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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.46 OF 2016
IN
COMPANY PETITION NO.565 OF 2014
WITH
NOTICE OF MOTION (L) NO.214 OF 2016**

M/s.Prahladrai Fabrics Limited	...Appellant (Orig. Respondent)
Versus	
The Shamrao Vithal Co-op. Bank Limited	...Respondent (Orig. Petitioner)

Mr.Abhay Khandeparkar a/w Mr.Jayesh Patil, Mr.Devang Khira, for the Appellant.

Dr.Birendra Saraf a/w Mr.Nikhil Rajani i/b M/s.V.Deshpande & Co., for the Respondent.

Mr.Anurag Gokhale, for the Official Liquidator.

**CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE : 2nd FEBRUARY, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondent.

2. The appellant is aggrieved by the impugned order passed by the learned Single Judge on 30th November, 2015. By the said order, the learned Single Judge was pleased to admit the Company Petition filed by the respondent and also pleased to appoint an official liquidator.

3. The learned counsel appearing on behalf of the appellant submitted that the respondent – bank have already filed an application in the Debts Recovery Tribunal (“DRT”) and interim order has been passed in the said application by the DRT restraining the appellant from disposing of their assets and from creating any third party rights. It is submitted that the fact that an interim relief was granted by the DRT was suppressed by the respondent when they filed the Company Petition. Secondly, it is submitted that the claim of the company has not been ascertained and as long as there is no adjudication of the amount which is due and payable to the Bank the Court ought not to have admitted the petition. Thirdly, it is submitted that apart from the amount which is due and payable to the respondent, there are other banks also who have given loans to the appellant. It is submitted that in the joint meeting of the Consortium of Banks which was held, it was agreed that the assets of the appellant –

company would be sold and the debts of all the banks would be paid by the appellant. It is submitted that the appellant had not filed a reply on merits. It is submitted that therefore the appellant be permitted to file a reply on merits and thereafter the learned Single Judge should decide whether an order admitting the petition should be passed or not.

4. On the other hand, learned counsel appearing on behalf of the respondent submitted that the learned Single Judge has considered all technical objections which were raised by the appellant and has thereafter passed a reasoned order admitting the Company Petition. It is submitted that during the time of final hearing of the Company Petition the Court would consider whether the debts of the respondent – bank would be paid by the appellant or not.

5. It is submitted that it is a well settled position in law that the jurisdiction of winding up the Company will be independently exercised despite the pendency of the DRT proceedings before the Tribunal under the RDB Act. He further submitted that the appellant – company has neither given any reply to the statutory notice nor they have given any reply to the

earlier demand notice.

6. Learned Counsel appearing on behalf of the respondent therefore pointed out that in fact the counsel appearing on behalf of the appellant had admitted the liability and this fact was recorded by the learned Single Judge in paragraph 5 of the impugned order.

7. We are unable to accept the submission made by the learned counsel appearing on behalf of the appellant. In paragraph 5 of the impugned order, the learned Single Judge has recorded the statement of the counsel appearing on behalf of the respondent who had submitted that the appellant had not denied the amount claimed by the bank. It is not now open for the learned counsel appearing on behalf of the appellant to resile from the said fact. It is quite well settled that any concession made by a party on fact before the Court cannot be resiled thereafter. The Apex Court in the case of *State of Maharashtra v/s Ramdas Shrinivas Nayak and Another*¹ has observed in paragraph 4 as under :-

“4. When we drew the attention of the learned Attorney General to the concession made before the High

1 1982(2) SCC 463

Court, Shri A. K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in *Somasundaram Chetty v. Subramanian Chetty*, AIR 1926 PC 136 : 99 IC 742). We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the

judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in *Madhu Sudan Chowdhri v. Chandrabati Chowdhrair*, AIR 1917 PC 30 : 42 IC 527). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment”.

8. It is therefore not open for the learned counsel appearing on behalf of the appellant to contend that the debts payable to the respondent – bank is not ascertained.

9. Apart from that, the learned Single Judge has merely admitted the petition and has appointed a provisional liquidator. Admittedly, the appellant - company has not given any reply and a presumption is raised about the inability on the part of the company to pay the debts. We are therefore not inclined to interfere with the order passed by the learned Single Judge.

10. The Appeal is, therefore, dismissed.

11. In view of the aforesaid, Notice of Motion does not survive and is accordingly disposed of.

REVATI MOHITE DERE, J.

V.M. KANADE, J.