

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Writ Petition No.2791 of 2017

Between:

Sri K.V.Kalyan Shanker

... Petitioner

and

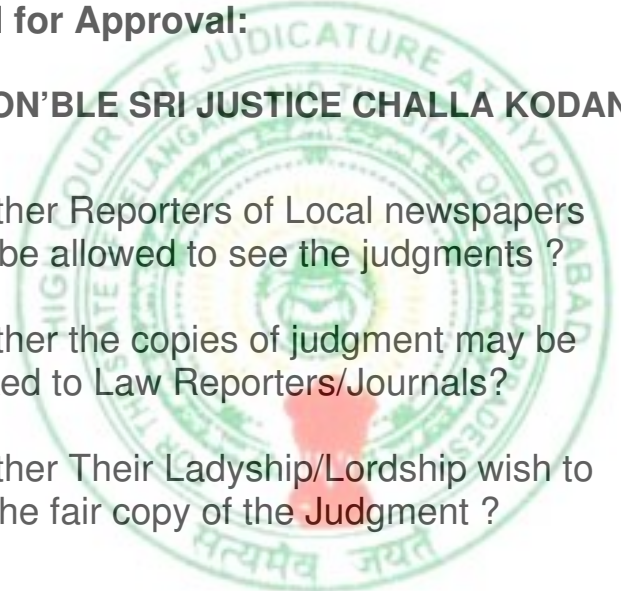
Visakhapatnam Port Trust and others.

...Respondents

Date of Judgment Pronounced: 09-10-2017

Submitted for Approval:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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1. Whether Reporters of Local newspapers may be allowed to see the judgments ? **Yes/No**
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? **Yes/No**
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? **Yes/No**

CHALLA KODANDA RAM,J

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ Writ Petition No.2791 of 2017

% Dated 09.10.2017

Between:

K.V.Kalyan Shanker

... Petitioner

and

Visakhapatnam Port Trust and others.

...Respondents

! Counsel for the petitioner: Mr.N.V.Sumanth

^ Counsel for respondents : Ms.V.Uma Devi

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? Cases cited:

1. AIR 1965 Supreme Court 40



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No. 2791 OF 2017****ORDER:**

In this writ petition, proceedings, dated 28.07.2016, issued by respondent No.1-Visakhapatnam Port Trust, are under challenge.

Petitioner states that he is the owner of Boat bearing registration No. VPT 20120040, which is used for the purpose of carrying men and material to offshore work site. He incidentally happens to be one of the Directors of M/s. Kaanha Shipping Private Limited, which operates as stevedores in respondent No.1-Port Trust handling all types of Cargos in the Port. He further states that the said Boat was seized on 27.07.2017 by CISF personnel on the instructions of Marine Department. When enquiries were made, he was informed that the Boat was seized on account of the alleged dues owed by M/s. Kaanha Shipping Private Limited. He also states that he is only one of the Directors of the said Company and for the dues owed by it, he cannot be made liable for the same and therefore, the respondents to take action against the Company. The assertion of the petitioner is that there is neither an agreement nor a provision which enable the respondent authorities to attach/detain the Boat of the petitioner, who is an individual, with regard to the dues of the Company.

The respondents filed a counter-affidavit stating that they are entitled to detain the Boat for the dues owed by the Company under Regulation 7(2) of the Visakhapatnam Port Trust Fishing Harbour Regulations, 1986 framed in exercise of statutory powers under the Major Port Trust Act, 1963.

Sri N.V. Sumanth, learned counsel appearing for the petitioner, by placing reliance on the judgment of the Hon'ble Supreme Court in **Tata Engineering and Locomotive Company Limited Vs. The State of Bihar and others**¹, would submit that it is well-settled that the Company is a separate corporate entity which has its own legal existence and the same is different from the shareholders of the Company. It is the specific contention of the learned counsel for the petitioner that the petitioner cannot be made liable to pay the dues of the Company.

Ms.V.Uma Devi, learned Standing Counsel appearing on behalf of the respondents, reiterates the contentions made in the counter-affidavit and would submit that the Company owes huge amounts to the extent of Rs.4,47,78,833/- and further, the petitioner had also executed a power of attorney in favour of his father to represent the Company and to sign all the documents in relation to it and therefore, the petitioner would be vicariously liable for the dues owed by the Company and the action taken by the respondents is not in violation of law.

¹ AIR 1965 Supreme Court 40

Having considered the respective submissions, it may be noted that the Hon'ble Supreme Court in the judgment referred to supra, while dealing with the legal status of the individual shareholders vis-à-vis the legal entity, held as under:

“The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them, similarly the creditors of the members have no right to the assets of the Corporation. This position has been well-established ever since the decision in the case of *Salomon v. Salomon and Company*, 1897 AC 22 was pronounced in 1897; and indeed, it has always been the well recognised principle of common law. However, in the course of time the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the Corporation. It may be that in the course of time these exceptions may grow in number and to meet the requirements of different economic problems.”

It is not in dispute that the petitioner is the owner of the Boat in question. It is also not in dispute that there is no claim against the petitioner with respect to the Boat in his individual capacity. In this connection, it is apt to quote Regulation 7(2) of

the Visakhapatnam Port Trust Fishing Harbour Regulations, 1986, which reads thus:

“If the owner of the fishing trawler/fishing vessel/boat fails to pay the charges and other amounts payable to the Port Trust under its Regulations and if the owner of the fishing trawler/fishing vessel/boat failed to comply with the orders of the Deputy Conservator/Traffic Manager, the concerned fishing controller/fishing vessel/boat shall be seized by the Deputy Conservator/Traffic Manager and will be released only after payment of all the dues.”

A bare reading of the above provision makes it clear that the owner of the vessel is liable to pay the dues if any. In the present case, there being no dues to be collected from the owner of the vessel i.e., the petitioner, and admittedly, the dues claimed are in relation to the Company, the action of the respondents in detaining the Boat is unsustainable and without jurisdiction.

In those circumstances, the writ petition is allowed. However, it is made clear that it would be open to the respondents to take all steps for collection of the amounts alleged to be due from M/s. Kaanha Shipping Private Limited, by following the procedure prescribed under law.

Consequently, the miscellaneous petitions, if any shall stand disposed of. No costs.

CHALLA KODANDA RAM, J

Dt:09.10.2017

Note: LR copy to be marked.
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