

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 27.02.2017
Coram

The Hon'ble Mr.Justice Nooty. Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

O.S.A.No.369 of 2012
and
M.P.No.1 of 2012

K.Jayaraman

...Appellant

Vs

1 The Official Liquidator,
High Court, Madras of
M/s.Pet Pack (P) Limited
(under liquidation)

2. V.Gurusamy

3. N.Dakshinamoorthy

...Respondents

This Original Side Appeal is filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of Letters Patent to set aside the order passed in C.A.No.2811 of 2008, in C.P.No.356 of 2003, dated 13.02.2012.

For Appellant : Mr.Gupta and Ravi
For Respondent-1 : Mr.S.R.Sundar
For Respondent-2 : Mr.N.Damodaran
For Respondent-3 : No appearance

JUDGEMENT

(Judgement of the Court was delivered by
Nooty Ramamohana Rao, J.,)

This Original Side Appeal is directed against the order passed on 13.02.2012, in C.A.No.2811 of 2008, in C.P.No.356 of 2003.

2. The present Appeal is preferred by Shri K.Jayaraman, who was arrayed as third respondent in C.A.No.2811 of 2008.

3. By an order made on 2nd November, 2006, in C.P.No.356 of 2003, the Company, M/s.Pet Pack (P) Limited was ordered to be wound up by this Court. Simultaneously, the Official Liquidator attached to this Court has been appointed as Liquidator of the said Company, and the Official Liquidator is directed to take custody and control of all the assets, books of accounts, records, etc. of the Company under liquidation. The Directors

of the said Company were required to file the statement of affairs. For securing such statement of affairs to be filed, C.A.No.2656 of 2008, has been moved by the Official Liquidator in the aforementioned Petition in C.P.No.356 of 2003. Notice was served in the said Application, and since the present appellant has been arrayed as third respondent therein, he has filed his objections, pointing out that the Company has called for its 11th Annual General Meeting on 29.09.1997. One of the agenda items of the ordinary business to be transacted at the said Annual General Meeting was appointment of a Director in the place of present appellant, whose term of Office was coming to an end. According to the appellant, he was not re-elected at the Annual General Meeting held on 29.09.1997 as Director. Consequently, he seized to be a Director of the Company under liquidation. This apart, on 01.10.1997, the appellant appears to have taken up the matter with the Managing Director of the Company, requesting him to file the necessary information with the Registrar of Companies in Form 32 and other Statutory compliances, so that, the appellant may not be mulcted with any accountability for the post period of his seizing to be the Director of the Company.

4. From the above facts, it is clear that, by the time, this Court made an order for winding of the Company, up, the appellant has seized to be the Director of the Company much earlier. Therefore, he could have filed the statement of affairs relating to the Company under liquidation existing at prior to the date of ordering liquidation of the Company. For the reason that he has seized to be Director of the Company very much anterior date to that of wounding up of the Company, no liability can be fastened on to the appellant. Merely because, Company under liquidation or its Managing Director has not lodged Form 32 with the Registrar of Companies. In the absence of any material available on record to indicate that the appellant has continued to be in charge and responsible for the affairs of the Company under liquidation beyond 01.10.1997, at any rate, under the presumption that he was in charge of the affairs of the Company, this Court passed an order for winding up the Company 2.11.2006, the appellant could not have been ordered to be prosecuted for his failure to file the statement of affairs as on the date of passing of the order for winding up the Company.

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5. Hence, this Original Side Appeal is allowed, the order passed by the learned Company Judge, in C.A.No.2811 of 2008, in C.P.No.356 of 2003, dated 13.02.2012, to the extent it directed prosecution of the appellant herein is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sd

To

1.The Official Liquidator,
High Court, Madras of
M/s.Pet Pack (P) Limited
(under liquidation)

2.The Sub Assistant Registrar
Original Side, High Court, Chennai-104

+1 cc to M/s.Gupta & Ravi Advocate sr 12327/17
+1 cc to Mr.N.Damodaran Advocate sr 13162/17
+1 cc to Mr.S.R.Sundar Advocate sr 12888

O.S.A.No.369 of 2012

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