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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.212 OF 2017
IN
COMPANY APPLICATION NO.74 OF 2017
IN
COMPANY PETITION NO.1048 OF 2008

Gaekwar Mills Kamdar Sangharsh Samiti … Appellant
V/s.
Homi Framroze Mehta and Anr. … Respondents

Mr. Roshan D'souza for the Appellant.
Mr. Navin Pahwa, Senior Advocate a/w Mr. Anuj Jhaveri i/b. Mr. Satish K. Kumbhar for the Respondents.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 17th OCTOBER 2018.

P.C. :

1 Heard the learned counsel appearing for the appellant. Appellant has taken an exception to the order dated 31st January 2017 passed by the learned Company Judge. By the said order, an application for review of the order dated 30th June 2015 passed in Company Application No.316 of 2013 by the learned Company Judge in a Company Petition No.1048 of 2008 was dismissed. The learned Single Judge in the impugned order has noted that the Company Application made by the appellant on which the impugned order has been passed was ordered to be treated as a petition for review by order dated 8th December 2016.

2 In the main Company Petition, by the order dated 10th September 2009 a Scheme was sanctioned by the learned Company Judge. The learned Single Judge has noted in the order that after the Scheme of Compromise was sanctioned on 10th September 2009, Daxin Gujarat Shramik Sabha, a representative body of workmen had espoused the cause of the workmen before the Scheme Court.

3 Company Application No.316 of 2013 on which the order dated 30th June 2015 was passed was for recall of winding up order of the Company Gaekwad Mills Limited. The said application was made on the footing that in pursuance of the scheme sanctioned on 10th September 2009 by the Company Court, all the debts of the Company in liquidation have either been fully repaid or secured by depositing requisite amount with the Official Liquidator. Paragraph 1 of the order dated 30th June 2015 reads thus :-

> " The Company Application is for recall of a winding up order. The basis of the application is that in pursuance of a scheme sanctioned by this Court, all the debts of the company in liquidation have either been fully repaid or secured by depositing the requisite amount with the Official Liquidator. On the last occasion, when this matter was called out, it was pointed out to the Court that there was a pending appeal before the Division Bench of this Court, filed by some of the workers of the company in liquidation, challenging the order passed by this Court sanctioning the scheme. This Court made it clear on the last occasion that though adjournments were sought earlier by the contesting workmen in the present Company Application on the ground of pendency of their appeal, unless some order has been obtained by the contesting workmen from the appellate court either staying the further proceedings in the scheme or in the Company

Application herein, no further time would be granted to any of the parties only on the ground of pendency of the appeal. With that clarification the matter was posted for final hearing today. It appears that there is no order obtained from the Appellate Court by the contesting workmen. Nothing has been brought to the notice of this Court. Today, contesting workmen are not even present before this Court. Accordingly, the Company Application is taken up for final hearing."

4 In paragraph 2 of the order dated 30th June 2015, the learned Company Judge has noted what transpired on 15th January 2014 when the Company Application No. 316 of 2013 was heard. Paragraphs 2 and 3 of the said order reads thus :-

"2. At an earlier hearing of the Company Application, on 15 January 2014, this Court noted in detail the various attempts made on behalf of the ex-directors and others for discharge of workers' dues from out of the amounts deposited with the Mamlatdar of Gandevi in Gujrat in pursuance of the sanctioned scheme. Various reports were filed from time to time by the Mamlatdar giving details of the amounts disbursed by him and the amounts that could not be disbursed despite extensive publicity given in the local media from time to time. In the premises, this Court directed that the amounts lying with the Mamlatdar, Gandevi, Gujrat should be transferred to the Official Liquidator. The Official Liquidator was required to distribute these amounts to the company's workers in accordance with the sanctioned scheme after verifying the identity and eligibility of the workers, within six months from the date of deposit of the amounts with him. It was further directed that if there were any undistributed funds with the Official Liquidator at the end of this six months' period, the same shall be returned to the company by the Official Liquidator against an undertaking by the latter to make payments of any dues found payable to any worker/s under the sanctioned scheme in the event any claim was made in that behalf after return of undistributed funds to the company. It appears that in pursuance of this order, a final public notice was issued by the Applicants, after getting a draft settled from the Official Liquidator, requiring all workers of the company in liquidation to claim their dues from the Official Liquidator within six months from the date of publication of the notice. The workmen were notified that in the event of failure to lodge their claims with the Official Liquidator within the stipulated period of six months, unclaimed amounts would be refunded to the company and in the event of such refund, the workers would have to claim the amounts directly from the company. It appears that in pursuance of this public notice, the Official Liquidator's Office has received 8 claims from various workers aggregating to Rs.3,61,407/-. It also appears that after expiry of the period of six months, further 14 claims aggregating to Rs.7,08,739/- have been received from the workers of the company in liquidation. The total amount of these 22 claims aggregates to Rs.10,70,146/-. As against this, the Liquidator has retained an amount of Rs.20,39,712/- from out of the amount transferred by the Mamlatdar to the Liquidator's office as of 16 June 2015. The balance amount from out of the amount received from the Mamlatdar office, has already been returned to the company as un-disbursed funds in pursuance of the order passed by this Court on 15 January 2014.

3. The above narration shows that all the debts of the Company in liquidation have been duly discharged in pursuance of the scheme sanctioned by this Court, save and except the outstanding claims of workmen (22 in number) aggregating to Rs.10,70,146/-. As against this amount, the Liquidator is admittedly holding funds aggregating to Rs.20,39,712/- as of 16 June 2015. Having regard to this position there is a clear case now for recall of the winding up order and refund of the

> excess amounts lying with the Official Liquidator to the company.”

5 Based on the said findings, the learned Company Judge allowed Application No.316 of 2013 by recalling the winding up order subject to conditions incorporated in the said order including the condition of the Official Liquidator disbursing the amounts to meet the workmen's claims received by the Official Liquidator as noted in the order after verifying each worker’s identity and eligibility in accordance with the orders passed by the Company Court earlier. A time-bound schedule was fixed for completing this exercise. We may note that in the order dated 30th June 2015, the learned Single Judge has referred to an appeal preferred by the workers challenging the order dated 10th September 2009 of sanctioning the scheme. In fact, the learned Company Judge has noted that on a date prior to 30th June 2015, he had made it very clear that unless some order is obtained by the contesting workmen from the Appellate Court either staying further proceedings in the scheme or in the Company Application No.316 of 2013, he would proceed with the hearing of the application. In the order dated 30th June 2015 he has noted that till the date there was no interim order passed in the appeal.

6 It appears that Dakshin Gujarat Shramik Sabha which represented the workmen filed an appeal against the order dated 10th September 2009. The said appeal was withdrawn on 18th April 2011. Thereafter, in the year 2011, the present appellant preferred an appeal which eventually rejected for non removal of office objections. In a Special Leave Petition which arose out of proceedings pending in the Gujarat High

Court, the Apex Court permitted revival of the appeal preferred by the appellant and granted time to remove office objections therein. The said appeal was numbered as Appeal No.455 of 2015 which has been admitted. It is an accepted position that in the said appeal, there is no interim order passed. We may note here that the present appellant by taking out the Notice of Motion No.611 of 2017 in Appeal No.455 of 2015 prayed for staying of entire proceeding before the Company Court in Company Application No.316 of 2013 and also sought interim order directing the parties to maintain status-quo till final disposal of Appeal No.455 of 2015. By order dated 4th October 2017 the Division Bench rejected the said Notice of Motion for reasons recorded therein. Therefore, the order of the Company Judge dated 10th September 2009 sanctioning the scheme of compromise is in force. The order dated 30th June 2015 of which recall was sought is passed on the basis of the said order dated 10th September 2009 sanctioning the scheme.

7 The submission of the learned counsel appearing for the appellant is that the order dated 10th September 2009 which sanctioned the scheme is subject matter of Appeal No.455 of 2015 which is pending for final hearing. He would, therefore, submit that in that sense, the order dated 10th September 2009 sanctioning the scheme has not attained finality. He submitted that the present appellant was not a party either to the Company Petition in which winding up order was passed or in Company Application No.316 of 2013. He submitted that there was an additional affidavit filed by the appellant which has not been considered by the learned Single Judge while passing the impugned order.

8 We have considered the submissions. In paragraph 3 of the impugned order, the learned Single Judge has noted that in pursuance of the sanction order, the proponents of the scheme have discharged the liabilities and/or secured THE liabilities of the company either by payment to the creditors including workmen or by depositing requisite amount with the Official Liquidator. He has observed that extensive care was taken to give widest publicity to the disbursement of the workmen's dues and actual disbursement made in pursuance thereof. It is also noted that balance dues of workmen on the basis of the claims received by the Mamlatdar/ Official Liquidator in pursuance of public notice given to the workmen were duly deposited with the Official Liquidator. Therefore, it is not possible to believe that the present appellant was not aware of the pending proceedings before the learned Company Judge. In fact, the Company Application No.316 of 2013 for recall of winding up order appeared on board from time to time which was eventually disposed of in the year 2015 by the order dated 30th June 2015. We may note here that order dated 30th June 2015 of which review was sought is based on the implementation of order dated 10th September 2009 sanctioning the scheme. Though scheme was sanctioned way back in the year 2009, the said order was never stayed either in the appeal preferred by Daxin Gujarat Shramik Sabha or in the appeal preferred by the appellant. Considering the material placed before the learned Single Judge about the discharge of liabilities and/or securing liabilities by deposit of requisite amount with the Official Liquidator in pursuance of the scheme sanctioned on 10th September 2009 that the learned Company Judge passed an order

recalling winding up order. What was before the learned Company Judge was the review petition. Even taking the submissions canvassed before us as correct, it is impossible to come to a conclusion that there was any error on the face of the record or even otherwise, there was a ground for review under Order XLVII of the Code of Civil Procedure, 1908. As regards the additional affidavit relied upon by the learned counsel appearing for the appellant, we find that there was no submissions canvassed on the basis of the said affidavit before the learned Company Judge as such submission is not reflected from the impugned order. If the case of the appellant is that a submission was canvassed but not considered, it was for the appellant to move the learned Company Judge by filing appropriate proceedings.

9 In the event the appellant succeeds in Appeal No.455 of 2015, the appellant can always seek appropriate orders from the Appellate Bench including consequential oder of revival of the winding up order.

10 We may also note here that we have dealt with the submissions of the appellant without going to the question of maintainability of Letters Patent Appeal as by the impugned order, the review petition has been rejected.

11 Subject to what is observed above, we see no reason to interfere in the impugned order. The appeal is accordingly dismissed.

(M.S. SONAK, J.) (A.S.OKA, J.)