

M/S ASSOCIATED JOURNALS
v.
THE MYSORE PAPER MILLS LTD.

JULY 11, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

Company Law:

Companies (Court) Rules, 1959—Rules 21 and 18—Form No.3—Affidavit verifying the Winding-up petition—Not as per Rule 21—Held: Defect is curable by filing fresh affidavit.

The affidavit filed by Respondent verifying the Winding-Up petition was not in accordance with Rule 21 of the Companies (Court) Rules, 1959. The Company Judge allowed the Respondent to correct the defect by filing a fresh affidavit. High Court upheld the judgment of Company Judge. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. Rules are undoubtedly statutory and the forms are to be adopted wherever they are applicable. But the Rules of procedure cannot be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy disposal of justice. This Court has in catena of decisions held that substantial compliance is enough. The Rules relating to the affidavit and the verification cannot be ordinarily brushed aside, but then what is required to be seen is whether the petition substantially complies with the requirements and, secondly, even when there is some breach or omission, whether it can be fatal to the petition. A careful perusal of the affidavit filed by the respondent and Form No.3 as prescribed under Rule 21 would show that there is substantial compliance of the said Rule. [446-E, G, H; 447-C]

1.2. A Three-Judge Bench of this Court in an identical matter has also opined that even if there is some slight defect or irregularity in the filing of affidavit, the appellant should have been given an opportunity to rectify the same. In the instant case, the same liberty was given to the respondent by the Company Judge as also by the High Court. [446-E, F]

A *Malhotra Steel Syndicate v. Punjab Chemi-Plants Ltd.*, [1993] Suppl. 3 SCC 565, relied on.

Khaitan Overseas & Finance Ltd. v. Dhandhanias Bros. P. Ltd., (2002) 1 Comp LJ 274, referred to.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 183 of 2000.

From the Judgment and Order of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, dated 27.10.1997 in Company Appeal No. 1 (C/A) of 1994.

C J.B. Dadachanji & Co. (N.P.) for the Appellant.

Pragya Singh Baghel, Debmalya Benerjee, R.N. Karanjawala and Manik Karanjawala for the Respondent

The Judgment of the Court was delivered by

D DR. AR. LAKSHMANAN, J. None appears for the appellant despite service of notice on the appellant.

E It appears that the previous counsel sought direction from this Court to discharge him as advocate-on-record. Notice was also sent by speed post A.D./Courier to M/s Associated Journals Ltd., Lucknow, U.P. and M/s Associated Journals Ltd., New Delhi requesting them to contact them otherwise they will not be in a position to attend to the above matter and will seek direction from this Court for discharge as advocate-on-record. When the matter was taken up for hearing on 12.04.2006, a submission was made by the learned counsel appearing for the appellant that no reply has been received from the addressee till date and, therefore, further time may be granted. The matter was adjourned by four weeks. Even today, there is no representation on behalf of the appellant. The counsel is also not present in the Court.

F We have heard Ms. Pragya Singh Baghel, learned counsel appearing on behalf of the respondent and also perused the original record which has been received from the High Court.

G This appeal is directed against the final judgment and order dt.27.10.1997 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Company Appeal No.1 of 1994. By the said order, the High Court dismissed the said Company Appeal holding *inter alia* that the learned Company Judge

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did not commit any error of law in allowing the respondent to file fresh affidavit to remove the defects in verification of the company petition. The High Court further held that the finding of the learned Company Judge regarding the sufficiency of the reasons for advertisement were not final. A

The said Company Appeal No.1 of 1994 which has been dismissed by the High Court had been filed by the appellant herein against the order dt.10.01.1994 passed by the learned Company Judge of the said Court in Company Petition No.3 of 1987 whereby the respondent, namely, the Mysore Paper Mills Ltd. were directed to file a fresh affidavit to remove the defect in the verification accompanying the said Company Petition and thereafter for the listing of the petition for passing orders regarding advertisement. B C

We have perused the grounds of appeal filed in this Court. It is stated in the grounds that the learned Company Judge had reached a *prima facie* conclusion that the debt being claimed by the respondent in the Winding Up Petition was payable by the appellant and that the defence purported to be raised on behalf of the respondent company was not a *bona fide* defence and cannot be validly considered effective enough to refuse the order of advertisement. The respondent was allowed to file a fresh affidavit correcting the defect in the verification of the Winding Up Petition filed by the respondent and further fixed the Winding Up Petition for passing orders regarding advertisement. D E

The case of the appellant company has been that the sum of money claimed by the respondent in the Winding Up Petition was not outstanding inasmuch as the said sum of money had already been paid to M/s General Trading & Sales Corporation who were the mutual agent of the appellant and the respondent. Hence no debt was due and payable by the appellant to the respondent. There was, therefore, no question of the appellant company being unable to pay any debts to the respondent. The Winding Up Petition filed by the respondent was, therefore, wholly without any basis or foundation in law and hence not maintainable. F

Company Appeal No.1 of 1994 was filed against the order dt.10.01.1994 passed by the Company Judge in Company Petition No.3 of 1987. In the said appeal, the appellant had challenged the order of Company Judge on several grounds. We are not now considering the merits of the grounds alleged in this appeal since it is premature for this Court to deal with the same at this stage. G H

A It is submitted by the appellant that in view of the mandatory statutory provisions of Rule 18 and 21 of the Companies (Court) Rules, 1959 governing the verification of the contents of the Winding Up Petition, the said Winding Up Petition was not maintainable in the light of the admitted fact that the petition had not been verified by the respondent in accordance with the provisions of the said Rule 21. It is further submitted that because the
B Winding Up Petition which is not supported with affidavit in accordance with law and is violative of Rules 18 and 21 of the Companies (Court) Rules, 1959 and is not in prescribed form is not liable to be admitted at all and is liable to be dismissed by the company court and also the appellate court.

C It is further urged that the defect in verification of the Winding Up Petition arising out of non-compliance with Rule 21 of the Companies (Court) Rules, 1959 was fatal to the Winding Up Petition and the said Petition ought to have been dismissed on that ground alone. It is also further contended that the defect in verification of the Winding Up Petition on account of non-compliance with the provisions of Rule 21 of the Companies Court (Rules)
D cannot be corrected by filing fresh affidavit by the respondent after a lapse of over several years from the date of institution of the Winding Up Petition.

E It is further contended that a defect in the verification of the Winding Up Petition arising out of non-compliance with the provisions of Rule 21 of the Companies (Court) Rules, 1959 cannot be cured by filing a fresh affidavit after a lapse of over 10 years as directed by the High Court in the impugned judgment.

F The respondent filed counter affidavit to the Civil Appeal. The respondent after denying averments made in the appeal grounds answered the preliminary objection raised by the appellant for the first time before the learned Single Judge is merely an afterthought and an attempt to somehow escape from their liability of payment of the outstanding dues to the respondent company. Ms. Pragya Singh Baghel, learned counsel for the respondent further submitted that the technical plea raised by the appellant regarding defective affidavit was raised after seven years of filing the petition. Assuming without
G admitting that the affidavit was not verified as per the Company Rules, the learned counsel submitted that if this objection was taken earlier the respondent would have cured the defect.

H The learned Company Judge after perusing the affidavit filed by the respondent herein was of the opinion that the contents of paras 1 to 25 of

the affidavit are true to be best of knowledge, information and belief of the deponent who is the Director (Finance) of the appellant company. A

It was further held :-

“Rule 21 of the Companies (Court) Rules require the petition to be verified by affidavit made by the petitioner and such an affidavit is to be filed along with the petition and is to be in Form No.3 appended to the Rules. B

Form in paragraph-2 requires the contents of the petition to be true to the knowledge of the deponent and the contents based on information to be stated and verified separately. To this extent, the verification is not proper.” C

The learned Single Judge has also referred to a judgment of the Division Bench of the said Court in Company Appeal No.1 of 1993 in *The Pradeshiya Industrial & Investment Corporation of Uttar Pradesh Limited v. North India Petro Chemicals Limited and Anr.*, which was decided on 27.08.1993. The Division Bench considered the aforesaid case and some others and found :- D

“Considering the aforesaid decisions the ground which has been canvassed in favour of treating a defect in verification as fatal is that it may create confusion about the date of the institution. E

Rule 21 of the Companies (Courts) Rules requires the verification to be made in a specific manner. Yet it does not provide that non-compliance of this rule would render the winding up petition infructuous. As has been pointed out by the Hon'ble Supreme Court rules of procedure are only to ensure certain ends. Verification is insisted upon to render the person who verifies, responsible for the statement contained in the petition so that it can be read as evidence. In case it is not duly verified, the same result can be achieved by requiring the petitioner to verify the petition. Going beyond this would render the dispensation of justice subject to minor technicalities of procedure which can never be the intention of law. The rules of procedure are meant to advance the cause of justice and not to frustrate it. We are, therefore, in respectful disagreement with the decision of Calcutta High Court and Punjab High Court and are of the view that any defect in verification can be justified. The petitioner can be required to re-verify the affidavit and once it stands duly verified, H

A the petition would be in order to be proceeded with in accordance with law.

B Dismissing the petition for not confirming to the prescribed form of verification would be taking a hypertechnical view of the matter. A person would be penalised for the inadequacy of his counsel as it can be assumed that such a mistake cannot be deliberate nor has it been so suggested in this case. Mechanical insistence on compliance with the rules and dismissal for technical infraction does not subserve substantial healthy justice but merely multiplies litigation and consequent harassment because even after the petition is dismissed on the ground, it would always be open to the petitioner to bring another petition with the same allegations and for the same relief, only after correcting the form of verification. This correction can be permitted in this very petition. Such dismissal is all the more justified when the purpose of the provision would be amply met by getting the mistake corrected.”

D In view of the aforesaid discussion, the learned Company Judge found that the objection raised on behalf of the respondent company (the appellant herein) was not tenable. The learned Company Judge has further directed that the respondent herein can be required to file a fresh affidavit complying with the provisions of law.

E Aggrieved by the said order passed by the Company Judge, the appellant preferred Company Appeal No.1 of 1994. We have carefully perused the judgment of the Division Bench. The learned judges of the Division Bench dismissed the appeal filed by the appellant herein and directed that after fresh affidavit as required in the order dt.10.01.1994 has been filed, the Company

F Petition be listed before the learned Company Judge for passing fresh orders regarding advertisement of the Company Petition. It is useful to reproduce the finding recorded by the Division Bench :-

G “We are in full agreement with the law laid down by the Division Bench and the petitioner has been rightly provided opportunity to rectify the defect of the affidavit by filing fresh affidavit for removal of the defect in swearing clause of the affidavit. The case of the respondents is not prejudiced in any manner nor there was any bar of limitation to come in the way. The winding up petition has already been admitted and any amendment or correction to rectify the defect of the affidavit by filing fresh affidavit at this stage would not be so

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fatal to dismiss the petition. The Court has always discretion to allow the amendment of pleadings, reswearing or reverification of the petition. The defects thus could be cured subsequently even after filing of the petition.” A

In this context, it is beneficial to reproduce Form No.3 of the Companies (Court) Rules, 1959 :- B

“FORM NO. 3

[See rule 21]

[Heading as in Form No.1] C

Company Petition No.....of 19....

Affidavit verifying petition

I, A.B., son ofagedresiding atdo, solemnly affirm and say as follows :- D

1. I am a director/secretary/...../ofLtd., the petitioner in the above matter *(and am duly authorised by the said petitioner to make this affidavit on its behalf).

[Note.-This paragraph is to be included in cases where the petitioner is the company.] E

2. The statements made in paragraphs.....of the petition herein now shown to me and marked with the letter ‘A’, are true to my knowledge, and the statements made in paragraphs.....are based on information, and I believe them to be true. F

Solemnly affirmed, etc.

*Note.- To be included when the affidavit is sworn to by any person other than a director, agent or secretary or other officer of the company.” G

Rule 21 of the Companies (Court) Rules, 1959 prescribes the procedure for verification of affidavit. Rule 21 is reproduced as under :-

“R.21. Affidavit verifying petition.- Every petition shall be verified by an affidavit made by the petitioner or by one of the petitioners, H

A where there are more than one, and in the case the petition is presented by a body corporate, by a director, secretary or other principal officer thereof; such affidavit shall be filed along with the petition and shall be in Form No.3:

B Provided that the Judge or Registrar may, for sufficient reason, grant leave to any other person duly authorised by the petitioner to make and file the affidavit.”

The affidavit filed by the respondent herein is available at page 63 of the paperbook. Para 2 of the said affidavit is reproduced as under :-

C “2. That I have read the contents of the accompanying Company Petition and have understood the contents thereof.

D I, the deponent abovenamed do hereby swear that the contents of paragraphs nos.1 and 2 of this affidavit, those of paragraph nos.1,2, 3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21 and 22 of the accompanying petition are true to the best of my knowledge, information and belief, that no part of its is false and nothing material has been concealed in it. So help me God.”

E A careful perusal of the affidavit filed by the respondent and Form No.3 as prescribed under Rule 21 would show that there is substantial compliance of the said Rule. A Three-Judge Bench of this Court in an identical matter in *Malhotra Steel Syndicate v. Punjab Chemi-Plants Ltd.*, [1993] Suppl.3 SCC 565 has also opined that even if there is some slight defect or irregularity in the filing of affidavit, the appellant should have been given an opportunity to rectify the same. In the instant case, the same liberty was given to the respondent by the Company Judge as also by the Division Bench of the High Court. We are, therefore, of the opinion that the Division Bench was right in dismissing the appeal filed by the appellant.

F This Court has in catena of decisions held that substantial compliance is enough. Rules are undoubtedly statutory and the forms are to be adopted wherever they are applicable. The Rules relating to the affidavit and the verification cannot be ordinarily brushed aside, but then what is required to be seen is whether the petition substantially complies with the requirements and, secondly, even when there is some breach or omission, whether it can be fatal to the petition. In the instant case, both the learned Company Judge and also the Division Bench were of the opinion that there is substantial compliance of Rule 21. In *Khaitan Overseas & Finance Ltd. v. Dhandhanian*

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Bros.P.Ltd., (2002) 1 Comp LJ 274, a petition was filed by the Chairman-cum-Director of the company. He annexed with the petition a resolution of the Board of Directors permitting him to execute necessary petitions, documents, applications, affidavits and to lodge a suit to recover dues from the debtor company. This was held to include the authority to file a Winding Up Petition also. The affidavit accompanying the petition was signed, sworn and affirmed on oath in the prescribed manner. The court said that the affidavit conformed with the requirements of law.

We are of the opinion that the Rules of procedure cannot be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy disposal of justice. The learned Judges of the Division Bench has appreciated that the technical plea raised by the appellant regarding defective affidavit was raised after seven years of filing the petition. The learned counsel submitted that the appellant is raising the defence of technical plea to protect himself from the consequence of his default and this plea cannot be considered effective enough to review the order of advertisement. Assuming without admitting that the affidavit was not verified as per the Company Rules, the learned counsel has correctly submitted that if this objection was taken earlier the respondent would have cured the defect.

For the aforesaid reasons, we are of the opinion that the appeal has no merit and the order passed by the learned Judges of the Division Bench confirming the order passed by the Learned Company Judge does not call for any interference by this Court. The appeal stands dismissed accordingly. No costs.

The interim order passed by this Court dt. 01.05.1998 granting stay of the order under challenge shall stand vacated. The Company Court is now at liberty to proceed further in accordance with Companies (Court) Rules, 1959 and dispose of the Company Petition as expeditiously as possible. We place on record our appreciation for the able assistance rendered to us by Ms. Pragya Singh Baghel, learned counsel for the respondent at the time of hearing.

B.B.B.

Appeal dismissed.