

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Rev. No. S-51 of 2018

Mst. Almas Khatoon and another

v.

P.O Sindh and 10 Others

Applicant No.1	:	Mst. Almas Khatoon d/o late Imdad Ali Khan Chandio
Applicant No.2	:	Mst. Sajida Begum d/o late Jalal Khan Chandio through Mr. Abdul Rehman Bhutto, Advocate
Respondent No.1	:	Province of Sindh through Secretary Revenue through Mr. Abdul Waris Bhutto, Assistant Advocate General
Respondent No.2	:	Nisar Ahmed s/o Shah Muhammad Malik
Respondent No.3	:	Muhammad Ilyas s/o Din Muhammad Bhatti
Respondent No.4	:	Syed Muhammad Ibraheem s/o Syed Abdul Qadir
Respondent No.5	:	Abdul Rahseed s/o Muhammad Memon
Respondent No.6	:	Tayyab s/o Haji Usman Memon through Mr. Malik Khushehal Khan
Respondent No.7	:	Mukhtiarkar (Revenue), Taluka Shahdadkot
Respondent No.8	:	Superintendent of Police Kambar-Shahdadkot @ Kambar
Respondent No.9	:	S.H.O P.S. B-Section Shahdadkot
Respondent No.10	:	Pakistan Industrial Development Corporation, through this General Manager, Karachi
Respondent No.11	:	Federation of Pakistan, through Secretary PIDC, Islamabad
Date of Hearing	:	04.03.2024
Date of Judgment	:	04.03.2024

Date of Reasons : 14.03.2024

J U D G M E N T

JAWAD AKBAR SARWANA, J.: This Revision arises from the Order dated 03.10.2015 of the learned Senior Civil Judge, Shahdadkot ("trial court") in F.C. Suit No.49/2014 (available on pages 79-87 of the Revision file), wherein the trial court rejected the plaint under Order 7 Rule 11 CPC r/w section 151 CPC on the assumption that liquidation proceedings were pending in respect of several properties alleged to be the subject matter of F.C. Suit No.49/2014 and the said suit had been filed without obtaining permission from the Winding-up Court. The trial court's order was upheld by the District Court Kamber-Shahdadkot at Kamber ("Appellate Court") in Civil Appeal No.20/2015 vide judgment dated 14.06.2017.

2. The Applicants, Almas Khatoon d/o late Imdad Ali Khan Chandio and Sajida Begum d/o late Jalal Khan Chandio through their attorney Wajid Ali Chandio s/o late Imdad Ali Chandio filed F.C. Suit No.49/2014 for Declaration and Permanent Injunction against the Respondents Nos.02, 03 and 04, i.e. Nisar Ahmed, Muhammad Ilyas and Syed Muhammad Ibrahim, at the time and / or presently all parties of "M/s Ahmed & Co." including but not limited to Respondent Nos. 05 and 06 (hereinafter all collectively referred to as "the Private Respondents") and others. It transpires that the issue of maintainability of F.C Suit No.49/2014 arose on account of an application filed by the Private Respondents in the trial court. The Private Respondents sought rejection of the plaint on the ground that one of the subject properties, namely Survey No.38-B, Deh Pathan, Shahdadkot, District Larkana (now Kamber-Shahdadkot) had been acquired by them through auction proceedings conducted by the Official Assignee of the High Court

of Sindh in his capacity as the Official Liquidator appointed in the Winding-up of Shahdakot Textile Mills (Pvt.) Ltd. (in Liquidation) in J.Misc. No.41/2001 pending in the High Court of Sindh at Karachi. The Private Respondents, having acquired clean title of Survey No.38-B from the High Court of Sindh at Karachi, claimed that they were the true and lawful owners of the said Survey No.38-B. After hearing the parties, the trial court allowed the application filed by the Private Respondents on the ground that the suit had been filed without obtaining permission from the Winding-up Court under section 316 of the Companies Ordinance, 1984.

3. The learned Counsel for the Applicant submitted that the trial court erred in law as he dismissed the entire suit against all the Respondents, both Private Respondents and Government Respondents. Further, the Applicant had sought a declaration in respect of properties apart from Survey No.38-B, which were not the subject matter of the liquidation being carried out by the Official Assignee, i.e. Survey Nos.38-A, 39-A, 39-B and 396, Deh Pathan, Shahdadkot, Larkana District. The learned Counsel conceded that F.C. Suit No.49/2019 as against the Private Respondents was filed without the permission of the Official Liquidator, and he had subsequently initiated proceeding in J.Misc. No. 41/2001 before the High Court of Sindh at Karachi to safeguard the legal rights and interests regarding the Applicants' entire Suit properties, including inter alia, Survey Nos.38-A, 38-B, 39-A, 39-B, and 396.

4. The learned Counsel for the Private Respondents submitted that Survey No.38-B was acquired through auction proceedings, and not only prior permission of the Winding up Court was missing from the lis but also the Official Liquidator, a necessary and proper party was not impleaded in the array of Defendants in F.C Suit No.49/2014. He added that the Private Respondents

were only concerned with Survey No.38-B; therefore, the trial court rightly dismissed the suit against the Private Respondents and that the Order dated 03.10.2015 passed by the trial court and the Judgment dated 14.06.2017 passed by the Appellate Court was lawful, valid and required no interference.

5. I have heard the learned Counsels for the parties and reviewed the Revision file.

6. On perusal of the documents available in the Revision file, it appears that there does not appear to be any error in the trial court's order dated 03.10.2015 and the Appellate Court's Judgment dated 14.06.2017 to the extent of Survey No.38-B; however, with regard to Survey Nos.39-B and 396 the impugned judgment and decree will require interference which matter I will discuss further in this judgment, later. According to the Official Assignee / Official Liquidator Statement dated 30.11.2018 (available on record) in paragraph-02, Survey Nos. 38-B, 39-B and 396, situated in Deh Pathan, Taluka Shahdadkot, District Larkana (now District Kambar-Shahdadkot), which were the subject matter of F.C. Suit No.49/2014, appear to have been auctioned by the Official Liquidator of the Company being wound up. Section 316 of the Companies Ordinance, 1984, states as follows:

*“Section 316. Suits stayed on winding up order.-
(1) When a winding up order has been made or a provisional manager has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.*

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of, any suit or proceeding by or against the company.

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by the Court.”

7. Based on a bare reading of Section 316, it is clear that applicants were legally bound to obtain permission from the Winding-Up Court before filing any claim against the suit property, which was alleged to be claimed against a company being wound by the Court-appointed Official Liquidator. In the circumstances, the applicants did not comply with the provisions of Section 316 of the Companies Ordinance, 1984 and filed F.C. Suit No.49/2014 without obtaining permission from the Winding-up Court. To this extent, the lis could not be maintained in respect of survey lands which were allegedly under the ownership of the company before its winding up and subsequently auctioned through the Official Liquidator. The Applicants' claim seeking a declaration in respect of the properties of the company being wound up required prior consent/permission from the Winding-Up Court before filing F.C. Suit No.49/2014, which was not done as required under Section 316 of the Companies Ordinance, 1984. Hence, the claim against the Private Respondents was bad in law.

8. I have perused the application under Order 7 Rule 11 r/w Section 151 CPC available on page 49 of the Revision file, and it is apparent from the prayer clause that the challenge of the Private Respondents in FC Suit No.49/2014 was limited to Survey No.38-B only and did not concern Survey Nos.38-A, 39-A, 39-B and 396. In his Report filed before this Court on 30.11.2018, the Official Liquidator has highlighted in bold Survey No.38-B only. Interestingly, while Survey No.38-B appears in bold text in the said Report, Survey Nos.39-B and 396, which were also the

subject matter of F.C. Suit No.49/2014 and subject matter of the proceedings before the Winding-up Court in J.Misc. No.41/2001 yet these appear in normal font in the suit properties identified by the Official Liquidator. In other words, reference to Survey Nos. 39-B and 396 are not highlighted and thus not emphasised. Yet, the said Report and the attached documents refer to Survey Nos.38-B, 39-B, and 396. As the Court did not have the benefit of the Official Liquidator in Larkano, it is presumed that as the Survey No.38-B relates to the current owners of the said Survey, i.e. the Private Respondents and they are defending it, therefore the Official Liquidator highlighted the said Survey No.38-B in his Report but not Survey Nos.39-B and 396 as the Applicants did not implead their owners, if any. Hence, Survey No.38-B alone appears in bold font in the Report. It may be that as only the Private Respondents of Survey No.38-B were impleaded in F.C. Suit No.49/2014, the Official Liquidator only highlighted the said survey no. in his Report and did not highlight Survey Nos. 38-A, 39-A and 396. Be that as it may, it is apparent from the Official Liquidator's Report that Survey Nos. 38-B, 39-B and 396, the subject matter of the F.C Suit No.49/2014, were all auctioned by the Official Liquidator as part of the assets of Shahdadkot Textile Mills (Pvt.) Ltd. (In Liquidation), and the Applicant had to obtain permission from the Court before filing the suit and implead the Official Liquidator as a party in the said suit.

9. In view of the above, the trial court's Order dated 03.05.2015 and the Appellate Court's impugned Judgment dated 14.06.2017, to the extent of Survey No.38-B rejecting the Plaint as against the Private Respondents, is confirmed and requires no interference. The names of the Private Respondents stand struck off from the array of Defendants in F.C. Suit No.49/2014. Additionally, F.C. Suit No.49/2014 stands dismissed against Survey Nos.39-B and 396. The said properties are the subject

matter of Winding-Up in J.Misc. No.41/2001. The Appellate Court's Judgment dated 14.06.2017 stands modified in the above terms.

10. It is not clear from both the trial Court's Orders dated 03.10.2015 and the Appellate Court's Judgment dated 14.06.2017 why the two Courts below dismissed the F.C. Suit No.49/2014 when it was no one's case that Survey Nos.38-A was the subject matter of the Winding-up. Survey Nos.38-A and 39-A appeared to be claimed neither by Shahdadkot Textile Mills (Pvt.) Ltd. (In Liquidation) through the Official Liquidator nor by the Private Respondents. The Official Liquidator submitted in his Report that he had auctioned Survey Nos.38-B, 39-B and 396 only. The Report did not mention/list Survey Nos.38-A and 39-A. Both these Survey Nos. were the subject matter of F.C. Suit No.49/2014. The learned Judge of the trial court should not have rejected the plaint in its entirety beyond the scope and subject matter of the application filed by the Private Respondents in respect of Survey No.38-B. Further, it has been brought on record that 2 out of the 5 Suit Properties (Survey Nos.38-A and 39-A), which were the subject matter of F.C. Suit No.49/2014, had nothing to do with the Winding-up and/or the Private Respondents. The trial Court should have allowed the Applicants to prove their case against the Defendants regarding Applicants' claim for Survey Nos. 38-A and 39-A. Therefore, the Plaint could not have been dismissed under Order 7 Rule 11 to the extent of Survey Nos.38-A and 39-A. Accordingly, the Appellate Court's Judgment dated 14.06.2017 and the trial court's Order dated 03.10.2015 constitute material irregularity and are hereby set aside. F.C. Suit No.49/2014 is hereby restored and shall proceed against the Government Respondents/Defendants impleaded in the said Suit in respect of Survey Nos.38-A and 39-A. The trial Court is directed to issue Court motion notice to the Official Liquidator and seeking his

comments, if any, regarding, Survey Nos.38-A and 39-B. The Revision is allowed in the above terms.

11. There is another aspect which requires mention. Civil Revision No.S-51/2018 was filed on 15.09.2018 against the Appellate Court's judgment dated 14.06.2017. According to the certified true copy of the impugned judgment of the Appellate Court available on pages 103 to 115 of the Revision, relevant page 115, the applicant applied for the certified copy on 14.06.2017 and paid/deposited costs on the even date. Thereafter, the copying branch took almost 15 months to prepare the certified copy of the Judgment, which was completed on 29.08.2018. The copying branch slept over the application for ages before it generated the certified copy. The District Judge should ensure that the time spent with the copying branch in preparing copies is reduced for the benefit of the litigant public and the bar. Office is directed to send a copy of this Judgment to the District Judge, Kamber-Shahdadkot at Kamber to take necessary action on this behalf.

12. The above are the reasons for the Short Order I passed on 04.03.2024 disposing of this Revision, which is partially allowed in the above terms.

13. It is clarified that the observations made herein are confined to providing a background for deciding this Revision and are without prejudice to the parties' claims and defences in the proceedings filed against each other and/or in any future litigation between them or involving the Official Liquidator.

14. Parties shall bear their own costs.