

IN THE HIGH COURT OF JUDICATURE AT PATNA
COMPANY APPEAL(DB) No.13 of 2015

In
COMPANY APPLICATION No.1 of 1991

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Karam Chand Jain

... .. Appellant/s

Versus

Official Liquidator

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Siddhartha Prasad, Advocate
For the Respondent/s : Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-02-2024

Present Company Appeal No. 13 of 2015 is filed by *Mr. Karam Chand Jain* who was arrayed as Respondent No. 13 in Company Application No. 1 of 1991 arising out of Company Petition no. 3 of 1984. Official liquidator has filed one application which is numbered as Flag no. 23 and Flag no. 24 is by *Mr. Karam Chand Jain* (Respondent- 13 to Company Application no. 1 of 1991). Official liquidator has sought for exemption in respect of bringing legal heirs of the dead respondents namely Respondent no. 2 *Mr. Nand Lal Poddar* stated to have died on 03.12.1990, Respondent no. 8 *Dr. Subodh Chandra Bhattacharya* stated to have died on 02.04.1994 Respondent No. 3 *Shri G.L. Bansal* stated



to have died on 19.03.2007, Respondents No. 4 *Mr. Rajendra Singh Lodha* stated to have died on 03.10.2008, and Respondents No. 18 *Shri Kanjuli Gopal Krishnan Nambiar* stated to have died in the year 2007.

2. The learned Company Judge proceeded to grant exemption in the following manner :-

“Further, the applicant - Official liquidator is granted exemption under Order 22 Rule 4 (4) of the Code of Civil procedure from substituting the legal heirs of deceased opposite party no. 3. However, the prayer for grant of exemption under the said provision with regard to opposite party nos. 4, 8 and 18 is rejected and the proceedings are held to abated as against them.”

3. In other words, partially exemptions have been granted. Question of partially allowing such exemption is incorrect for the reasons that if a party died during pendency of certain proceedings and if such party's legal heirs are not brought on record within a period of 90 days or making necessary application to the extent of setting aside the abatement proceedings read with delay application the company judge has committed error, now even there is no challenge to the aforementioned order.



4. Flag No. 24 - Interlocutory application has been filed by the Respondent No. 13- Shri. K.C Jain in which he has sought for the following prayer:-

“It is therefore prayed that your lordship pleased to allow the application and hold that application no. 1/91 has abated completely and as per such order, order or orders as per your lordships may deem fit and proper”

5. The aforementioned prayer is not crystal clear for the simple reason that reading of prayer leads to as if all the respondents were stated to have died. On the other hand, there should have been specific prayer to the extent that Application No. 1 of 1991 stands abated against Respondents Nos. 2, 3, 4, 8 and 18. In respect of remaining respondents are concerned, Application No. 1 of 1991 survives. However, Application No. 1 of 1991 was not maintainable in view of the relief sought by the official liquidator in Application No. 1 of 1991 to the extent of joint responsibility in respect of alleged misappropriation of company fund. One of the contentions in Flag no. 24 application that having regard to the prayer of the official liquidator to the extent that there is a joint liability on the respondents that cannot be segregated in view of the later development to the extent that some of the



respondents have died. On this issue learned single judge has not considered in the impugned order dated 06.05.2015 while deciding Flag no. 24. It is also reliably learnt that Flag nos. 23 and 24 were heard by the learned company judge on 23.02.2012 and it was pronounced on 06.05.2015.

6. Learned counsel for the appellant submitted that certain judgments were cited in support of the relief sought in Flag no. 24 and the same have not been considered by the learned company judge. Be that as it may, specific relief has not been sought by the appellant in flag no. 24, therefore, appellant is permitted to file a fresh application insofar as maintainability of Application No. 1 of 1991 in the guise of death of Respondents Nos. 2, 3, 4, 8 and 18. Accordingly, liberty is granted to file fresh application in Application No. 1 of 1991.

7. The learned company judge shall not influenced by whatever observation made in the order dated 06.05.2015 passed in Flag no. 23 and 24.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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