THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Company Petition No.158 of 2013

Dated 09th June, 2015

Between:

Kodali Saibaba,
S/o Raghunayakulu

..... Petitioner

And:
M/s Pramoda Housing & Estates (P) Ltd., Vijayawada, reptd., by its Managing Director-Kondapaneni Vishnuvardhan Rao and two others.

.....Respondents

Counsel for the Petitioner: Sri P.Vinayaka Swamy

Counsel for Respondent No.2: Sri S.Ravi, senior counsel for Sri G.Narasimha Rao

The Court made the following:

ORDER:

This Company Petition is filed under Section 560(6) of the Companies Act, 1956 (for short 'the Act') r/w Rule 9 of the Companies (Court) Rules, 1959 to direct the Registrar of Companies to cancel the striking off of respondent No.1-Company under Section 560 of the Act pursuant to respondent No.2's application, dated 29.02.2004, and to restore respondent No.1-Company to settle all the pending issues, accounts, etc.

I have heard Sri P.Vinayaka Swamy, learned counsel for the petitioner and Sri S.Ravi, learned Senior Counsel appearing for respondent No.2.

The petitioner pleaded that he was one of the Directors of respondent No.1-Company along with respondent No.2, who was another Director; that respondent No.1-Company was incorporated under the provisions of the Act on 06.04.1995 and registered on 02.05.1995; that several objects of respondent No.1-Company include purchase, sale, developing, exchange or on lease or acquire for sale any personal estate including lands etc; that the authorised share capital of respondent No.1-Company was Rs.5,00,000/- comprising 50,000 equity shares of Rs.10/- each; that respondent No.2 being the Managing Director of respondent No.1-Company used to look after its affairs, such as, maintenance of records, accounts, etc; that he used to maintain the bank accounts and was in complete control of financial affairs; that he did not furnish any particulars to the petitioner at any point of time; that after collection of the required EMI, registration of plots was started in 1999; that the registration was done by the Manager by name Siva Shanker, who obtained a Power of Attorney from the original owner of the land, and executed the sale deeds; that all the transactions were stage managed by respondent No.2 by keeping the petitioner in dark and that the registration of plots was continued from 1999 to 2006.

The petitioner further averred that prior to the incorporation of respondent No.1-Company, he and respondent No.2 constituted a firm along with others in the name and style of “M/s.Pramoda Real Estates” with effect from 05.08.1993; that disputes relating to the said partnership arose among the parties; that at the instance of one of the Directors, the disputes were referred for arbitration, vide A.A.No.3 of 2008; that during the pendency of the Arbitration Application, the disputes were amicably settled among the partners; and that when the petitioner approached respondent No.2 to settle the accounts of respondent No.1-Company, he did not respond.

The petitioner further averred that on enquiry, he came to know that respondent No.2 submitted an application before the Registrar of Companies on 25.03.2004 under Section 560 of the Act to strike off respondent No.1-Company from the Register on the ground that it did not carry on any business since its inception; that on verification, it was found that the petitioner's signature was forged in the affidavit as well as in other papers submitted before the Registrar of Companies; that it was also revealed that respondent No.2 has obtained auditor's report without disclosing the true accounts and the certificate issued by the said auditor was filed; and that respondent No.2 has himself signed the Director's report declaring that he himself is maintaining the accounting record and that there is no fraud.

The petitioner further pleaded that the entire exercise done by respondent No.2 to strike off respondent No.1-Company is against the interests of the creditors, members and public and the record makes it clear that respondent No.1-Company has carried on the business since its inception by floating two ventures, known as "Mega Units" at Tadepalli and Kolamakonda Villages in Tadepalli Mandal, Guntur District and "Corporate Colony" at Gosala Village; and that respondent No.2 had collected monthly instalments, issued receipts for payments, made entries in the passbooks and registered the plots in the names of the members who joined the scheme since 1999. The petitioner further averred that respondent No.2 has made an application before the Company Law Board with his forged signature and got the name of respondent No.1-Company struck off from the Register of the Registrar of Companies and that therefore, the same does not bind the petitioner; and that recently some persons who were affected by double registration of the plots approached the media people, who caught hold of respondent No.2 and the latter has admitted his misdeeds and promised to settle the claims of the affected parties and as respondent No.2 was postponing the settlement of accounts, the petitioner has filed the present Company Petition.

On behalf of the respondents, respondent No.2 filed a counter affidavit, wherein he has denied the averments in the company petition. He has averred that respondent No.1-Company was having only two shareholders, that the petitioner was the Executive Director and Chairman, and himself acted as Managing Director. That the petitioner was given authority to operate the bank account with his single signature and taking advantage of the same, he has grossly misused the cheque facility and misappropriated/diverted/siphoned the amounts collected from third parties in the name of respondent No.1-Company. Respondent No.2 has further averred that the petitioner has set up his mother, Kodali Satya Gnana Prasunamba, to raise a dispute with regard to M/s.Pramoda Housing Development, in which, respondent No.2 was the Managing Partner and the petitioner was one of the partners and raised a dispute, namely, A.A.No.3 of 2008, in the Court of the learned Principal District Judge, Krishna, Machilipatnam, with the sole intention of extracting money and that all the disputes connected with the firm were settled amicably out of Court. He denied the allegation that he has forged the petitioner's signature before the Registrar of Companies.

Respondent No.2 has also stated that the petitioner cannot question striking off of the name of respondent No.1-Company from the Register of the Registrar of Companies eight years after it was struck off. That even as per the documents filed in support of the company petition, the petitioner has obtained certified copies from the Registrar of Companies on 28.01.2008 and the company petition was filed on 23.03.2013 i.e., after five years of receiving of the certified copies. That this conduct of the petitioner is mischievous and he has come to the Court with unclean hands.

Respondent No.2 had denied the allegation that he has indulged in double registration and that complaints were filed in that regard. He has alleged that the petitioner has engineered complaints with a view to defame him. That the petitioner has failed to show that he has sustained any loss on account of striking off of the name of respondent No.1-Company and that there were no *bona fides* on his part in filing this company petition. That the petitioner has never approached him to settle the alleged disputes and that in pursuance of the order of the Registrar, even the Gazette publication was published on 30.12.2005. That under Section 285 of the Act, it is mandatory to hold Board meetings once in every quarter and that the petitioner being one of the two Directors has never raised any issue on non-conduct of the Board meetings from 2004 onwards and that similarly he has also not raised any objection for not holding any Annual General Meeting under Section 166 of the Act all these years. That this fact would clearly show that the petitioner has approached this Court with unclean hands.

On behalf of the petitioner, he has examined himself as PW.1 and filed Exs.P1 to P31. On behalf of the respondents, respondent No.2 has examined himself as RW.1 and filed Exs.R1 to R8.

Having regard to the rival contentions of the parties, the following two points arise for consideration:

(1) Whether respondent No.2 has forged the signature of the petitioner on the application filed before the Registrar of Companies for striking off of the name of respondent No.1-Company, and striking off of the name of respondent No.1-Company was without the petitioner's knowledge? and

(2) Whether the petitioner has suffered any prejudice on account of striking off of the name of respondent No.1-Company from the Register?

Re point No.1:

In his evidence, as PW.1, the petitioner has reiterated his averments made in the company petition. He relied upon Ex.P2-brochure and Ex.P3-Invitation for inauguration of mega draw with photos on 23.07.1995 to show that after its incorporation on 06.04.1995, respondent No.1-Company has commenced its activities and sold the plots by making ventures. He has filed Ex.P4-pass book containing the terms and conditions of allotment and Ex.P5-application form for the membership for plots in respect of Corporate Colony at Gosala Village, Kankipadu Mandal.

The petitioner has also filed Exs.P6 to P13-registered sale deeds executed by one Sri Obilisetty Sivasankara Venkata Mutyam, General Power of Attorney of respondent No.1-Company in favour of third parties. He has filed Ex.P14-application, dated 29.02.2004, made by respondent No.2 for striking off of the name of respondent No.1-Company along with Ex.P15-Director's Report, dated 01.03.2004, Ex.P16-Auditor's report, dated 01.03.2004, and the copy of the Gazette notification, dated 14.01.2006, relating to the striking off of the name of respondent No.1-Company as Ex.P21. A CD allegedly videographed by one Telugu news channel was marked as Ex.P26 and two CDs allegedly of the meeting held at Benz Circle, Vijayawada on 20.01.2013 were marked as Ex.P27.

In short, the case of the petitioner is that respondent No.1-Company has commenced its operations of buying and selling of land after converting the same into plots to various customers from the inception and that its activities continued even after respondent No.2 has made the application, Ex.P14, on 29.02.2004 before the Registrar of Companies.

In his cross examination, the petitioner has admitted that he had retired from the partnership firm, namely, M/s.Pramoda Housing Development, that his accounts with the said firm were settled and that as a consequence thereof, he has signed the deed of retirement-cum-settlement of accounts on 06.04.2009 (Ex.R3). He has also admitted that he had retired as a partner in another firm and executed a deed of retirement-cum-settlement of accounts on 06.04.2009 (Ex.R4). He has admitted Ex.R5, containing three receipts issued by her mother Kodali Satya Gnana Prasunamba and Smt.Kodali Sree Lakshmi, who is his sister, in acknowledgement of settlement of accounts in respect of M/s.Pramoda Housing Development. He has also admitted Ex.R6, certified copy of sale deed executed by his wife, Smt.Kodali Rama

Devi, representing M/s.Pramoda Housing Development, in respect of a property of the said firm in favour of Sri Gangavarapu Venkateswara Rao. He has also admitted execution of Exs.R7 and R8, two sale deeds by his wife on 23.11.2002 in favour of the purchasers in respect of M/s.Pramoda Housing Development. He has admitted his signatures on Exs.R6 to R8 as a witness. To a suggestion, he has admitted that his signatures marked as Exs.R6A, R7A and R8A are different from his signatures on the affidavit filed in lieu of examination-in-chief. He has, however, denied the suggestion that he has the habit of signing differently on different documents at different points of time deliberately.

The petitioner has further replied to a question that he has not given any loan to respondent No.1-Company and that he has made investment in respondent No.1-Company and denied the suggestion that he has not disclosed either the factum or the quantum of investment made by him in respondent No.1-Company in the company petition. He has admitted that he has not given any notice or instituted any legal proceedings for recovery of any dues from respondent No.1-Company. He has also admitted that he has not given the name of any creditor or the amounts due to such creditors by respondent No.1-Company. He has admitted that he has not vediographed any meetings and that Exs.P26 and P27 are not the vediographs taken by him.

A perusal of Exs.P14 shows that it is an application form for striking off of the name of respondent No.1-Company under section 568 of the Act. It contains the photographs of the petitioner as well as respondent No.2. On the second page of the application, the purported signatures of both the applicants are available. The petitioner has seriously disputed his signature on the said application. However, he has not made any effort to get his signature compared with the admitted signatures by the Handwriting Expert.

The learned Senior Counsel for respondent No.2 has invited this Court's attention to Ex.R6, sale deed, dated 23.11.2002, executed by the petitioner's wife in her capacity as GPA in favour of a third party to which the petitioner has figured as a witness. In his evidence, the petitioner has admitted his signature. Similarly, the petitioner has attested Exs.R7 and R8, registered sale deeds executed by his wife. As noted hereinbefore, these signatures are marked as Exs.R6A, R7A and R8A respectively. The petitioner has categorically admitted in his cross-examination that the said signatures look different from the signatures on the affidavit filed in lieu of examination-in-chief. It is, thus, evident from this admission that the petitioner is in the habit of signing differently on different occasions.

It is not in dispute that the certified copy of Ex.P14, purported joint application filed before the Registrar of Companies for striking off of the name of respondent No.1-Company and other related documents were applied for by the petitioner on 24.01.2008 and the certified copies thereof were furnished to him on 28.01.2008 itself. As pointed out by the learned Senior Counsel for respondent No.2, the petitioner has admitted in his evidence that he has settled his disputes relating to two other partnership firms in the year 2009 and himself, his mother and his wife have executed receipts on 06.04.2009 acknowledging settlement of accounts in respect of those accounts. If the petitioner has not applied to the Registrar of Companies along with respondent No.2 for striking off of the company's name and if the latter has filed the application with the forged signature of the petitioner, he would not have entered into a settlement with the two other firms without raising any protest. Not only that the petitioner has failed to protest the alleged forgery by respondent No.2, but also he has settled the disputes with the latter. Even after the settlement of disputes relating to the partnership firms, the petitioner has remained quiet for more than four years before approaching this Court by way of present company petition.

This conduct on the part of the petitioner convinces me to hold that he has joined respondent No.2 in applying for striking off of the name of respondent No.1-Company and evidently to make wrongful gain, he has made a volte-face and filed this company petition five years later. The fact that he has not sought Expert's opinion on genuineness or otherwise of his signatures on Ex.P14 further fortifies the opinion of this Court that the signature on Ex.P14 belongs to the petitioner and he has come with a false plea of forgery.

This point is answered accordingly.

Re point No.2:

The learned counsel for the petitioner has sought to point out certain discrepancies, such as, the date on which Ex.P14 is shown to have been received by the office of the Registrar of Companies. He has argued that the endorsement on Ex.P14 shows that the same was received by the office of the Registrar on 29.02.2004, which happens to be a Sunday. Once it is found that the petitioner himself made an application along with respondent No.2, this aspect pales into insignificance. The petitioner has not sought to summon the original of Ex.P14 from the office of the Registrar of Companies. The fact that Ex.P14 refers to the resolution of the Board of Directors of respondent No.1-Company on 01.03.2004 itself makes it improbable that the application was received by the office of the Registrar on 29.02.2004. In any event, it is not in dispute that the name of respondent No.1-Company was struck off from the Register which itself is questioned in this company petition. Therefore, even if there is formal defect in the application, having regard to the fact that the petitioner joined respondent No.2 in applying for striking off of the name of respondent No.1-Company from the Register, this aspect looses its relevance.

The learned Senior Counsel for respondent No.2 has submitted that the petitioner has not pleaded as to how his interests are affected by the striking off of the name of respondent No.1-Company from the Register of the Registrar of Companies. In his petition, the petitioner has merely stated that the authorized share capital of the company is

Rs.5,00,000/-. He has not raised any whisper as to his contribution in the company. He has categorically admitted in his evidence that he has not given any loan to the company. A copy of the Balance Sheet as on 29.02.2004, which is part of Ex.P14, shows that though the authorized share capital of respondent No.1-Company was Rs.5,00,000/-, its issued, subscribed and paid up capital was only Rs.2,000/- and that the share application money was Rs.4,400/-. The petitioner has not disputed the contents of this Balance Sheet. Therefore, even if the name of respondent No.1-Company which has the liabilities of Rs.6,400/- is struck off from the Register, no prejudice would be caused to the petitioner or for that matter, to any third party.

The learned counsel for the petitioner submitted that the said Balance Sheet is a self serving document filed by respondent No.2 along with the application for striking off of the name of respondent No.1-Company before the Registrar of Companies and that its contents cannot be relied upon. As admitted by the petitioner, at no point of time after the dispute relating to the two firms were settled, he caused any notice on respondent No.2 to settle the accounts relating to respondent No.1-company. Even in the company petition, the petitioner has not raised the plea that the said Balance Sheet is a concocted document and that the company has other assets and liabilities. Except a vague plea that several double registrations were made in respect of various customers, no evidence in support thereof has been produced. The purported CDs, Exs.P26 and P27, were stated to have been obtained by the petitioner from a news channel and nobody connected with the said channel have been examined as a witness. Therefore, as rightly submitted by the learned Senior Counsel, such evidence cannot be looked into.

On the above analysis, I am of the opinion that the petitioner has not suffered any prejudice on account of striking off of the name of respondent No.1-Company from the Register and no perceptible illegalities have been proved by the petitioner for setting aside the said action. Though under Section 560(6) of the Act, an aggrieved party can approach the Court within 20 years of striking off of the name of a company, the conduct of the petitioner in keeping quiet for more than five years after he came to know about the alleged forgery of his signature on the application filed by respondent No.2 before the Registrar of Companies thoroughly disentitles him to any relief in this company petition, more so, in the absence of any evidence of prejudice caused to him on account of such striking off of the name of respondent No.1-Company from the Register.

This point is accordingly answered against the petitioner.

Conclusion:

In the light of the findings on point Nos.1 and 2, the company petition fails and the same is accordingly dismissed.

C.V.NAGARJUNA REDDY, J

09th June, 2015
VGB