THE HON'BLE .RI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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ORIGINAL SIDE APPEAL No.14 of 2015

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

This appeal, under clause 15 of the Letters Patent Act, 1571 and Section 483 of the Companies Act, 1956 (for brevity, 'the Act'), is preferred against the order passed by the learned single Judge in C.P.No.215 of 2013 dated 31.12.2013.

The appellant herein is the petitioner in the Company Petition. He filed C.P.No.215 of 2013 under Section 433 (e) of the Act seeking winding up of the respondent-company. It is his case that, while the Managing Director of the respondent-company had agreed to pay Rs.9,50,000/- per annum as salary, he had, by way of a separate letter dated 09.06.2010, agreed to pay, in addition thereto, Rs.8,00,000/- per annum as Cost-to-Company (CTC). The appellant joined duty on 10.06.2010, and worked with the respondent-company for a period of more than a year till he was relieved from service on 24.06.2011. The appellant claimed Rs.8.00,000/- and, as the said claim was not accepted, he invoked the jurisdiction of this Court seeking winding up of the respondent-company under Section 433 (e) of the Act.

In the order under appeal, the learned single Judge observed that the appellant's claim for CTC of Rs.8,00,000/- was with reference to the letter allegedly issued by the CMD on 09.06.2010, which was a day earlier to the letter of appointment; there was no material to substantiate his claim on the basis of Annexure-P3; his letter of resignation dated 16.06.2011 did not reflect any pending claim except for a general request for settlement of account; there was no correspondence between the parties for over two months till the appellant sent a further letter i.e. Annexure-P10 dated 08.10.2011, wherein also no specific claim for payment of CTC of Rs.8,00,000/- was made; even during the period, when the appellant worked with the respondent-company from 10.06.2010 to 24.06.2011, there was no correspondence demanding disbursement of CTC in quarterly instalments of Rs.2,00,000/- each; the requirement of establishing the debt, atleast *prima facie,* for the purpose of maintaining the winding up petition was not satisfied; the contents of the statutory notice, sent under Section 434 of the Act, were denied by the respondent-company in their letter dated 09.01.2012; the genuineness of the letter dated 09.06.2010 has been seriously disputed; the annual report of the respondent-company, which contains the balance sheet as on 31.03.2013, shows that the company has substantial current and non-current assets and its profit after tax is shown to be Rs.72,54,95,862/-; and, considering the financial position, it would be highly unjust to direct winding up of the respondent-company when the appellant has, *prima facie,* failed to establish the debt claimed.

The learned single Judge dismissed the Company Petition granting liberty to the appellant to approach the competent civil Court and establish the debt as claimed by him. It was made clear that the observations made in the order were only for the purpose of, and from the stand point of, considering the maintainability of the Company Petition under Section 433(e) of the Act; and the Civil Court should not be influenced by any observations therein while entertaining the petition, if any, filed by the petitioner.

Sri S.Sandeep Reddy, learned counsel for the appellant, would draw attention of this Court to the letter dated 09.06.2010 wherein the Managing Director of the respondent-company is alleged to have agreed to pay the appellant Rs.8,00,000/- CTC per annum besides his regular salary; and for payment thereof in quarterly instalments of Rs.2,00,000/- each. Learned counsel would submit that the signature of the Managing Director, in the said letter dated 09.06.2010, has not been disputed by him. He would also draw attention of this Court to the observations made by the auditors, in their report, that the respondent-company was not regular in depositing its undisputed statutory dues; and there were disputes in respect of income tax, service tax, luxury tax etc. He would also draw attention of this Court to Explanatory Note-

10 to the Annual report wherein a reference is made to the non-servicing of debt and interest, and that the respondent-company had made an application for Corporate Debt Restructuring (CDR), to contend that the respondent-company was facing financial problems, and was finding difficulty in servicing its debt obligation from December, 2011.

On the other hand Ms.S.Pranathi, learned counsel for the respondent, would draw attention of this Court to paragraph No.6 of the counter-affidavit, filed by the respondent, to submit that the respondent had categorically denied the petitioner's claim of Rs.8,00,000/- per annum as CTC to be false; the company had also denied having issued the letter dated 09.06.2010; they had contended that the letter was obviously fabricated by the petitioner taking advantage of his role in Human Resources Development of the respondent, and his access to the Managing Director; this was evident from the fact that the appellant had deliberately restrained from using the word "Cost-to-Company" in respect of gross salary of Rs.9,50,000/- whereas the same was issued with respect to Rs.8,00,000/- per annum salary; and the appellant was well aware that there could not be two CTCs in respect of the same employee.

Winding up proceedings is not a mode for recovery of debt. It is only if the Court is satisfied that the respondent-company is unable to pay its debts, and its continued existence would be detrimental to the interests of its creditors and the general public would the Company Petition be admitted. Even admission of a Company Petition has adverse consequence as it may result in putting the solvency of the company in jeopardy. It could also result in the creditors of the respondent-company seeking immediate payment of the amounts due to them. In cases where there is a *bona fide* dispute, with regards the petitioner's claim for payment, the proper recourse is for him to file a Civil Suit, and not to invoke the jurisdiction of this Court seeking winding up of the respondent-company. The findings recorded by the learned single Judge show that there is a *bona fide* dispute regarding payment of the debt claimed as due by the appellant.

While the submission of Sri S.Sandeep Reddy, learned counsel for the appellant, that the respondent-company appears to be facing financial difficulty, cannot be said to be without merit, its profit and loss account discloses that it made a profit in excess of Rs.72.54 Crores. The financial problems faced by the company could be for various reasons which the Court would not be required to examine unless it is satisfied that the petitioner has made out a *prima facie* case of non-payment of the debt due, and that the dispute raised by the respondent-company, for non-payment of the said sum, is not *bona fide*. On both the aforesaid counts, the learned single Judge has held against the appellant.

We see no reason to take a view different from that of the learned single Judge. As has been rightly held by the learned single Judge the remedy which the petitioner has is to file a Civil Suit for recovery of the money. The learned single Judge has also made it clear that, in case a Civil Suit is filed, it shall be adjudicated without being influenced by any observations made in his order.

The Original Side Appeal is dismissed subject to the rider that, in case the appellant invokes the jurisdiction of the Civil Court, the observations made in this order shall also not weigh with the Civil Court in adjudicating the appellant's claim on its merits. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

09th June, 2015.

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