

T.K. FASTENER LANKA (PVT) LTD

v.

SEYLAN BANK LTD

COURT OF APPEAL.

DE SILVA, J.

WEERASURIYA, J.

CA NO. 223/97

DC NEGOMBO 2178/SPL.

NOVEMBER 11TH, 1998.

DECEMBER 11TH, 1998.

MARCH 18TH, 1999.

MAY 25TH, 1999.

Companies Act, Ss.260, 289, 347 and 449 - Winding up proceedings - Liquidator seeking an order directing a 3rd party to deposit sum held by the said party to the credit of the case.

On an application made on 27. 07. 1973 an Order to wind up the Petitioner Company was made by Court and two liquidators were appointed. The company under liquidation had in deposit a certain sum of money with the Respondent Bank. The Respondent Bank on 19. 11. 1993 informed the Company under liquidation that the Bank had appropriated the said sum against monies it claimed to be allegedly due to it from the said Company.

The Liquidator disputed the alleged claim and on 29. 12. 95 made an application under S.260 read with S.289 of the Companies Act to the District Court in the winding up proceedings for *inter alia*, to direct the Respondent Bank, to deposit the said sum to the credit of the case.

The Respondent Bank, contended that the said application cannot be maintained in the winding up action. Court held with the Respondent.

Held :

(1) Any disposition of the property of the company after the commencement of winding up shall be null and void unless the Court otherwise orders.

(2) Once a winding up order is made it is that Court (S.449) which has the power and jurisdiction to go into any matter relating to the winding up and all steps taken thereunder. The policy seems to be the protection of the interest of the creditor and to ensure that the free assets of the

Company at the commencement of winding up proceedings will be available for distribution of its creditors and also to avoid multiplicity of actions to prevent the company funds being wasted.

APPLICATION in Revision from the Order of the District Court of Negombo.

Case referred to :

C.A. 584/93 - D.C. Colombo 2576/Spl - CAM 25. 03. 1994.

N.R. Sivendran with Ms. G.E.L. Direkze for Petitioner.

Romesh de Silva P.C. with S.R. de Livera for 2nd Respondent - Respondent.

Cur. adv. vult.

July 27, 1999.

DE SILVA, J.

This is an application in revision filed by the Liquidators of T.K. Fastener Lanka (Private) Limited from the order dated 17. 02. 1997 where in the learned District Judge upheld the preliminary objection of the respondent regarding the maintainability of the application under Section 260 read together with Section 289 of the Companies Act against the respondent.

The facts which led to the above order as set out in the petition are as follows:

An application to wind-up the company named T.K. Fastener Lanka (Private) Limited was presented to the District Court of Negombo on 27th July 1993 under Case No. 2178/Spl. The said application was duly advertised in the news papers and also in the Government Gazette. An order to wind-up the above company was made by the District Court of Negombo on the 22nd of November 1993 and two liquidators were appointed by that Court.

The respondent Bank is a duly incorporated Banking Company limited in liability. T.K. Fastener Lanka (Private)

Limited was a customer of the respondent Bank. The company (under liquidation) had in deposit a sum of U. S. Dollars 42,000/= in its Foreign Currency Banking Unit Account No. 895231 of the respondents Bank at free Trade Zone, Katunayake.

By letter dated 19th November 1993 the respondent Bank informed the Company under liquidation that a sum of U. S. Dollars 42,000/= had been transferred from the Foreign Currency Banking Unit Account to another Account of the Company in the same Bank which was overdrawn. The respondent Bank appropriated the said sum of U. S. Dollars 42,000/= against monies it claimed to be allegedly due to it from the company under liquidation.

The liquidators disputed the alleged claim and by letter dated 14th March 1994 requested the Bank to re-deposit or re-transfer the said sum back to the companies account (under liquidation). The liquidators further required the Bank to prove its alleged claim in the liquidation proceedings.

In this background the liquidators by petition dated 29th December 1995 made an application under section 260 read with section 289 of the Companies Act to the District Court of Negombo in the said winding-up No. 2178/Spl. for *inter alia*, the following reliefs:

- “(a) for an Order directing the respondent-responder Bank to deposit the said sum of U. S. Dollars 42,000/= to the credit of D. C. Negombo case No. 2178/Sp1. to be disposed of as required by the liquidation proceedings; or in the alternative,
- (b) for a declaration that the transfer and or appropriation of the sum of U. S. Dollars 42,000/= in the Foreign Currency Banking Unit Account of the petitioner-petitioner company (under liquidation) by the respondent-responder Bank on 19th November 1993 is null and void;

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- (c) for an Order directing the respondent- respondent Bank to reverse the entry in its books and to re-deposit or re-transfer the sum of U. S. Dollars 42,000/= to the foreign Currency Banking Unit Account of the petitioner-petitioner Company (under liquidation);
- (d) for an Order directing the respondent-respondent Bank to hold the sum of U. S. Dollars 42,000/= at the disposal of the petitioner-petitioner Company (under liquidation) as per the instructions of the Liquidators;”

The respondent Bank filed objections and the District Judge inquired into the matter. Written submissions of the parties too were tendered to Court, and in that the respondent Bank took up a preliminary objection regarding the maintainability of this application in the winding up action. On the 17th of February 1997 the learned District Judge disallowed the application of the liquidators with costs and held that the said application could not be made in the same proceedings.

The present application to this Court is to revise the said order of the learned District Judge.

Counsel for the petitioner contended that the said order is *ex facie* wrong and there has been a miscarriage of justice as the learned District judge has not given any reasons for the order. He further submitted that the order is contrary to the imperative statutory provisions contained in the Companies Act.

Counsel for the respondent Bank among other matters contended that-

- (a) The debt is disputed and a regular action should be filed against the Bank.
- (b) The Court has no power in winding-up proceedings to compel a 3rd party to bring in and deposit a debt.

(c) The company (under liquidation) is seeking to recover money without proper trial by way of summary proceedings.

The application by the liquidators on behalf of the company was filed under Section 260 and 289 of the Companies Act. Section 260 reads as follows:

"In a winding-up by the Court, any disposition of the property of the company, including things in action and transfer of shares or alteration in the status of the members of the company, made after the commencement of the winding-up shall, unless the Court otherwise orders be void."

It is clear from the above section that any disposition of the property of the company after the commencement of the winding-up shall be null and void unless the "Court" otherwise orders. Section 289 of the Companies Act reads as follows: "The Court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hand to which the company is *prima facie* entitled."

The scope of section 260, the manner and the procedure that have to be followed in an application under section 260 of the Companies Act was fully considered in C.A. Application 584/93⁽¹⁾, (This is an unreported case. Counsel for the petitioner was good enough to file a photo copy of the above judgment for our perusal).

In that case Hon. Justice Sarath. N. Silva the then President of the Court of Appeal having analysed the provisions relating to Section 260, observed that an application under Section 260 invoking the jurisdiction of the

winding-up Court should be by way of petition and affidavit naming the respondent who will be affected by the order.

The "court" referred to in sections 260 and 289 has been defined in Section 449 of the Companies Act to be the District Court which takes steps to wind-up the Company, it reads as follows "The Court" used in relation to a company means the District Court having jurisdiction to wind-up the company."

Counsel for the petitioner relying on Section 260, and 289 of the Companies Act submitted that the winding-up proceedings of T.K. Fastener Lanka (Private) Limited is pending in the District Court of Negombo and therefore the District Court of Negombo has jurisdiction to hear and determine this application and any matter arising out of the winding-up proceedings of the company under liquidation.

It was the contention of the respondent's Counsel that if this kind of application is allowed to be made in the winding-up proceedings there will be confusion and the entire winding-up process would be complicated.

This contention of the counsel for the respondent cannot be accepted for the following reasons:

It is to be noted that once a winding-up order is made, it is that court which has the power and jurisdiction to go into any matter relating to the winding-up and all steps taken there under. The policy seems to be the protection of the interest of the creditors and to ensure that the free assets of the company at the commencement of winding-up proceeding will be available for distribution of its creditors and also to avoid multiplicity of actions to prevent the company funds being wasted.

In the instant case of consent of all parties on the 22nd of November 1993 winding-up order has been made. The liquidators are in the process of recovering the assets in order

to distribute the same to the creditors in terms of section 347 of the Companies Act.

In these circumstances we hold that the District Court of Negombo has jurisdiction to hear and determine the matter in issue.

We note that the respondent has filed objections and written submissions in respect of the main question in the District Court. The petitioner too has filed his written submissions. The District Judge has given the order only on the preliminary question raised.

We set aside the order dated 17. 02. 1997 and direct the learned District Judge to proceed with the inquiry with regard to the "disposition" of the property and make an order according to law. This case should be given priority and concluded expeditiously. This application is allowed with costs.

WEERASURIYA, J. - I agree.

Application allowed.