IN THE HIGH COURT OF JUDICATURE AT PATNA
COMPANY APPEAL(DB) No.1 of 2016

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1. Sanjay Suchanti, Son of Shri Birchand Suchanti resident of Khandakpur, Biharsharif, District - Nalanda.

... ... Appellant/s

Versus

1. Anurag Cinema p Ltd. Hajipur and Ors. at present the registered office of the company has been shifted to the house of Shri Ajay Kumar Gupta Director, Mohalla -Sakunat Kalan, Biharsharif, District - Nalanda - 803101.
2. Shri Arvind Kumar Director, Jalalpur Sohsarai, Biharsharif, District - Nalanda - 803101.
3. Shri Ajay Kumar Gupta Director, Mohalla - Sakunat Kalen, Biharsharif, District - Nalanda - 803101.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar, Advocate
Mr. Dhananjay Mishra, Advocate
Mr. Nitesh Kr. Nirala, Advocate

For the Respondent/s : Mr. S.D. Sanjay, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

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

Date : 15-03-2024

The appellant has assailed the judgment dated 26.11.2015 passed in Company Petition No. 2 of 2013 by learned Company Judge.

2. The appellant is shareholder in the Anurag Cinema Private Limited and it was incorporated as a private company limited by shares on 23.11.1976 having its registered office at

Hajipur, Biharsharif in the district of *Nalanda*. Thereafter, it is stated to have been shifted. The appellant claims that he is member/contributor of the Company and is holding 300 equity shares of Rs. 100/- each against subscribed and paid-up capital of Rs. 15.12 *lakhs* and he is relying on the list of shareholders attached to the Annual Return dated 29.09.2012 of the Company to demonstrate that the appellant in all holds 600 equity shares of Rs. 100 each. He has filed Company Petition No. 2 of 2013 for winding up of the Company in terms of Section 433 (c) and (f) read with 439 (c) of the Companies Act, 1956 (hereinafter referred to as 'Act, 1956')

3. The appellant alleged that the Company has completely closed its business activities. Further alleged that the respondent – Directors of the Company who are stated to have sold the entire land in pieces at the rate of approximately Rs. 1,54,286/- per decimal. In this regard, appellant is relying on 29 sale deeds executed by the respondents – Directors. It is also alleged that respondents – Directors have demolished the building of cinema hall and sold the building materials, plants and machinery and have misappropriated sale proceeds. It is further alleged that the respondents - Directors have sold valuable land and building of Company at a throw away price of Rs. 1,54,286/-

per decimal whereas market price is of Rs. 15 *lakhs* per decimal. It is submitted that respondents – Directors of the Company have sold 69.7182 decimal for a paltry sum of Rs. 1,45,20,000/-. The aforementioned proceedings have been proceeded without calling for meeting of the shareholders. It is also submitted that filing of Balance Sheet and Annual Return with the Registrar of the Company is without compliance of Section 215 of the Act, 1956. In other words, Balance Sheet was required to be prepared and placed before the Board of Directors for approval and, thereafter, it is to be submitted to the Auditor of the Company for audit and report. Further there is violation of Section 210 of the Act, 1956. In other words, approval of the shareholders had not been obtained. Further there is violation of Section 220 of the Act, 1956.

4. The appellant has also filed I.A. No. 4614 of 2013 for provisional winding up of the Company in terms of Section 450 of the Act, 1956 read with Rule 106 of the Companies (Court) Rules, 1959 (hereinafter referred to as 'the Rules, 1959'). There are no material as to what is the fate of I.A. No. 4614 of 2013 and it is not forthcoming from the records.

5. *Per contra,* respondents have resisted the aforementioned contentions of the appellant. They have taken specific contention that Anurag Cinema Private Limited was under heavy loss. Consequently, they were compelled to sell certain plants and machinery and land to meet liabilities. While taking the aforementioned steps, respondent – Company have complied all relevant statutory provisions. In fact, shareholders have been notified at the relevant point of time and when it was required. Further, it is averred that company Byelaw has been strictly followed. In the Byelaw it was made clear that if cinema business is not materialized, in such circumstances Company can switch over to any other businesses like Hotel and other businesses mentioned therein *vide* Clause A (iii) of Byelaw.

6. Taking note of material information, learned Company Judge proceeded to dismiss the Company Petition No. 2 of 2013 on 26.11.2015. He has taken note of the ingredients of Section 433 (f) of the Act, 1956 and appellant has not apprised the Company Court that any of the ingredients under Section 433 (f) has been violated by the respondent – Company.

7. Feeling aggrieved and dissatisfied with the judgment of the learned Company Judge dated 26.11.2015 passed in Company Petition No. 2 of 2013, the present Company Appeal No. 1 of 2016 has been presented.

8. Matter was heard from time to time. Thereafter, at the behest of the appellant, appellant counsel has filed written arguments so also the respondents have filed written notes of arguments in which they have stated:

> *"Setting aside the order/judgement dated 26.11.2015 passed in Company Petition No. 02/2013 whereby the Company Petition filed by the Appellants under Section 433(c) and (f) read with Section 439 (c) of the Companies Act, 1956 praying winding up of Respondent No. 1 (Company) and appointment of Official Liquidator to take charge of the assets of the Respondent No. 1 (Company) was dismissed by the Hon'ble Company Judge."*

Respondent Nos. 1 and 3 have analyzed factual aspect of the appellant as well as respondents, they are as under:

> *"The Respondent No. 1 (Company) was incorporated as a Private Company (Limited by shares) on 23.11.1976 having its Registered Office at Hajipur, Biharsharif (Nalanda).*
>
> *The Respondent No. 1 (Company) was established to carry on the business of Proprietors or Manager of Theatres, Places and Halls, Studies and Cinematographic shows and exhibitions, both silent and moving and for the said object the Respondent No. 1 (Company) had purchased about 1 Acres of land in Mouza Hajipur Makdumpur, Mohalla Kandipar, Biharsharif*

(Nalanda)and constructed a Cinema Hall and started exhibiting pictures.

The Respondent No. 1 (Company) at the time of presentation of the Company Petition, is alleged to have removed the Registered Office to some unknown destination and is alleged that there is no trace even of the Registered Office of the Respondent No. 1 (Company).

It is alleged that in the course of time the cinema business of the company started incurring losses and since the time of presentation of the Company Petition the cinema hall is lying closed and the company is alleged to have not been carried any business for last several years and therefore, the Respondent Company may be proceeded for liquidation.

The Appellants (Company - Petitioners) claims to have been holding 300 Equity Shares of Rs. 100/- each against subscribed and Paid-Up Capital of Rs. 15.12 Lakhs relying on the list of Share Holders attached to the Annual Return dated 29.09.2012 of the Respondent No. 1 (Company). The Appellants (Company - Petitioners) alleged that the Respondent No. 3 (Director of the Respondent No. 1 Company) along with Respondent No. 2 (another Director of the Respondent No. 1 Company), now deceased, have sold entire land of the Respondent No. 1 (Company) at a throw away price of Rs.1,54,286/- per decimal whereas it could have fetched rate of Rs. 15.00 Lakh per decimal.

The Appellants (Company Petitioners) alleged that 29 Sale Deeds were executed by the Respondent No. 2 & 3 (Directors) and have sold 69.7182 decimals of land at a sum of Rs. 1,45,20,000/- without calling any meeting of the Share Holders.

The Appellants (Company Petitioners) alleged that without complying provision of Section 215 of the Companies Act, 1956 wherein the Balance Sheet are required to be prepared and placed before the Board of Meeting for approval and thereafter to be submitted to the Auditor for audit and report, the Respondent No. 1 (Company) has been filing Balance Sheet and Annual Return with the Registrar of the Companies.

The Appellants (Company Petitioners) alleged that under Section 210 of the Companies Act, 1956. the report of the Auditors is required to be got approved by the Share Holders and thereafter only, the Balance Sheet and Profit & Loss Account could be filed before the Registrar of Companies in terms of Section 220 of the Companies Act, 1956.

The Appellants (Company - Petitioners) alleged that an amount of Rs. 3,18,185/- shown in the Balance Sheet as on 31.03.2012, being lying with the Respondent Company, is claimed to be wrong.

The Appellants (Company - Petitioners) in their Supplementary Affidavit has stated that the Respondent Company has been Authorized Capital of Rs. 24.00 Lakhs divided into 24,000 *shares of Rs. 100/- each and subscribed capital of Rs. 15,12,000/- consisting of 15,120 Equity Share of Rs. 100/- each, out of which the Petitioners jointly subscribed 600 Equity Shares of value of Rs. 100/- each.*

The Appellants (Company Petitioners) in I.A. No. 4614/2013 has alleged that the Respondent Directors had sold 69.7182 decimals of land of the Respondent Company, out of total 1 Acre area of land and it is alleged that the remaining 30.2818 decimals of land would also be sold by the Respondent Directors and apprehending such, filed an Interlocutory Application under Section 450 of the Companies Act, 1956 read with Rule 106 of the Companies (Court) Rules, 1959.

On the aforesaid facts Company Petition No.02/2018 seeking winding up of the Respondent Company under Section 433(c) and (f) read with Section 439 (c) of the Companies Act, 1956 was filed by the Appellants (Company Petitioners).

The Appellants in Rejoinder to the Counter filed by the Respondents have alleged that no notice of extra-ordinary meeting were sent to them and it was surprising that on requisitions made by 18 Share Holders, 32 out of total 42 Share Holders were present and had attended the meeting and have further alleged that as per the Balance Sheet as on 31.03.2013, an amount of Rs. 25.00 Lakhs is kept as Fixed Deposit in Canara Bank and a sum of Rs. 31,40,695/- is lying in the Current Account of the Canara Bank whereas an *amount of Rs. 61,16,185/- has been shown as Cash in Hand of the Respondent Company without any business activities.*

The Appellants have also stated in the Rejoinder that after filing of the present Company Petition, the Respondent Company has transferred 5.550 decimals of land to three persons for the small sum of Rs. 12,41,000/-.

Facts of the Case as per the Respondents:-

The Respondents have challenged the credential of the Appellants for filing the present Company Petition on the ground of locus of the Appellants for presenting the same before the Hon'ble Company Judge.

The Appellant No. 1 was the Managing Director of the Respondent Company during the period 1980 to 1986 and due to non-submission of statutory Annual Returns, Balance Sheet for various financial years with the Register of Company and Income Tax Return in time, a prosecution was lodged against the Appellant No. 1 for violation of provisions of Companies Act, 1956.

The Appellants (Company - Petitioners) had left Biharsharif sometime in the year 1986 and had also sold out their entire properties including residential house by 3 separate Sale Deeds all dated 15.01.1991 and since then have not been living in Biharsharif (Nalanda).

The Respondent No. 3 was appointed as a new Managing Director by the Board of

Directors who managed the Respondent Company till 1995. The Respondent No. 3 facing personal difficulties resigned from the post of Managing Director in the year 1995 and thereafter one Sri Krishna Kumar was appointed as a new Managing Director of the Respondent Company.

The Respondent Company works smoothly till the year 1995, but during the period of Sri Krishna Kumar, being the Managing Director of the Respondent Company, the Respondent Company suffered massive loss due to non payment of statutory liability, namely, liability of Entertainment Tax, Employees' Provident Fund, Electricity dues, Dues of Municipal Corporation ete, which led to initiation of recovery proceeding under the Bihar, Orissa and West Bengal Public Demand Recovery Act and action for auction sale of the property of company was also initiated.

In the aforesaid background, the share holders of the company conveyed an extra-ordinary General Meeting on 15th February, 2008 in terms of Section 169 of the Companies Act, 1956 wherein in the presence of the 31 shareholders of the Respondent Company, the property of the company was unanimously resolved to be sold by authorizing the two Directors (Respondent Nos. 2 & 3) to execute deed or conveyance of the properties of the company for discharge of statutory liabilities which had led to initiation of recovery proceedings against the Respondent Company.

The Minutes of the aforesaid Meeting dated 15.02.2008 was also intimated to the Register of Company in prescribed Form - 23 for registration of the Resolution of an Agreement.

The Registered Office of the Company was shifted from Mohalla Hajipur, Biharsharif to the house of Ajay Kumar Gupta, Mohalla Sakunat Kalan, P.O. Biharsharif, District Nalanda which was informed to the Register of Company in Form 18. Hence, the allegation of the Appellants regarding disappearance of Registered Office of the Respondent Company is false and the company is still in existence and has been filing its statutory returns to the Register of Company.

The Respondent Company has fixed an amount of Rs. 1,92,64,000/- by sale of its land on which capital gain tax of an amount of Rs. 38,18,382/- was also paid by the Respondent company on 18.09.2013.

The Respondent company by using the proceeds of sale of part land of the Respondent company, cleared the dues of an amount of Rs. 3,25,124/- of Nagar Parishad, Biharsharif, dues of Rs. 1,44,999/- of Employees' Provident Fund on 25.11.2011, dues of Entertainment tax of an amount of Rs. 6,38,842/-, due of Commercial Taxes Department and dues of Rs.62,936/- of Bihar State Electricity Board and obtained No Dues Certificate from the departments concerned by which the Certificate Case No. 10/2006-07, Certificate Case No. 01/2003-04 and Certificate Case No. 01/2011-12 were all dropped against the

Respondent Company. Hence, the allegation of Appellants of sale of property of the Respondent Company by the Respondent Directors without any cause is completely false.

The Respondent company has fixed deposited the sale proceeds on account of sale of land which has been duly mentioned in the Balance Sheet for the Financial Year ending 31.03.2013. Hence, the allegation of the Appellants of misutilization of sales of proceeds by the Respondent Directors are false.

The Respondent Company is trying to resolve its pending problems in respect of some proceedings against it and is proposing to start new business by diversifying the existing business in terms of the Memorandum of Association of the Respondent Company as there are many businesses stated in the Memorandum of Association, including the present business of running Cinema Hall, and, therefore, the allegation of the Appellants that the Respondent company is not carrying out the business of Cinema Hall, hence entitled to be wound up is not being made out as, as per the Memorandum of Association business of Cinema is not only the business for which the Respondent company was incorporated and hence the company has the option to diversify its existing business into any other business detailed in Memorandum of Association.

On the aforesaid facts, the Respondents prayed for dismissal of the Company Petition filed by the Appellants."

9. In this backdrop, learned Company Judge framed the following issue :

"Whether the present company petition needs to be admitted and steps be taken for liquidation of the company by appointing the Official Liquidator?"

10. The learned Company Judge after due analyzing the factual aspects of the matter had come to the conclusion that it is not a case for winding up for the reasons that appellant has not made out various ingredients for the purpose of invoking Section 433 (c) or Section 433 (f) of the Act, 1956.

11. The appellant in the present appeal reiterated the stand taken before the learned Company Judge to the extent that respondent - Company have sold the property at a throw away price including the market rate fixed by the government and without going for liquidation. It is further reiterated that there is violation of Sections 210, 215, 450 of the Act, 1956 read with the Rules, 1959. There is violation of Section 159 of the Act, 1956 since only 32 shareholders attended while ignoring the presence of the appellant. The Registrar Office was either open or shifted after filing of the winding up petition. There are no proof in support of sending notices to the shareholders of holding extraordinary general meeting as is required under Section 172 of the Act, 1956. Resolution under Section 293 of the Act, 1956 does not specify with new businesses. Alternative business undertaken by the respondent – Company have not been specified in their counter affidavit. On that respondents in their written submission contended as under:

> *"Section 433(c) of the Companies Act, 1956 provides that a company may be wound up by a court if the company does not commenced its business within a year from its incorporation or suspense its business for a whole year.*
>
> *In the facts of the present case, it is not a case that the Respondent Company has not commenced its business within the year of its incorporation and, therefore, in terms of first part of Section 433(c) of the Companies Act, 1956, the order of winding up of the Respondent Company cannot be passed.*
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> *So far as the second part of the provision of Section 433(c) is concerned, regarding suspension of business for a whole year, it is submitted that the circumstances due to which such suspension of business occurs have to be considered before passing an order of winding up under Section 433(c) of the Companies Act, 1956.*
>
> *In the facts of the present case, the business of the Respondent Company was not suspended at the whims of the Respondent*

Directors, rather due to initiation of certificate proceedings initiated for recovery of various statutory dues which accrued against the Respondent Company.

The Appellants have filed the present Company Petition under Section 433(f) of the Companies Act, 1956 which provides that if the court is of the opinion that it is just and equitable that the company should be wound up, an order of winding of the company may be passed.

In this connection, it is submitted that in the facts of the present case it is admitted that under duress, the Respondent Company to pay the statutory dues of various government departments, after resolution passed in extra-ordinary general meeting had sold the land of the Respondent Company and by the proceeds of such sale cleared the outstanding dues of the Respondent Company and the balance sale proceeds are secured in Fixed Deposit and Current Bank Account of the Respondent Company maintained in Canara Bank which has also been duly accounted for in the Balance Sheet as on 31.03.2012. Moreover, the Respondent Company is making endeavour to diversify its business in one of the object as mentioned in the Memorandum of Association and, therefore, it is not a fit case for passing an order of winding up under Section 433(f) of the Companies Act, 1956.

It is not a case where the assets of the Respondent Company have been sold and its proceeds have been mis-utilized; to the contrary, *the proceeds of sale was utilized for payment of statutory dues of the Respondent Company and the balance are secured in the name of the Respondent company in its bank account by way of Fixed Deposit or balance in the Current Bank Account. Hence, there is no infirmity in the impugned order and the present Memo of Appeal is liable to be dismissed by this Hon'ble Court.*

So far as the allegation of non-compliance of various provisions of the Companies Act, 1956 by the Respondent Company is concerned, it is humbly submitted that till date no proceeding for violation of the statutory provisions of the Companies Act, 1956 have been initiated by the Registrar of Company against the Respondent Company since the year 1955.

Section 169 of the Companies Act, 1956 provides calling of extra-ordinary general meeting on requisition. The resolution dated 15.02.2008passed in the extra-ordinary general meeting was duly requisition in terms of Section 169 of the Companies Act, 1956.

The ground of the Appellants that the main object of the Respondent Company has provided under Clause of Objects of the Company (A) in the Memorandum of Understanding, being related to cinematographic show, diversification could only be done by passing of a Resolution in a meeting of the Shareholders is concerned, it is submitted that as per Clause A(iii) to run a Restaurant, Bar cum Restaurant, Bar, Hotel or Motel or adjacent to the companies premises is *also one of the main object of the Respondent Company as per the Memorandum of Association and therefore it cannot be claimed that due to closure of business relating to cinematography, no other main object subsist for keeping the company into existence.*

The Hon'ble Kolkata High Court in the case of Murlidhar Roy Vs. Bengal Steamship Company Ltd., reported in AIR 1920 Cal. 722 has held that "to carry on their business when a company had acquired a Steamer and two flats and the flats were acquired by government during the war and the company had not yet been able to replace them in view of the rise in prices, the resulting in suspension of business for more than a year was satisfactorily accounted and did not furnish an indication that there was no intention to carry on business so as to pass an order of winding up the company".

The Hon'ble Rajasthan High Court in the case of Registrar of Company Vs. Jaipur Stock Exchange Ltd., reported in 1987 (62) Company Cases 459 held that "where the company was making its due efforts for its revival it could not be wound up for suspension of the business for a period of more than one year".

The Hon'ble Orissa High Court in the case of Mohanlal Saraf Vs. Cuttack Electric Supply Co., reported in (1964) | Company Law Journal 58 has held that "where suspension of business was due to acquisition there was no *sufficient reason for passing of winding up order against the Company".*

The Hon'ble Rajasthan High Court even in the case of Registrar of Company Vs. Jai Agro Industries Ltd., reported in 1987(62) Company Cases 358 has held that "though the business of the company has been suspended for more than year but then the company was in sound financial condition and, therefore, it need not be wound up".

In the present case, the only ground urged by the Appellants seeking winding up of the Respondent Company is suspension of business of Cinema Hall for more than year. In this regard, it is submitted that the reason for suspension was not attributable to either the Respondent Company or to the Respondent Directors; rather, due to accumulation of huge statutory debt of different government organizations and, therefore, in view of the aforesaid judgments of various Hon'ble High Courts, considering the fact that the sale proceeds of the assets of the Respondent Company are secured, it is not a fit case for interfering the impugned judgment passed by the Hon'ble Company Judge rejecting the Company Petition by a detailed reasoned order.

Overall analysis of the present matter

12. The appellant and another (deceased) filed Company Petition No. 2 of 2013 under Section 433 (c) and (f) read with Section 439 (c) of the Act, 1956. Section 433 (c) of the Act, 1956 is not attracted for the reasons that company affairs were commenced in the year 1976 whereas its affairs were disrupted and certain loss stated to have caused in the year 2008, in which year respondent - Company proceeded to sell certain movable and immovable properties of the Company. Hence, Section 433 (c) is not attracted. Section 433 (f) of the Act, 1956 provides that if the Court is of the opinion that it is just and equitable that the Company should be wound up, an order of winding up of the Company may be passed. Therefore, question for consideration is whether appellant has made out a case under this provision or not?

13. Common shareholders are granted six rights: voting power, ownership, the right to transfer ownership, a claim to dividends, the right to inspect corporate documents, and the right to sue for wrongful acts. The appellant has made certain specific allegation in support of Company Petition like closure of business in the year 2008 and selling of properties at throw away prices. Respondents have not answered with material. Further establishment of alternative business, from the date of closure of Anurag Cinema somewhere in the year 2008 till date alternative business has not been established. If there is evidence of mismanagement, it may be subject to legal action or investigation. Appellant allege fraudulent activities in the respondent -

Company, it is a matter of records to be verified. If a Company engaged in fraudulent activities, it may be wound up. Fraudulent activities can include misappropriation of funds, falsifying financial statements, and other illegal activities. Having regard to certain allegations made by the appellant, respondents have to clarify with material information. The same has not been examined by the learned Company Judge while deciding the Company Petition.

14. Briefly the appellant contended that the cinema hall is alleged to have been closed for the last several years and movable and immovable properties have been sold at a throw away price. To that effect, he has pointed out 29 sale deeds which were executed by respondent Nos. 2 and 3 (Directors) and they have sold 69.7182 decimals of land at a sum of Rs. 1,45,20,000/-. Such proceedings have been undertaken by respondent Nos. 2 and 3 without calling any meeting of the shareholders. Thereafter, certain procedures were required to be followed by the respondent Nos. 2 and 3 to the extent of compliance to Sections 215 and 210 of the Act, 1956. For compliance of the aforementioned statutory provisions, respondent Nos. 2 and 3 have not apprised this Court in the Company Petition in furnishing relevant documentary evidence or material information. Even amount shown in the balance sheet is incorrect as on 31.03.2012 to the extent of sum of Rs. 3,18,185/- On this issue, the respondents have not countered in producing relevant material to defeat the contentions of the appellant. They have also not countered in respect of supplementary affidavit filed on behalf of the appellant that the respondent – Company has been authorized capital of Rs. 24 *lakhs* divided into 24,000/- shares of Rs. 100 each and subscribed capital of Rs. 15,12,000/- consisting of 15.120 equity shares of Rs. 100 each, out of which appellant and another (deceased) jointly subscribed 600 equity shares of value of Rs. 100 each.

15. In fact, appellant filed rejoinder affidavit to the counter affidavit filed by the respondents in respect of no notice of extraordinary meeting were communicated to them. The respondents have not apprised this Court in respect of dispensation of notice to the appellant or validly they have been served and the appellant and deceased remained absent. It is also alleged that during pendency of the Company Petition, respondents have proceeded to transfer 5.550 decimals of land to three persons for a sum of Rs. 12,41,000/-. Even at this stage requisite formalities have not been completed in respect of disposal of immovable properties of the Company.

16. The respondents have very vaguely defended while alleging that appellant who was Managing Director for the year 1980 to 1986, certain irregularities have been committed for which he was subjected to prosecution. However, what happened to such prosecution has not been apprised and what would be the result. This is just only to prejudice this Court, such statement has been made. At one stretch the respondents have submitted that appellant while leaving *Biharsharif* in the year 1986 have sold his three residential properties. How is it relevant for the present case is not forthcoming.

17. It is also submitted that respondent No. 3 was appointed as a new Managing Director by the Board of Directors and its duty is not revealed and it is only mentioned till the year 1995. It is further submitted that during respondent No. 3 tenure, Company was facing various difficulties and he had resigned in the year 1995. Thereafter one *Krishna Kumar* was appointed as Managing Director. Due to loss caused to the Company and in not making certain statutory payments, the respondent – Company proceeded to sell movable and immovable properties in the year 2008. However, they have not apprised as to why the appellant and deceased have not been informed or heard. Further no material has been placed on record to the extent that requisite provisions have been complied while selling movable and immovable properties of the Company. It is also to be noted that respondent - Company sold certain properties as stated *supra,* it was not recommenced any kind of business as narrated in the memorandum of association in particularly Clause A (iii) to run a Restaurant, Bar-cum-Restaurant, Bar, Hotel or Motel even to this day. It is only stated that respondent - Company is trying to resolve its pending problems in respect of some proceedings against it and proposing to start new business by diversifying existing business in terms of memorandum of association with the respondent – Company. For these many years what are the steps taken to commence new business is not forthcoming.

18. Respondents in their rejoinder statement/notes, they have narrated various factual aspects of the matter. However, supporting documents have not been placed on record to meet each and every contentions of the appellant. In the absence of these material information, the learned Single Judge has committed error in rejecting the Company Petition No. 2 of 2013 on 26.11.2015.

19. The winding up order may also be made if it is approved that the affairs of the Company have been conducted in a manner unfairly and prejudicial to the interest of some shareholders of the Company or its shareholders generally. In considering the various factual aspects of the matter the Court still shall taken into account the circumstances of the Company including whether it is insolvent and whether there is any alternative solution to the dispute such as buying each of the shares of disgruntled and dissatisfied shareholders. These are all the material which was required to be taken note of by the learned Company Judge while deciding Company Petition No. 2 of 2013 with reference to the various contentions raised by the appellant/petitioner. Citations cited *supra* are not assisting the respondent – Company unless factual aspects are crystal clear to the extent as to whether any fraudulent activities are existing in the matter. Therefore, the appellant has made out a case so as to interfere with the judgement dated 26.11.2015 passed in Company Petition No. 2 of 2013. Accordingly, judgement dated 26.11.2015 stands set aside and Company Petition No. 2 of 2013 stands restored on the file of learned Company Judge.

20. Learned Company Judge is requested to decide Company Petition No. 2 of 2013 afresh within a period of six months. Both appellant and respondents are hereby directed to furnish material information in support of their each of the contentions. The respondent - Company is also required to apprise the learned Company Judge what are the development in respect of company affairs after disposal of certain movable and immovable properties.

21. The respondent – Company is also hereby directed to furnish each and every material information in respect of disposal of Company property or properties to the extent in compliance of various provisions like Sections 210, 215 of the Act, 1956 etc. Merely statement that they have duly complied would not suffice. The parties are hereby directed to co-operate before the learned Company Judge while avoiding adjournments.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	04.03.2024
Uploading Date	15.03.2024
Transmission Date	