Sukumaran Pillai, ILR (1983) 2 Kerala 700, order dated 8.11.2004 passed

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by the Division Bench of the High Court and various interim orders passed by this Court including the one dated 8.6.2005 by which the petitioner in S.L.P.(C) No.2034/2005 was directed to deposit Rs. two crores with Justice Padmanabhan, former Judge of the High Court of Madras and Additional Director appointed by Kerala High Court for the company in liquidation within one week and another sum of Rs. two crores within two months from the date of order.

Learned counsel for the parties say that during the pendency of the proceedings, Justice Padmanabhan expired and in his place Justice B.M. Thulasidas of Kerala High Court was appointed as Additional Director by this Court.

In the impugned order, the Division Bench noted that even though the winding up order passed by the Court was kept in abeyance with the hope that claims of the creditors will be settled, the needful

has not been done and this continues to be the position

despite order dated 8.11.2004.

After making detailed

reference to the history of the case, the judgment in

Sudarsan Chits (India) Ltd. v. G.Sukumaran Pillai

(supra), the Division Bench observed:

"8. Therefore we are satisfied that the company is

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not in a position to protect the interest of the investors and its creditors. Necessarily that responsibility shall be vested in the hands of this court. This court cannot shirk out of that responsibility because it has to protect the interest of the investors and creditors and the company.

9. Though the winding up order was kept in abeyance by the Division Bench, it was not set aside by the Division Bench as per the judgment in MFA 518/81 and connected cases. In the aforesaid situation, as the company could not pay off the creditors in spite of several directions by the company court and the threat of contempt and is again not complying with the direction contained our order dated 8.11.2004, we are satisfied that no more indulgence shall be shown to the company keeping the winding up order, which has been found to be justified earlier by the Division Bench, in abeyance any more.

10. Therefore, we make it clear that the winding up order shall stand revived from today and the official Liquidator as well as the company court shall proceed further in accordance with law for disposal of the properties of the company in liquidation and of the holding company in order to safeguard the interest of its creditors and the investors. We make it clear that the direction issued in our order dated 8.11.04 directing the companies mentioned above that they shall not dispose their properties nor shall create any encumbrance thereon or shall not put their properties in the possession of other persons, shall continue to remain in force subject to further direction, if any, to be issued by the company court in the exigencies of situation. Neither the holding company nor the company under winding up shall withdraw any amount from the accounts that the said companies are maintaining in Banks or other financial institutions from today onwards."

In our view, the reasons assigned by the High Court for ordering revival of the winding up order and

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issue of directions to the Official Liquidator and the Company Court to proceed further in accordance with law

for disposal of the properties of the company in liquidation as also of the holding company do not suffer from any patent legal error, which may call for interference by this Court under Article 136 of the Constitution. At the same time, we feel that appropriate direction should be given for ensuring that the money due to the investors is paid to them at the earliest. Therefore, the special leave petitions are disposed of with the following directions:

- 1) Justice Thulasidas, who was appointed as Additional Director for the company in liquidation shall ensure that the entire amount lying with him is deposited with the Registrar General of Kerala High Court within two weeks from the date of the receipt of copy of this order. Immediately thereafter, the Registrar General shall bring the factum of deposit of amount to the notice of the learned Company Judge.
- 2) Within six weeks of the receipt/production of copy of this order by either party, the learned Company Judge shall pass appropriate order

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determining total amount payable by the company in liquidation to the subscribers of Chit Fund along with interest.

- 3) Within three months from the date of order of the Company Judge, the petitioners herein shall deposit the entire amount with Official Liquidator. Thereafter, the learned Company Judge shall pass appropriate order for disbursement of amount to the subscribers. The Official Liquidator shall ensure that the amount is disbursed to the subscribers within a period of three months from the date of deposit.

The parties shall be free to file applications for further orders before the learned Company Judge. Such applications shall be disposed of in accordance with law. The learned Company Judge should ensure that neither of the petitioners is able to impede disbursement of the amount to the subscribers.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master