

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/07/2004

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN
AND
THE HON'BLE MR.JUSTICE N. KANNADASAN

Original Side Appeal No.175 of 2003
and O.S.A. Nos. 176 and 177 of 2003

O.S.A.No.175 of 2003

S.Rajalakshmi .. Appellant

-Vs-

1. The Official Liquidator
High Court, Madras, as the
Official Liquidator of
M/s. RPS Benefit Fund Limited
(In Liquidation).

2. G. Masilamani
Senior Advocate
Administrator
M/s. RPS Benefit Fund Limited
(In Liquidation).

3. M/s. Hatsun Agro Products Limited
No.5-A, Vijayaraghava Road
T.Nagar, Chennai 600 017. .. Respondents

O.S.A.Nos.176 & 177 of 2003

P.G. Saranyan .. Appellant

Vs.

1. G. Masilamani
Senior Advocate
Administrator
M/s. RPS Benefit Fund Limited
(In Liquidation).

2. The Official Liquidator
High Court, Madras, as the

Official Liquidator of
M/s. RPS Benefit Fund Limited
(In Liquidation).

3. Ajith Dairy Industries Limited
No.5-A, Vijayaraghava Road
T.Nagar, Chennai 600 017.

4. M/s. Hatsun Agro Products Limited
No.5-A, Vijayaraghava Road
T.Nagar, Chennai 600 017.

5. Income Tax Officer
City Ward-IV (5)
Safee Mohammed Road
Chennai 600 008. .. Respondents

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Appeal against the common order dated 10.2.2003 made in C.A.Nos.1443 ,
1444 & 1445 of 2002 in C.P.No.233 of 1999 on the file of this Court.

!For Appellants in : Mr. Arul Natarajan
all appeals For Mr.S. Silambanan

^For Official Mr. Ramesh
Liquidator : Mr.J. Nithayanandam

For Income Tax Ms. Pushya Sitaraman
Officer : Standing Counsel

For Administrator : Mr.G. Masilamani, S.C.
For Mr.M. Muthusamy,
Administrator

:J U D G M E N T

Judgment of the Court was delivered by
P.D. DINAKARAN, J.

Heard all the parties.

2. These appeals are directed against the order dated 10.2.2003 made
in C.A.Nos.1443 to 1445 of 2002 in C.P.No.233 of 1999, in the matter of RPS
Benefit Fund Limited (in liquidation), heeling the wound of the depositors.

3.1. Behind these appeals, there is a painful history of the
sufferings of the innocent depositors, who invested their hard earned money
with RPS Benefit Fund Limited, a financial company in liquidation.

3.2. During the course of winding up proceedings of RPS Benefit Fund
Limited in C.P.Nos.233 to 238 of 1999, this Court, by order dated 20 .7.1999,

appointed Mr.G. Masilamani, learned senior counsel as the Chairman of the Inspecting Committee, assisted by his team of officers, who unearthed various misfeasance and malfeasance relating to the siphoning of the funds of RPS Benefit Fund Limited by P.G.Saranyan and his wife Rajalakshmi, the appellants in the above appeals.

3.3. The Investigating Committee found that the appellants herein have siphoned the funds of RPS Benefit Fund Limited and floated another company, viz. Ajith Diary Industries Ltd. and also a partnership firm carrying on diary business, in the name of M/s. Komatha Milk Chilling Centre.

3.4. Even though Mrs. Rajalakshmi, appellant in OSA No.175 of 2003/ applicant in C.A.No.1443 of 2002 was neither a Director nor a officer bearer in RPS Benefit Fund Limited, the fact remains that the appellants/applicants, viz. Rajalakshmi and Saranyan, who are wife and husband respectively, were holding 81% of shares in Ajith Diary Industries Ltd., referred to above and also have movable and immovable properties.

3.5. On the basis of the investigating report, this Court, by an order dated 10.8.2000, of course, with the consent of the appellants herein, directed the Official Liquidator to sell the shares of the appellants herein in Ajith Diary Industries Ltd. Accordingly, the said 81 % of shares of the appellants in Ajith Diary Industries Ltd. were sold to M/s. Hatsun Agro Products Limited, the third respondent in C.A. No.1443 of 2002 as well as in OSA No.1443 of 2003 and fourth respondent in C.A.Nos.1444 and 1445 of 2002 as well as in OSA Nos.1444 and 144 5 of 2003, for a sale consideration of Rs.10.50 crores. M/s. Hatsun Agro Products Limited paid a sum of Rs.1,03,469/- on behalf of Rajalakshmi towards the income tax payable by her.

3.6. In the meanwhile, this Court, by order dated 29.9.2000 in C.P. Nos.233 to 238 of 1999, made it clear that the money realised from the sale of Ajith Diary Industries shares and some of the assets relating thereto shall be utilised exclusively for the payment to be made to the depositors of RPS Benefit Fund Limited, after the claims of such depositors are duly verified and found to be genuine.

3.7. Simultaneously, Economic Offences Wing also initiated action against RPS Benefit Fund Limited under the provisions of Criminal Law Amendment Ordinance, 1944 and by G.O.Ms.No.995, Home (Courts IIA) Department, dated 21.10.2002, attached the properties which were acquired out of the pecuniary sources that were believed to be procured from and out of the deposits collected from the depositors.

3.8. Concededly, Ajith Diary Industries Ltd. itself was got floated and incorporated by siphoning the funds of RPS Benefit Fund Limited and therefore, the entire amount paid by Hatsun Agro Products Limited towards the purchase of 81% of shares in Ajith Diary Industries Ltd. shall be repaid to the depositors subject to the payment of capital gain tax in respect of the sale, as per the subsequent order of this Court dated 14.2.2003 made in C.A.No.18 of 2003 in C.P.Nos.233 to 238 of 1999. But, by a further order dated 25.3.2004, it was modified to the effect that the capital gains

liability were not really required to be made, as the same is beyond the scope of the order dated 10.8.2000.

3.9. Out of the said sale consideration, viz. by sale of 81% of shares of the appellants in Ajith Dairy Industries Ltd. to Hatsun Agro Products Limited by order dated 10.8.2000, 20% of the principal amount deposited by the depositors was disbursed by an order of this Court dated 1.3.2002 and another 20% of the principal amount was disbursed by another order dated 23.1.2003.

3.10. Even though there are some more funds still available out of the said sale of 81% of shares of the appellants in Ajith Dairy Industries Ltd. to Hatsun Agro Products Limited and by the sale of movable and immovable properties of Ajith Dairy Industries Ltd. as well as RPS Benefit Fund Limited, for disbursement of the same to the innocent depositors, the Tax Recovery Officer of the Income Tax Department issued notice under Section 222 of the Income Tax Act to recover tax from the appellants towards capital gain, out of the funds available with the Official Liquidator as referred to above.

3.11. On receipt of the said notice under Section 222 of the Income Tax Act, the appellants herein, viz. Rajalakshmi filed Application No.1443 of 2002 and Saranyan filed C.A.No.1444 of 2002 and C.A.No.1445 of 2002, seeking the relief as follows:

- (a) in C.A.No.1443 of 2002, to direct the third respondent therein to adjust the sum of Rs.1,03,469/- paid by him towards the income tax on her behalf from the arrears of lease rentals payable by the third respondent for the months of February 2000 to November 2000 amounting to Rs.1,50,000/- for the land on which M/s. Ajith Dairy Factory is situate;
- (b) in C.A.No.1444 of 2002, to declare that the capital gains tax of Rs.1,15,95,970/- relating to the sale of 81% shares in Ajith Dairy Industries Ltd., should be given priority under Section 530 of the Companies Act and paid out along with interest at 24% from the date it became due from the funds available with the liquidator of RPS Benefit Fund Limited on a preferential basis; and
- (c) in C.A.No.1445 of 2002, to direct the liquidator to pay the capital gains tax arising out of the sale of the share in Ajith Dairy Industries Ltd. by their family members from out of the sale proceeds of the shares lying in credit with the liquidator to the fifth respondent herein.

3.12. It is the common case of the appellants that the capital gain tax claimed by the Income Tax Department is recoverable out of the funds available with the Official Liquidator from the sale of 81% of the shares in Ajith Dairy Industries Ltd., as per Section 530(1)(a) of the Companies Act, which reads as follows:

"Section 530: Preferential Payments.

(1) In a winding up, subject to the provisions of section 529A, there shall be paid in priority to all other debts-

- (a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable

within twelve months next before that date;

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

... "

3.13. In fact, the Income Tax Officer also contended that the said capital gain tax payable by the appellants herein shall be paid out of the sale proceeds of the shares lying in credit with the liquidator to the Income Tax Department on preferential basis, as per Section 53 0(1)(a) of the Companies Act, referred to above.

3.14. But the Administrator appointed by this Court in the matters of RPS Benefit Fund Limited, objected to the same contending that Section 530(1)(a) of the Companies Act is not attracted in the instant case, in view of the fact that Ajith Diary Industries Ltd. got floated by siphoning the funds of RPS Benefit Fund Limited, which were invested by the innocent depositors, whose interest are well protected by the order of this Court dated 29.9.2000 and 25.3.2004, which were never challenged.

3.15. After considering the rival contentions, the learned single Judge, in his order dated 10.2.2003, dismissed all the C.As. holding that Section 530 of the Companies Act was not attracted for the disbursement of the sale consideration of 81% of the shares of the appellants in Ajith Diary Industries Ltd. Hence, these appeals.

4.1. The learned counsel appearing for the appellants, while reiterating the submissions that were made before the learned single Judge, contends that in view of Section 530(1)(a) of the Companies Act, in a winding up, the payment shall be preferred to the debts in preference to all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority, at a relevant date, and therefore, the Income Tax authority, who issued notice under Section 222 of the Income tax Act for the capital gain tax towards the sale of 81% of shares of the appellants in Ajith Diary Industries Ltd. are entitled to recover the same out of the sale consideration available with the Official Liquidator.

4.2. The learned counsel appearing for the Income Tax Authority contends that the income tax department has got a preferential right to recover the said capital gain tax out of the sale consideration referred to above, by exercising the powers conferred under Section 530(1)(a) of the Companies Act.

4.3. In reply, Mr.G. Masilamani, learned senior counsel, who was appointed by the Court as the Chairman of the Investigating Committee to investigate into the affairs and diversification of the funds of RPS Benefit Fund Limited, and who is appearing as amicus curiae in the matter, invited our attention to the orders of this Court dated 29.9.2 000 and 25.3.2004, wherein

it is held that the funds available with the Official Liquidator are meant for repayment of funds to the innocent depositors and the same cannot be diverted for any other purpose and in any event, Section 530 of the Companies Act is not attracted to the facts of the instant case.

5. We have bestowed our careful consideration to the submissions of all sides.

6.1. It is not in dispute that the properties of RPS Benefit Fund Limited got attached by G.O.Ms.No.995, Home (Courts IIA) Department, dated 21.10.2002, invoking the provisions of Criminal Law Amendment Ordinance, 1944. That apart, several assets of the appellants (movable and immovable) as well as that of RPS Benefit Fund Limited also got attached in the criminal case, initiated at the instance of Economic Offences Wing.

6.2. Concededly, the appellants who were holding 81% of the shares in Ajith Diary Industries Ltd., floated and incorporated Ajith Diary Industries Ltd. out of the funds siphoned and diverted from that of RPS Benefit Fund Limited, which were invested by the innocent depositors, committing malfeasance, viz. an act which is positively unlawful, and misfeasance, viz. a lawful act of incorporating Ajith Diary Industries Ltd. in an unlawful manner, while managing the affairs of RPS Benefit Fund Limited. Since 81% of shares of the appellants in Ajith Diary Industries Ltd. was sold by order of this Court dated 10.8.2000, to Hatsun Agro Products Limited, with the consent of appellants themselves, for a specific purpose, viz. the sale consideration was meant for repayment of funds to the innocent depositors, as per the order dated 29.9.2000, as reinforced by another order dated 25.3.2004, in our considered opinion, the said funds cannot be diverted for any other purpose, as rightly contended by Mr.G. Masilamani, learned senior counsel, and therefore, the funds lying with the Official Liquidator are not the funds available by winding up of RPS Benefit Fund Limited, but it is the sale consideration of 81% of shares of appellants in Ajith Diary Industries Ltd. and therefore, Section 530 of the Companies Act is not attracted in the instant case.

6.3. Assuming the Income Tax authorities are at liberty to recover the capital gain tax, they are at liberty to initiate appropriate action against the appellants herein in accordance with law against the properties already attached as referred to above. But, in any event, we are convinced that the funds lying with the Official Liquidator is meant for the purpose of repayment to the innocent depositors and therefore, the same cannot be made available to the income tax authorities towards any liability of the appellants, much less the capital gain tax in question.

6.4. Accordingly, the money realised out of the sale of 81% of shares of the appellants in Ajith Diary Industries Ltd. as well as by the sale of other movable and immovable properties, which are now available with the Official Liquidator to the tune of Rs.2,16,08,827/-, as rightly contended by the learned counsel appearing for the Official Liquidator, shall be utilised exclusively for disbursement to the innocent depositors.

6.5. Thus, while dismissing these appeals for want of merits and legal contentions, in order to wipe the tears of the innocent depositors to the extent possible, we direct the Official Liquidator to disburse the entire amount of Rs.2,16,08,827/- with accrued interest thereon and whatever the funds available with him in this regard, directly to the depositors as per their entitlement, by way of cheque, a minimum of 750 depositors per day, commencing from 30.7.2004. The Official Liquidator is at liberty to avail the assistance of the members of the depositors Association or any other assistance for the early disbursement of the funds of the depositors, if it is so required.

6.6. It is also more appropriate, before parting with our order, to record our appreciation to Mr.G. Masilamani, learned senior counsel appearing on behalf of Mr.M.Muthusamy, Administrator and also to Mr.M.Muthusamy, for the tireless service being rendered by them to protect the interest of the innocent depositors.

In the result, the appeals are dismissed, with the above directions. Consequently, CMP Nos.6876 & 6877 of 2003 and 6611 & 6612 of 2004 are also dismissed.

Index : Yes

Internet : Yes

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To

1. The Sub Asst. Registrar Judicial
High Court, Madras.

2. The Sub Asst. Registrar (O.S.)
High Court, Madras.

3. The Section Officer
VR Section, High Court, Madras.

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