

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

APPEAL (L) NO.384 OF 2018
WITH
NOTICE OF MOTION (L) NO.875 OF 2018
IN
COMAPNY PETITION NO.38 OF 2016

Jagran Entertainment Media Private Limited ...Appellant

vs.

Rajesh Valchand Shah ...Respondent

Mr. Zal Andhyarjina a/w. Mr. Anrup Dasgupta, Mr. Shrey Sanchetti and Ms. Sonam G. for the Appellant.

Mr. Vikramjit Garewal, Mr. Ritesh Jain and Mr. Sriraj Menon I/b. MJ Juris, for the Respondent

Mr. L.T. Satelkar, for the Official Liquidator.

CORAM : A. S. OKA &
M. S. SONAK, JJ.

DATE : OCTOBER 30, 2018

P.C.:

. By consent, the Appeal is admitted and is taken for final disposal.

2. By the impugned order dated 1st August, 2018 passed by the learned Company Judge on a Company Petition for winding up filed by the Respondent herein, the Appellant-Company was ordered to be wound up.

3. In paragraph No. 1 of the impugned order, the learned Company Judge has noted that a statement was made on behalf of the Appellant Company that the balance amount of Rs. 20,41,603/- will be paid by the Company to the Respondent within three weeks. The said statement was accepted as an undertaking. It is further noted that on 15th January, 2018, it was noted that not a penny has been paid by the Appellant Company to the Respondent. Further assurances given on behalf of the Appellant were noted in the impugned order. The last assurance was given that the balance amount of Rs. 10,45,045/- will be paid by 31st July, 2018. The impugned order records the statement of the learned counsel appearing for the Appellant that the Appellant Company was unable to pay the said amount. After recording the finding that the Appellant Company has not paid the amount as assured, the learned Company Judge passed the order of winding up. As the Directors as well as the Appellant committed breach of the the undertaking, under the impugned order, show cause notices were ordered to be issued calling upon them to show cause as to why they should not be held guilty of contempt of the Court for committing breaches of the undertakings.

4. The dispute between the parties as regards the subject matter of leave and licence agreement dated 28th June, 2013 is pending in the Court of Small Causes. On 30th August, 2018 in this Appeal, following order was passed:

1. In terms of the undertaking given by Shri Sanjiv Mohan Gupta and Anshuman M. Gupta, the learned counsel for the appellant has tendered a Demand Draft in the sum of Rs.10,45,045/drawn in favour of the Prothonotary and Senior Master of this Court. The Court Associate to send the Demand Draft to the concerned office. In view of the aforesaid undertakings, the learned counsel appearing for the appellant states that the appellant has no objection if the amount of Rs.10,45,045/- is withdrawn by the respondent. Place the appeal under the caption of fresh admission on 18th September 2018. We grant limited ad-interim relief preventing the Official Liquidator from taking any further steps on the basis of the directions issued in paragraph 12 of the impugned order. It will be open for the appellant to communicate this order to the Official Liquidator as a copy thereof may not be immediately available.”

In terms of the said order, the Appellant deposited the sum of Rs. 10,45,045/- in this Court without prejudice to its rights and contentions in the pending proceeding in the Small Causes Court. It is an admitted position that the said amount has been withdrawn by the Respondents. The amount of Rs. 10,45,045/- was to be paid by the Appellant as per the undertaking given by it by 31st July, 2018. Though belatedly, the Appellant has complied with the said undertaking.

5. The learned counsel representing the Official Liquidator submitted that as no further steps were taken on the basis of the impugned order, no claims were invited and no claims of third parties have been received. We accept the said statements.

6. From the impugned order dated 1st August, 2018, it appears that the Respondents had no issue if the balance amount of Rs. 20,41,303/- was paid by the Appellant. Though belatedly, the entire amount as assured has been paid by the Appellant. As the impugned order has not been acted upon and claims have not been received from any one, a case is made out to set aside the impugned order.

7. Under the impugned order, a contempt notice has been issued to the Appellant and its Directors. A Letters Patent Appeal against the a show cause notice is not maintainable and therefore, show cause notice will have to be heard by the learned Company Judge. It is obvious that while dealing with the show cause notice, the fact that the Appellant has paid the aforesaid amount of Rs. 10,45,045/- will be a factor which can be taken into consideration.

8. Accordingly, we pass the following order.

(1) The impugned judgment and order dated 1st August, 2018 to the extent to which Company Petition No. 38 of 2016 was made absolute in terms of prayer clause (a) and (b) is hereby set aside.

(2) The Company Petition stands disposed of;

(3) We make it clear that the proceedings under the Companies Act arising out of Company Petition No. 38 of 2016 will not affect the pending proceedings in Small Causes Court and all the contentions of the parties in the said proceedings remain open;

(4) We make it clear that Clause 16 of the impugned judgment and order is not set aside and the show cause notices will have to be heard by the learned Company Judge;

(5) The Appeal is allowed in above terms. Pending Notice of Motion stand disposed of.

(M. S. SONAK, J.)

(A. S. OKA, J.)