

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE  
and  
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

O.S.A.No.184 of 2012

N.Anand

...Appellant

Versus

1.The Official Liquidator  
High Court, Madras  
as the Liquidator of  
M/s.Navakkarai Spinners Limited (In Liquidation)

2. Ayappa Cotton Traders,  
represented by G.P.Narasimhulu  
No.13/321, Vedula Bazaar,  
Rodatur 516360  
Kadappa District,  
Andhra Pradesh.

3.M/s.Raj Enterprises  
represented by Shri Rajah Shah,  
Rai Behind Apang Manav Mandel,  
Dr.Vikram Sarabhai Road,  
Ahmedabad 380 015.

4.Commercial Tax Officer (FAC)  
Avanashi Road Circle,  
Coimbatore -18.

5.M/s.Karamchand Thapar and Brothers  
(CS) Limited,  
represented by A.P.Ravindran  
Deputy General Manager,  
No.4, Second Line Beach,  
Chennai 600 001.

... Respondents

Appeal filed under Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent, against the Order passed in C.A.No.6 of 2011 in C.P.No.342 of 1998, on the file of this Court.

For Appellant... Mr.AR.L.Sundaresan  
Senior Counsel for  
Mr.M.Aravind Subramanian

For Respondents.. Mr.S.R.Sundar for R.1  
Mr.G.R.M.Palaniappan for R.2

Mr.M.Sriram for R.3  
R.4 and R.5

No appearance for

## J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

The first respondent company was wound up in terms of an order dated 14.07.2000 in C.P.No.342 of 1998 on account of inability of the company to pay its debt for the cost of printing of Rs.1,16,000/- to M/s.Karamchand Thapar and Brothers (CS) Limited, Chennai.

2. The appellant before us is the Ex-Managing Director of that company, M/s.Navakkarai Spinners Limited, who filed company applications in C.A.Nos.6 and 384 of 2011 in the company petition making a grievance that the debt has actually been settled on 11.03.2008, but due to some personal inconvenience and non-representation, the position could not be brought to the notice of the court on 14.07.2000. A grievance was also made about the manner of publication of the notice and the appellant came to know about it only when he was served at his residence, for submitting the statement of affairs in the year 2005. The appellant expressed his readiness and willingness to settle all the creditors, including the original petitioning creditor, and thus sought to set aside and recall the order dated 14.07.2000.

3. The applications were however rejected by the learned company Judge vide impugned order dated 23.01.2012, primarily based on the reason of disbelieving the story of the appellant of lack of knowledge and inability to attend the Court proceedings. Simultaneously it was also observed that if all creditors or shareholders of the company were willing to revive the Company, they were always at liberty to come before the Court under Section 391 of the Company Act, 1956 with a viable and feasible claim of arrangement to that effect.

4. The present appeal was filed in the year 2012 and apparently much water has flown since then. We have the benefit of the report of the Official Liquidator. It is stated that in response to the notice inviting the claim, only three claims were received - (i) M/s.Raj Enterprises (ii)M/s.Ayyappa Cotton Traders and (iii) Commercial Tax Officer, Avanashi Road Circle, Coimbatore.

5. The claim for Sales Tax arrears was settled. The claim received from Ayyappa Cotton Traders is stated to be subject matter of appeal in A.S.No.442 of 2006 pending before the Andhra Pradesh High Court and the claim of M/s.Raj Enterprises was rejected for non-production of original documents. A remedy of appeal would thus be available to the party before the Company Court.

6. Insofar as M/s.Ayappa Cotton Traders, learned counsel states that he has no objection to the revival of the company and in fact his execution petition is pending in Coimbatore. Thus, the impediment would actually be removed and the said claimant can proceed with the execution before the competent Court.

7. In view of these subsequent developments, we are of the view, that it would be appropriate to set aside the impugned order dated 23.01.2012 and allow Company Application Nos.6 and 384 of 2011 preferred by the appellant before the learned Company Judge. Sequitur to this would be that the order of winding up dated 14.07.2000 would stand recalled.

8. The result is that the Company Petition would be listed before the learned Company Judge for appropriate orders.

9. The Original Side Appeal accordingly stands allowed, leaving the parties to bear their own costs.

Sd/-  
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

ksr

To

1. The Official Liquidator  
High Court, Madras

2. The Sub Assistant Registrar  
Original Side  
High Court, Madras

1 cc to Mr.S.R. Sundar, Advocate, Sr. 52002  
1 cc to Mr.M. Sriram, Advocate, Sr. 52242  
1 cc to Mr. Aravind Subramanian, Advocate, Sr. 52332  
1 cc to M/s. GRM Palaniappan, Advocate, Sr. 51919

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GP (CO)  
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