

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

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O.S.A. No.30 of 2014
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JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal is preferred against the order passed by the Learned Company Judge in C.P. No.94 of 2014 dated 20.08.2014. The appellant is the respondent in the Company Petition. The Company Petition was filed under Section 433 and 434 of the Companies Act seeking winding up of the appellant company on the ground that it had failed to pay Rs.15,53,400/- despite service of notice on them, under Section 433 and 434 of the Companies Act, on 08.03.2014.

In the order under appeal, the Learned Company Judge held that Counsel had entered appearance on behalf of the appellant-company on 14.07.2014, and had requested time to file a counter-affidavit; the case was adjourned to 28.07.2014, on which date it was informed that the Counsel, who offered to appear, was bereaved, and a further request for adjournment was made to file a counter-affidavit; and, thereafter, the matter was adjourned to 20.08.2014 for filing a counter. As there was no representation on that date, and no counter-affidavit was filed, the Learned Company Judge perused the petition, the e-mails and the statutory notices and was satisfied, *prima facie*, that the appellant-company had failed to pay the admitted debt of Rs.15,53,400/-. The Learned Judge also noted that the respondent had failed to file a counter-affidavit controverting the pleadings of the petition. It is in such circumstances that the Company Petition was admitted, and the petitioner in the company petition was permitted to cause publication of advertisement in Deccan Chronicle and Andhra Bhoomi news papers, and to file proof of publication by the next date of hearing. It is not in dispute that the petitioner in the company petition had caused advertisement in the news papers, as directed by the Learned Company Judge.

Sri K.V. Simhadri, Learned Counsel for the appellant, would submit that, subsequently, an order of winding up was passed; an application was

filed to set aside the *ex parte* order of winding; the *ex parte* order of winding up was set aside on condition that the appellant deposited Rs.7.75 lakhs; the said amount was deposited, *albeit* belatedly; the matter is now pending adjudication before the Learned Company Judge; and, as the company petition has already been admitted, the appellant is disabled from filing a counter and from contesting the company petition on merits.

An order admitting the company petition would only result in publication, of admission of the company petition, in the news papers and, consequently, other creditors who may either support or oppose winding up would be entitled to join in such proceedings. Merely because the company petition is admitted, does not disable the appellant-company from filing a counter to the company petition, and from contesting the matter on merits. It is only after evidence is adduced, in the enquiry to be conducted by the Learned Company Judge, would the question, of passing an order of winding up, arise. We see no basis for the apprehension expressed by Sri K.V. Simhadri, Learned Counsel for the appellant, that the appellant would be denied an opportunity to file their counter merely because the company petition has been admitted.

In an appeal, preferred against an order admitting the Company Petition, the enquiry is confined only to whether or not, on the material before him, the Learned Company Judge was justified in coming to the *prima facie* conclusion that the ingredients of Sections 433 and 434 of the Companies Act were satisfied, and the defence of the company was merely a moonshine. In the absence of any counter-affidavit being filed by the appellant company, the only material available before the Learned Company Judge was the company petition and the documents enclosed thereto. It is on the basis of such uncontroverted documents that the Learned Company Judge has concluded that the Company Petition necessitates admission. We see no error in the order of the Learned Company Judge necessitating interference in this appeal. The appeal fails and is, accordingly, dismissed. No costs.

RAMESH RANGANATHAN

S. RAVI KUMAR

Date:06.07.2015.
MRKR