

Sharayu

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 127 OF 2015
IN
SUIT NO. 3972 OF 2000

Dileep Nevatia	...Applicant
<i>In the matter between</i>	
Bajaj Auto Finance Limited	...Plaintiff
<i>Versus</i>	
Sundeepp Polymers Private Limited & Anr.	...Defendants

Mr. Dileep Nevatia, *Applicant in person.*
Mr. Snehal Shah, *a/w Mr. Mitesh Naik i/b M/s. Dhru & Co., for the*
Plaintiffs.

CORAM: G.S. PATEL, J
DATED: 3rd March 2015

PC:-

1. The Notice of Motion is filed by the Defendants. The 1st Defendant, Sundeepp Polymers Private Limited is a company of which the 2nd Defendant is a Director. It appears that there were some independent proceedings for the winding up of the Sundeepp Polymers Private Limited. The 2nd Defendant, appearing in person, contested these proceedings right up to the Appeal Court. I am informed that finally an order of winding up was passed.

2. Mr. Nevatia, the 2nd Defendant, claims that the winding up order was against “some company called Sundeeep Polymers Private Limited”. Having opposed those winding up proceedings right through, he now claims that the winding up order was against some other company. The basis of this submission is that there is an error in the CIN Number of the company in that winding up Petition.

3. Mr. Nevatia now says that the Suit should proceed against both the Defendants or, at any rate, against him because he has also been joined in his capacity as a guarantor.

4. Mr. Shah, learned Counsel for the Plaintiff, points out that an Official Liquidator has informed the Plaintiff that a winding up order has been passed against 1st Defendant. The Plaintiff has filed a Company Application under Section 446 of the Companies Act to join the Official Liquidator as a party Defendant to this suit. That Company Application is pending. Mr. Nevatia submits that the Official Liquidator not having applied for the stay of this suit, and, in any case, since there is no question of staying the Suit against him personally in his capacity as the 2nd Defendant, the suit should nonetheless proceed.

5. Mr. Nevatia relies on the decision of the Supreme Court in *Harihar Nath & Ors. Vs. State Bank of India & Ors.*¹ to suggest that this can be done. There is no dispute about this. However, it seems to me that it would be more appropriate to await the order on the Plaintiff’s Company Application because the 2nd Defendant is not joined only in his capacity as a Guarantor, but also as a Director of

¹ 2006(4) SCC 457

the 1st Defendant. I do not see what possible prejudice can be caused to the Defendants, if the Trial Court awaits the outcome of the Company Application. After all, once an order of winding up has been passed, this enures for the benefit of all creditors of the 1st Defendant company. Further, once the company has been ordered to be wound up, it can only be represented by the Official Liquidator.

6. The Notice of Motion is dismissed with no order as to costs.

(G. S. PATEL, J.)