

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COMPANY APPEAL No.3 of 2015 (O&M)
DATE OF DECISION: 10.03.2015

M/s Continental Furnishers

....Appellants

versus

M/s Ambience Hotels & Resorts Ltd.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Deepak Suri, Advocate for the appellant
..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral) :

This is an appeal against the order of the learned single Judge dated 12.09.2014 rejecting the appellants' application for recalling the order dated 05.12.2013 and for permission to withdraw the company petition with liberty to file the same before the High Court of Delhi.

2. The appellants filed Company Petition No.18 of 2013 for winding up of the respondent-company inter alia on the ground that they were unable to pay their debts. The petition was dismissed by an order and judgment of the learned single Judge dated 05.12.2013. The appellants were relegated to the alternate remedy of filing recovery proceedings. The relevant observations read as under:-

"It is not the case of the petitioner-company that the respondent-company does not have sufficient means to discharge the alleged debt liability. There is a counter-claim raised by the respondent. The question whether or

not the work executed by the petitioner suffered from any defects and/or was to the satisfaction of the respondent, can be determined on the basis of evidence to be lead by the parties.

In these circumstances, I am of the considered view that it is not a fit case to entertain the winding up petition against the respondent. The same is dismissed, with liberty to the petitioner to initiate recovery proceedings and/or to have recourse to any alternative remedy, as may be available in law."

3. The appellants filed Company Appeal No.18 of 2014, which was disposed off by the order and judgment of the Division Bench dated 23.04.2014. The appellants contended against themselves that the petition filed by them was not maintainable as the registered office of the respondent-company is in New Delhi. The appellants were granted liberty to make an application for withdrawal of their own petition before the learned single Judge. The order reads as under:

"Learned counsel for the appellant contends that the appellant had erroneously filed the company petition under a mistaken belief that since the jurisdiction of courts was conferred in Haryana, the company petition could be filed in the present High Court, even though the registered office of the respondent-Company is in Delhi. It is, thus, submitted that the petition actually was not maintainable. It is conceded by learned senior counsel that this aspect was never pointed out to the learned single Judge with the result that the learned single Judge dismissed the petition on merits.

The aforesaid being the position, learned senior counsel for the appellant, on instructions, seeks to withdraw the appeal with liberty to approach the learned Company Judge pointing out the aforesaid error in law which has occurred as a result of the own conduct of the appellant and the factum of registered office being in Delhi not being pointed out.

Dismissed as withdrawn with the aforesaid liberty."

4. Pursuant to the liberty granted by the Division Bench, the appellants filed Company Application No.277 of 2014 in the said company petition for recalling the order dated 05.12.2013 and allowing them to withdraw the petition which has

now been dismissed by holding that the observations made on 05.12.2013 shall have no bearing at all on the recovery suit.

5. The appellants themselves filed the petition in this Court. Having found that the learned Company Judge has held against the appellants on merits, the appellants now seek to withdraw the petition and file it before another court. The order dated 05.12.2013 has attained finality.

6. We see no reason to interfere with the impugned order.

7. The appeal is dismissed.

As we have dismissed the main appeal itself, the delay in re-filing the appeal stands condoned.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

10.03.2015
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(G.S. SANDHAWALIA)
JUDGE