

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3174-2021 (O&M)

Date of Decision: October 09, 2023

Akash Garg

...Petitioner

Versus

Pawittar Singh Walia and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Divanshu Jain and Mr.Prateek Sodhi, Advocates
for the petitioner.

Mr.Amit Jhanji, Senior Advocate with
Ms.Eliza Gupta, Advocate
for the respondents.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 25.02.2020 passed by learned Court below, in execution petition titled 'Pawittar Singh Walia and others vs. M/s RMS Hospitality Pvt. Ltd.' EXE-281-2017, wherein, the objections, filed by the petitioner, have been dismissed.

That, initially, Pawittar Singh Walia and others, filed a suit against M/s RMS Hospitality through Akash Garg, its Director, thereby, seeking recovery of Rs.1,50,67,143/- along with interest. The said suit was decreed ex-parte on 01.03.2017. During the pendency of the execution

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petition, thereby, seeking execution of the aforesaid ex-parte judgment, Akash Garg-petitioner filed objection petition, thereby, asserting that notice has been wrongly issued to him, as he is no longer the Director of the company, nor does he represent the said company, neither there is any order against him. The decree had been passed against Private Limited Company namely RMS Hospitality Pvt. Ltd. The said company has since been closed and the name has been struck off from the register of companies. As the said company ceased to exist, therefore, no proceedings could be carried on against an entity, which is not in existence. Akash Garg, the then Director, has not been impleaded in his personal capacity nor any order has been passed against him in personal capacity. He has been only arrayed as, in the capacity of being Director representing the company. Hence, the proceedings in the execution petition, cannot continue, as proceedings cannot continue against the entity, which does not exist.

Reply to the said objection petition was filed, wherein, preliminary objection was raised about the objection petition to be misconceived, bad in law and liable to be dismissed. The Executing Court cannot go beyond the judgment and decree and has to execute the decree, so passed. On merits, it was averred that Akash Garg, being Director of the JD-company, is personally liable to pay the decretal amount. Hence, a prayer was made for dismissal of the objection petition.

After hearing learned counsel for the parties, vide impugned order dated 25.02.2020, the objection petition was dismissed.

Feeling aggrieved, Akash Garg filed the present revision

petition.

Respondents-decree holders made appearance through counsel.

Learned counsel for the parties heard.

Though, Akash Garg was erstwhile Director of the Company in question, but however, he attempted to shed away his liability, while asserting about the company RMS Hospitality having been dissolved and that the erstwhile Director cannot be made personally liable, vis-a-vis, the decree passed against an entity, which no longer exists.

It is not disputed that the company in question stood dissolved in the year 2015, in accordance with provisions of Section 560 (5) of the Companies Act, 1956 and that notification to that effect was published in Gazette of India on 30.06.2015. In this notification, it is categorically stated about companies to have been struck off from the register and said companies are dissolved. The name of this company stood at Sr.No.41.

Thus, the only question which calls for consideration is the effect in law of said dissolution, vis-a-vis, the liability of the erstwhile Director.

Section 560 of the Companies Act, 1956, reads as herein given:-

“560. Power of Registrar to strike defunct company off register.

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on- business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not

received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiry of the time mentioned in the notice referred to in sub- section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:

Provided that-

*(a) the liability, if any, of every director, [***] manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and*

(b) nothing in this sub- section shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the 2 [Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just

that the company be restored to the register, order the name of the company to be restored to the register; and the [Tribunal] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub- section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

*(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, 1 [***] manager or other officer of the company, or if there is no director, 1 [***] manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.*

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.”

Close perusal of Section 560(5) of the *ibid* Act shows that it continues the liability of the officers including the Directors of the company existing, if any, on the date of its dissolution. It does not convert the existing liability of the company, on its dissolution, into that of the officers, named in the proviso. The liability of such officers contemplated under the proviso is their liability qua such officers, which was existing on the date of dissolution. If the named officers had no liability, independent of the liability of the company, on the date of its dissolution, the proviso does not come into play.

In this regard, it is appropriate to make reference to ***Mukesh Hans and another vs. Smt.Uma Bhasin and others, 2010 SCC OnLine Del 2776***, wherein, the question with regard to proviso of Section 560(5) of the

Companies Act, came under scrutiny and it was observed, as herein given:-

“10. The short question which arises for consideration in the present appeal is as to whether the appellants as erstwhile Directors of the Company, M/s. Dawson Leasing Limited (In Liquidation) can be made liable in a suit for recovery of money when the Directors have not made themselves personally liable by extending any guarantee, indemnity, etc.

11. Indubitably, a company incorporated under the Companies Act, whether as a private limited company or a public limited company, is a juristic entity. The decisions of the Company are taken by the Board of Directors of a Company. The Company acts through its Board of Directors, and an individual Director cannot don the mantle of the Company by acting on its behalf, unless he is so authorized to act by a special resolution passed by the Board or unless the Articles of Association so warrant. It is equally well settled that a Director of a Company though he owes a fiduciary duty to the Company, he owes no contractual duty qua third parties. There are, however, two exceptions to this rule. The first is where the Director or Directors make themselves personally liable, i.e., by execution of personal guarantees, indemnities, etc. The second is where a Director induces a third party to act to his detriment by advancing a loan or money to the Company. On the third party proving such fraudulent misrepresentation, a Director may be held personally liable to the said third party. It is, however, well settled that this liability would not flow from a contract, but would flow in an action at tort, the tort being of misrepresentation and of inducing the third party to act to his detriment and to part with money.”

Now, reverting to the case in hand, it is pertinent to mention that dispute under judgment and decree dated 01.03.2017, related to the payment of the outstanding amount, on the basis of the registered lease deed dated 17.07.2012. In fact, the dispute related to the rent having not been paid from 01.12.2012 and it extended upto 27.11.2014 i.e. soon before the date of institution of the suit. The said liability to pay the arrears of rent for the period 01.12.2012 to 27.11.2014 was based on the lease deed dated

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17.07.2012, which has also been annexed as Annexure A-4 with the application for seeking vacation of stay order and resolution of the company is Annexure A-5. As per clause 6 of the aforesaid registered lease deed, the Directors of the company were personally liable to discharge the liability of the company, due towards the respondent/decreed holder. The relevant portion of Clause 6 of the said lease deed, is herein reproduced:-

“6

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Therefore, the Amount/payments as may be due & as to be paid to the Lessors, Pending Taxes, Bills etc shall be deducted and adjusted from the Security Deposits to the extent as possible and for remainder, if any, shall be recovered from the Assets Properties of the Company/Lessees & failing that from the Personal Properties of the lessees and Directors Jointly or Severely, through the Legal Proceedings or through the Process of Law, if not paid otherwise.

XXXX”

Thus, from the aforesaid recitals of the lease deed, it is evident that mutually it was agreed between the parties that in case the outstanding due, including the lease amount/rent, all taxes, bills, damages amount etc. against the lessees may work out more than the security amount/deposits, then, it shall be lawful for the lessors to recovery the balance amount of dues/arrears, taxes etc., from the property/assets of the company/lessee or jointly or severally from the personal properties of the Directors and owners. In the light of such recitals, the petitioner, as such, cannot run away from the liability, so intended to be fastened upon him.

Not only this, it is further pertinent to mention that respondents-decreed holders had filed six complaint cases under Section 138 and 141 of the Negotiable Instruments Act against the present petitioner and the

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company, in which, two compromise deeds were executed on 06.05.2016, between the present petitioner and respondent No.1. One of the compromise had been brought on record by the petitioner, which is Annexure P-7. However, the second compromise dated 06.05.2016 has been produced by the respondents, along with the application for vacation of stay i.e. Annexure A-6. Perusal of the said compromise deed reveals that petitioner had himself entered into compromise for and on behalf of the company, thereby, acknowledging the liability towards the respondents-decree holders. The said compromises have been duly proved before learned Court below.

In the light of the same, it is evident that the petitioner himself had entered into compromise with the respondents-decree holders and the cheques amounts have been ordered to be paid and therefore, if any, in the minimum, it can be said to be misrepresentation, at the behest of the petitioner, for which, he can be made liable. In fact, now he cannot run away from his liability by simply stating about himself to have ceased to be the Director of the company and that the company stood dissolved.

From the judgment dated 01.03.2017, copy where of is Annexure P-2, it is evident that in pursuance of the civil suit having filed, at the behest of Pawittar Singh Walia and others against M/s RMS Hospitality Pvt. Ltd. through its Director Akash Garg, the defendant had made appearance through counsel, but on 03.09.2015, when the case was fixed for filing reply/written statement, no one had turned up and defendant was proceeded against ex-parte. The company stood struck off on 30.06.2015, as per the Gazette Notification. Even, after striking off the company, the

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petitioner had made appearance through Sh.Sandeep Suri/Sh.Puneet Tuli, Advocates and the copy of Power of Attorney, so having filed before the Court below is Annexure A-3. It was only thereafter, a plea has been raised that the petitioner has no concern with the decree, so passed against M/s RMS Hospitality Pvt. Ltd.

But however, it is palpably wrong. In fact, there was misrepresentation during the pendency of the suit, when they did not state about the petitioner to be not having any liability, as now asserted and furthermore, even, failed to make appearance in the execution petition also. Not only this, even, during the pendency of the complaints under Section 138 and 141 of the Negotiable Instruments Act, the petitioner had entered into compromise on 26.04.2016 i.e. after the dissolution of the company and therein also, projected himself to be the Director of M/s RMS Hospitality Pvt. Ltd. and thereupon, entered into compromise, wherein, the liability, vis-a-vis, outstanding amount in the civil suit, as such, has also been talked about. It has been agreed in the said compromise, about deduction to be made from the due amount claimed by the complainant, in the recovery suit, so filed, against the accused company, which was pending, at that time.

In the given circumstances, learned Executing Court has rightly concluded about the objections to be devoid of merits and the same having been filed to avoid payment of the decretal amount to the decree-holders and to prevent them from realizing the fruits of decree passed, in their favour. As such, learned Executing Court has rightly dismissed the objection petition.

Resultantly, the impugned order dated 25.02.2020 does not call for any interference. Hence, the present revision petition is hereby dismissed.

October 09, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No