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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10-04-2015

Date of Judgment: 16-04-2015

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

O.S.A.No.54 of 2015

G.Babu ... Appellant

Versus

M/s.L.S.Mills Limited,
Having its registered office at
Madurai Road, Theni-625 531. ... Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the order, dated 28.3.2014, made in C.P.No.183 of 2011 and C.A.No.805 of 2011.

For Appellant : Mr.B.Dhanaraj

For Respondent : Mr.M.S.Krishnan
Senior Advocate
for M/s.P.Annal

JUDGMENT
(Judgment of the Court was made by M.Jaichandren,J.)

This Original Side Appeal has been filed against the order, dated 28.3.2014, made in C.P.No.183 of 2011.

2. It has been stated that the appellant is the sole proprietor carrying on business in supplying of cotton, cotton bales and allied products to the spinning mills, under the name and style of K.G.Cotton Company, having its regional office at Coimbatore. The respondent company had been incorporated on 28.4.1983, and it has

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been functioning under the name and style of L.S.Mills Limitted. The respondent company has been purchasing cotton from the appellant company. While so, the respondent company had committed default in making its payment, in respect of the cotton supplied by the appellant company. As on 20.1.2011, a sum of Rs.29,60,795/- remained due and payable to the appellant company, by the respondent company.

3. It has been further stated that a statutory notice, dated 8.8.2011, had been sent on behalf of the appellant company, calling upon the respondent company to clear its debt, within a period of three weeks from the receipt of the said notice, with interest on the sum of Rs.29,60,795/-, at the rate of 18% per annum, failing which the appellant company would initiate winding up proceedings against the respondent company. The said notice had been served on the respondent company, on 10.8.2011. It has been further stated that the respondent company had acted fraudulently by raising a false claim that the appellant company had failed to supply 200 bales of cotton due to which the respondent company had to purchase cotton bales from one M/s.Shri Rajendra Ginning Factory and it had incurred a loss, by doing so, to the tune of Rs.26,89,980/- and that the respondent company was ready to settle the balance amount by making a payment of Rs.2,70,815/-. In such circumstances, the appellant company had been constrained to file a winding up petition against the respondent company in C.P.No.183 of 2011 and C.A.No.805 of 2011 under Section 433(e) of the Companies Act, 1956.

4. It has been further stated that a learned single Judge had passed the order, dated 28.3.2014, stating that on a perusal of the relevant records and taking into consideration the nature of transaction between the appellant and the respondent company, it was clear that the claim made by the appellant company had been disputed by the respondent company, both in terms of quality and the quantity of the cotton bales said to have been supplied by the appellant company. The learned single Judge had also noted that after the filing of the Company Petition, payments had been made by the respondent company to the appellant company to the tune of Rs.15 lakhs. As such, the appellant company had not made out a case for the winding up of the respondent company for the alleged debt said to be payable by the respondent company to the tune of Rs.29,60,795/-.

5. The learned counsel appearing on behalf of the appellant company had submitted that raising a dispute with regard to the quality and the quantity of the cotton bales supplied by the appellant company is a moon shine. The claim of the respondent company that it had incurred a loss to the tune of Rs.26,89,980/- due to non supply of 200 bales of cotton by the appellant company is false. The learned counsel had further submitted that from the

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particulars given by the respondent company in the annual reports for the years 2011-2012, 2012-2013 and 2013-2014, it could be clearly seen that the respondent company had borrowed large sums of money from various financial institutions running into several crores of rupees. The assets of the respondent company cannot meet the debt payable to the banks concerned.

6. It has also been submitted that a sum of more than Rs.10 lakhs is due and payable by the appellant company, in addition to the interest payable by the respondent company, even after the payment of a sum of Rs.15 lakhs during the pendency of the winding up petition before this court. All the claims made by the respondent company with regard to the quality and the quantity of the cotton bales supplied by the appellant company to the respondent company are false in nature.

7. Per contra the learned senior counsel appearing on behalf of the respondent company had submitted that a real dispute had arisen with regard to the amount payable by the respondent company to the appellant company in view of the quality and the quantity of the cotton bales supplied by the appellant company. Due to the short supply of 200 bales of cotton, the respondent company had been forced to purchase cotton bales from Shri Rajendra Ginning Factory, incurring a loss to the tune of Rs.26,89,980/-. Only a sum of Rs.2,70,815/- was due and payable by the respondent company to the appellant company, which the respondent company was ready and willing to pay the said amount as full and final settlement of the amount payable to the appellant company.

8. The learned counsel had further submitted that after the filing of the winding up petition, the appellant company had filed a civil suit in O.S.No.21 of 2015 on the file of the District Court, Theni, claiming a sum of Rs.10 lakhs along with interest thereon. As such, it could be seen that the dispute raised by the respondent company is not a mere moon shine, as alleged by the appellant company. The learned counsel had further submitted that from the audited accounts of the respondent company, it is clear that the respondent company is making substantial profits to meet all its debts, if any. Even though the filing of the civil suit by the appellant company will not be a bar for making its claim, the act of the appellant company in filing the suit claiming Rs.10 lakhs along with the interest accrued thereon would clearly show that a real dispute is in existence with regard to the amounts said to be payable by the respondent company.

9. It has been further stated that during the pendency of the winding up petition, the respondent company had paid a sum of Rs.15

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lakhs to the appellant company. In such circumstances, the claims made by the appellant company for a sum of Rs.29,60,795/- is due and payable by the respondent company to the appellant company and that the respondent company is not in a position to discharge the said debt are incorrect. As such, the order of the learned single Judge, dated 28.3.2014, dismissing the winding up petition is correct, as it is based on the facts and circumstances of the case.

10. In view of the submissions made on behalf of the appellant company and the respondent company and on a perusal of the records available, it could be noted that there is a dispute with regard to the amount payable by the respondent company to the appellant company, with regard to the quality and the quantity of the cotton bales said to have been supplied by the appellant company to the respondent company. It is also noted that during the pendency of the winding up petition of a sum of Rs.15 lakhs had been paid by the respondent company to the appellant company. It is also noted that the appellant company had filed a civil suit in O.S.No.21 of 2015, on the file of the District Court, Theni, claiming a sum of Rs.10,00,000/- said to be payable by the respondent company, along with the interest accrued thereon. Further, on a perusal of the audited accounts of the respondent company, it could be seen that the respondent company has been making substantial profits. Even though the respondent company might have borrowed loans from various financial institutions, the appellant company has not been in a position to show, clearly, that the respondent company is not in a position to pay the alleged debt said to be payable by the respondent company to the appellant company.

11. Even though the learned counsel appearing on behalf of the appellant company have relied on several decisions of the Supreme Court, as well as of this court, to substantiate its claim that the filing of a civil suit claiming the amount payable by the respondent company would not be a bar for the filing of a winding up petition before this Court under Section 433(e) of the Companies Act, 1956, we do not find any reason to consider the same at this stage, in view of the fact that the position of law enunciated by the said decisions have not been disputed by the learned counsel appearing on behalf of the respondent company. The learned counsel appearing on behalf of the respondent company had only indicated that the filing of the civil suit by the appellant company claiming for certain amount due and payable by the respondent company could be taken into consideration by this court while deciding the issue relating to the claim of the appellant company for the winding up of the respondent company by filing a winding up petition under Section 433(e) of the Companies Act, 1956. As such, we do not find any cause or reason to interfere with the findings of the learned single Judge, dated

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28.3.2014, made in C.P.No.183 of 2011. Accordingly, we find it appropriate to dismiss the present Original Side Appeal. Hence, it is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

csh

To

The Sub Assistant Registrar
Original Side
High Court, Madras

+2cc's to M/s.P.Annal, Advocate, S.R.No.20845
+1cc to Mr.B.Dhanaraj, Advocate, S.R.No.20745

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MP(CO)
CA(12/05/2015)

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