

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

ORIGINAL SIDE APPEAL No. 3 of 2017

JUDGMENT: (*Per VRS,J*)

Aggrieved by the dismissal of a petition for winding up, the creditor has come up with the present appeal.

2. Heard Mr. M. Narender Reddy, learned senior counsel for the appellant, and Mr. S. Sri Ram, learned counsel for the respondent.

3. The appellant filed a petition under Section 433(e) read with Section 434 (1) (a) and (b) of the Companies Act, 1956, seeking winding up of the respondent herein. The petition for winding up was filed, on the basis of a certificate of recovery issued by the Debts Recovery Tribunal, Hyderabad, on 15.03.2005.

4. The learned Judge, before whom the petition for winding up came up, closed the company petition with liberty to the appellant to revive the company petition, if the respondent failed to pay a sum of Rs.60.00 lakhs. This order was passed by the learned Judge, on the basis of what had happened earlier, namely, the payment of Rs.1.00 crore pursuant to the order passed by the company Court on 05.02.2014. The learned Judge recorded that with the payment of Rs.1.00 crore pursuant to the order dated 05.02.2014, and with the undertaking to pay Rs.60.00 lakhs, the total payment made by the respondent would come to Rs.3.22 crores.

5. After the closure of the company petition by the order impugned in this appeal, the respondent admittedly paid a sum of Rs.60.00 lakhs. Hence, the appellant has not been able to seek recourse to the liberty given to them to revive the company petition. Therefore, after accepting the payment of Rs.60.00 lakhs as ordered by the learned Judge, the appellant has come up with the present appeal. It is true that the appeal was filed before the payment was made. But, it got numbered, only after the payment was received.

6. Be that as it may, it is stated across the Bar that the *ex parte* decree granted by the Debts Recovery Tribunal has now been set aside, on an appeal filed before the DRAT as against the dismissal of the petition to set aside the *ex parte* decree. Therefore, the matter is now at large before the DRT. In the above circumstances, we are not inclined to entertain the appeal. Therefore, the appeal is dismissed, leaving it open to the appellant to work out their remedies, depending upon what transpires before the Tribunal.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

10th February, 2017
cbs



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O.S.A.No. 3 of 2017
(dismissed)

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