AIR 1970 SC 1350 : (1970) 40 CompCas 1128 : (1970) 3 SCC 65

Supreme Court of India

Case No: Civil Appeal No. 2408 Of 1969

Golcha Investment (P) Ltd.		APPELLANT
	Vs	
Shanti Chandra Barna		RESPONDENT

Date of Decision: March 5, 1970

Acts Referred:

- Bombay High Court Rules - Rule 965, 966, 966A
- Companies Act, 1913 - Section 202
- Companies Act, 1956 - Section 433, 483
- Constitution of India, 1950 - Article 226

Citation: AIR 1970 SC 1350 : (1970) 40 CompCas 1128 : (1970) 3 SCC 65

Hon'ble Judges: K. S. Hegde, J; J. C. Shah, J; A. N. Grover, J

Bench: Full Bench

Final Decision: Allowed

Judgement

K.S. Hedge, J.

This is an appeal by special leave. It arises from the decision of the appellate bench of the Bombay High Court in Appeal No. 113 of 1969 on its file. That appeal was directed against the order made by Kantawala, J. in Company Petition No. 100 of 1969, a petition made by the Registrar of the Companies u/s 433 of the Companies Act, 1956 for winding up the appellant Company. The winding up application was filed by the Registrar on August 8, 1969. In that petition notice was issued to the appellant to show cause why the petition should not be admitted and advertised. The petition was posted for hearing on September 8, 1969. The notice issued was served on the appellant on September 1, 1969. On the date of the hearing the appellant appeared through an advocate and asked for an adjournment of the proceedings. That prayer was rejected and thereafter the Company Judge passed the following Order:

Mr. Chagla for Company applies for adjournment with a view to approach the Government. This petition is filed by the Registrar after the Central Government heard the Company so it is not necessary to adjourn it on this ground.

P. C. Petition admitted to be advertised in Indian Express, Bombay Samachar and Maharashtra Government Gazette. Advertisement to appear on or before 29th September, 1969. Petition on board on 27th October, 1969.

2. The appellant appealed against that decision. The appeal came up before K. K Desai and Vaidya, JJ. on September 12, 1969. The learned Judges summarily dismissed the appeal. Thereafter the appellant orally applied for leave to appeal to the Supreme Court. That application was rejected with these observations:

Oral application for leave to appeal to Supreme Court dismissed because the orders made are all interlocutory orders.

3. As against that order the appellant has brought this appeal after obtaining special leave from this Court.

4. The learned Attorneys-General, who appeared for the respondent urged that the appellant''s appeal before the Bombay High Court was not maintainable and therefore we should reject this appeal. According to him the order made by Kantawala, J. was an interim order and such an order is not appealable u/s 483 of the Companies Act which provides for an appeal from any order made or decision given in the matter of winding up a Company by the Company Court. The question whether the order directing advertisement of a winding up application is an appealable order u/s 202 of the Indian Companies Act, 1913, a provision similar to Section 433 of the present Act, came up for consideration before a division bench of the Bombay High Court in 460007 . That court held that the order in question is appealable. That decision was specifically approved by this Court in 261473 . Therefore the contention of the learned Attorney-General that the appellant''s appeal before the appellate bench of the Bombay High Court was not maintainable cannot be sustained.

5. On behalf of the appellant it was urged that the Company judge was not justified in rejecting the prayer for an adjournment and further according to the appellant, Registrar''s petition did not disclose any ground for admitting the winding up petition and much less for advertising it. His further contention was the appellate bench of the Bombay High Court was not competent to summarily dismiss the appeal. As we are in agreement with the appellant''s contention that the appellate bench of the High Court was not competent to summarily dismiss the appeal, we have not thought it necessary to go into the other contentions advanced on its behalf.

6. Chapter XLII of the Bombay High Court Rules provides for appeals to appellate court. Rule 965 thereof prescribes the form of memorandum of appeal Rule 966 prescribes what documents should be filed along with the memorandum. Rule 966-A prescribes:

In the following cases the appeal shall be placed, in the first instance, for admission before a bench of the High Court to be appointed by the Chief Justice:

(1) An appeal from an order summarily rejecting a writ petition under Article 226 of the Constitution;

(2) An appeal from an order on an interlocutory application by way of Notice of Motion or Chamber Summons; and

(3) An appeal from an order on a Summons for judgment in a Summary Suit.

If the appeal is admitted, then the provisions hereinafter contained with regard to appeals shall apply to such appeal.

7. From this rule it is clear that appeals other than those mentioned therein are not to be placed for admission. In other words they are entitled to be admitted as a matter of course. Therefore the appellate bench erred in summarily dismissing the appeal. It was bound to entertain the appeal and dispose of the same on merits.

8. For the reason mentioned above we allow this appeal, set aside the order of the appellate bench and send the case back to the appellate bench, for disposal of the same in accordance with law. In the circumstances of the case we make no order as to costs in this appeal.