

IN THE HIGH COURT OF BOMBAY AT GOA**COMPANY APPEAL NO. 2 OF 2011**

Pedro Viegas,
resident of House No.806,
Mugali,
Sao Jose de Areal,
Salcete Goa.

... Appellant

V e r s u s

Official Liquidator of
M/s National Auto Accessories Limited,
(in Liquidation),
EDC House,
Dr. Dada Vaidya Road,
Panaji Goa.

... Respondent

Mr. Vishwadh Sardessai, Advocate for the appellant under Free Legal Aid Scheme.

Ms. A. Razak, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 11th March, 2016

ORAL JUDGMENT

Heard Mr. V. Sardessai, learned counsel appearing for the appellant and Ms. A. Razak, learned counsel appearing for the respondent.

2. The above appeal challenges the order passed by the Official Liquidator dated 20.02.2009 whereby the claim of the appellant was partly allowed directing the payment of a sum of Rs.473.30 as against the claim of the appellant to the tune of Rs.13,271/-. The learned counsel appearing for the appellant has submitted that there was a Memorandum of Settlement (herein after referred to as “ the said MOS”) which was arrived at on 09.04.2001 whereby the dues payable by the subject company to the workers were specified in the schedule attached to the said MOS. The learned counsel further submits that as per the said schedule undisputably a sum of Rs.13,271/- is due and payable to the appellant. The learned counsel further points out that the Official Liquidator claims that only a sum of Rs.473.30 was payable to the appellant based on the statement of affairs filed by the Ex-Director disclosing that such amount is payable to the appellant. The learned counsel thereafter pointed out that the record maintained by the Official Liquidator of the subject company do not disclose any amount was paid to the appellant after the said MOS was arrived at. The learned counsel further submits that no payments were received by the appellant after the said MOS was executed and as such the contention of the Official Liquidator that the amounts are payable in terms of the statement of

affairs submitted by the Ex-Director is not at all justified. The learned counsel further pointed out that even the Ex-Director has not produced any material on record to substantiate their claim that any amounts were paid to the appellant after the said MOS came to be signed. The learned counsel has thereafter taken me through the impugned order to point out that this aspect has erroneously been examined by the Official Liquidator which calls for interference of this Court.

3. On the other hand, Ms. A. Razak, learned counsel appearing for the respondent has submitted that on perusal of the statement of affairs filed by the Ex-Director in terms of the Companies Act, it clearly stipulates that only a sum of Rs.473.30 is payable to the appellant. The learned counsel further upon instructions pointed out that though the Official Liquidator did not find any document with the company to establish the amount payable to the appellant, nevertheless, according to her, the Official Liquidator has to accept the amount shown in the statement of affairs filed by the Ex-Director. The learned counsel further submits that the appellant has not produced any material to show that he has not received any amount from the subject company. The learned counsel as such points out that the appeal be rejected.

4. I have considered the submissions of the learned counsel and I have also gone through the records. On perusal of the schedule attached to the said MOS, it cannot be disputed that the schedule discloses that a sum of Rs.13,271/- is payable to the appellant. The Official Liquidator has also admits that there are no receipts on record of the company to establish that any amounts were paid to the appellant. In such circumstances, the question of calling upon the appellant to produce document to show that any amounts were received by him would not arise. The learned counsel appearing for the respondent further pointed out that there are receipts where amount have in fact been paid to the other workers as mentioned in the schedule attached to the said MOS. The Official Liquidator has also filed an affidavit to the effect that there are no receipts from the appellant on record of the company acknowledging the receipt of any amount. In such circumstances, when admittedly there are no receipts on record to establish that the appellant has received any amount after the said MOS was executed, the Official Liquidator was not justified to refuse the claim of the appellant to the tune of Rs.13,271/- as shown in the schedule. Consequently, I find that the impugned order passed by the Official Liquidator cannot be sustained and deserves to be quashed and

set aside to that extent. The learned counsel appearing for the appellant upon instructions of the appellant who is present in Court submits that the appellant has not pressed for any interest on the said amount. In such circumstances, I pass the following :

ORDER

- (1) The impugned order dated 20.02.2009 passed by the Official Liquidator is quashed and set aside.
- (2) The appellant is entitled for a sum of Rs.13,271/- with no further interest thereon.
- (3) The appeal stands disposed of accordingly.

F. M. REIS, J.

at*