

THE HON'BLE .RI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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ORIGINAL SIDE APPEAL No.36 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 483 of the Companies Act, 1956 and clause 15 of the Letters Patent, is preferred against the order passed by the learned single Judge in C.P.No.139 of 2012 dated 02.09.2014 and 02.02.2015.

In his order in C.P.No.139 of 2012 dated 02.09.2014, the learned Company Judge noted that, even if the sum of Rs.25,00,000/- paid by the respondent (appellant herein) to the company petitioner was given credit to, the respondent owed a sum of Rs.4.18 Crores; as the debt was undisputed and the respondent was neither able to pay the debt nor had they come out with a schedule for payment, he did not find any reason to keep on adjourning the Company Petition from time to time; and, therefore, the Company Petition should be admitted. While posting the matter to 07.10.2014, the learned Company Judge directed publication of advertisement to be deferred, and observed that, if the respondent comes out with an acceptable proposal to the petitioner for payment of the remaining debt in reasonable tranches, the Court may consider further deferment of the advertisement; and if the respondent did not come out with such proposal, the Court would be left with no option other than directing publication of the advertisement. Thereafter, in his order dated 02.02.2015, the learned Company Judge noted that on 20.01.2015 the learned counsel for the respondent had sought one more opportunity, and the case was adjourned to 02.02.2015; and, in view of the failure of the respondent to pay the admitted debt despite grant of repeated opportunities, the Court was left with no option other than to permit the petitioner to make publication of admission of the Company Petition.

Subsequent to the order passed by the learned Company Judge, in C.P.No.139 of 2012 dated 02.02.2015, the appellant (respondent in C.P.No.139 of 2012) is stated to have paid the company petitioner the undisputed amount of Rs.4.20 Crores receipt of which is acknowledged by Sri B.Chandrasen Reddy, learned counsel for the company petitioner.

While stating that the petitioner has not yet caused publication of the advertisement, Sri B.Chandrasen Reddy, learned counsel for the company petitioner, would contend that a sum of Rs.1.12 Crores is still due towards the principal, and a further sum of Rs.3.02 Crores is due towards interest for delayed payment. The Company Petition was admitted, and the petitioner was permitted to cause publication of the advertisement, for failure of the appellant (respondent in C.P.No.139 of 2012) to pay the undisputed sum of Rs.4.18 Crores. The claim of the company petitioner, for being paid Rs.1.12 Crores in addition thereto, and for

Rs.3.02 Crores towards interest for the delayed payment, has not been examined by the learned Company Judge while admitting the Company Petition.

As the appellant has since paid the undisputed amount of Rs.4.20 Crores, and as the claim of the respondent-company petitioner regarding Rs.1.12 Crores being due towards the principal and Rs.3.02 Crores towards interest has not been adjudicated by the learned Company Judge, we consider it appropriate to set aside both the orders dated 02.09.2014 and 02.02.2015, and remand the matter for consideration of the petitioner's claim, for admission of the Company Petition, on the ground of non-payment of the amount allegedly due towards principal of Rs.1.12 Crores and for interest of Rs.3.02 Crores.

The Original Side Appeal is disposed of accordingly.

Miscellaneous petitions pending, if any, shall also stand disposed of.
There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

28th October, 2015.
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