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

APPEAL NO.168 OF 2011
IN
COMPANY PETITION NO.214 OF 2010

M/s.Devipura Balaji Securities & Investments Ltd. ...Appellant
vs.
Santosh Processors Pvt.Ltd. ...Respondent.

Mr.Anand Mishra I/b. Mr.Ashok M.Saraogi, for the Appellant.

None for the Respondent.

CORAM: NARESH H.PATIL AND G.S.KULKARNI, JJ .

DATED: 22th June, 2018

<u>P.C:-</u>

1. This appeal is directed against an order dated 27 October 2010 passed by the learned Single Judge whereby the company petition filed by the petitioner under Section 433 and 434 of the Companies Act,1956 seeking winding up of the respondent-company, stands rejected.

2. The case of the appellant is that certain representations were made by the respondent to the appellant to seek financial assistance. Believing those representations, an amount of Rs.7,45,000/- was paid by

the appellant to the respondent-company on various dates by cheques from 28 January 2004 to 16 December 2004. It is stated that the agreement between the parties was that the respondent-company would repay double the amount to the appellant within a period of five years. The repayment of the amounts had become due and payable in the year 2009. However, there was default on the part of the respondent-company in repaying the said amounts alongwith the interest as agreed. On the date of filing of the petition, an amount of Rs.14,95,000/- had become due and payable. The appellant issued a statutory notice dated 16 January 2010 calling upon the respondent-company to make payment of the said amount, which was replied by the respondent-company by its Advocate's reply dated 3 February 2010 disputing and denying the liability. The respondent contended that the claim of the appellant was time barred inasmuch as amounts advanced in the year 2004 were sought to be recovered in the year 2010. Accordingly, a Company Petition for winding up came to be filed by the appellant.

3. The respondent-company contested the company petition by filing a reply, interalia contending that there was no oral or written agreement between the company and the appellant that double the

amount would become payable by the respondent-company. It was also contended that the business of the company was not to accept deposits and double any deposits, the business was of bleaching and dyeing in textile.

4. The learned Single Judge considering the facts and circumstances of the case did not find any merit in the contention as urged on behalf of the appellant and came to a conclusion that the summary procedure as available under Section 433 and 434 of the Companies Act cannot be available in the facts of the case, in regard to the claim as made by the appellant and accordingly, dismissed the company petition.

5. The learned Counsel for the appellant in assailing the impugned order would contend that what was not appreciated by the learned Single Judge is that there was no dispute between the parties on the amount which was advanced and hence, there was a clear liability on the respondent to repay the said amount. The respondent having defaulted in making such payment, the Company Court ought to have exercised jurisdiction to wind up the respondent-company.

6. We have heard the learned Counsel for the parties. We have

also perused the record and the impugned order. The case of the appellant is that the amount aggregating Rs.7,45,000/- was advanced by the appellant to the respondent between 28 January 2004 to 16 December 2004 and the said amounts had became repayable from 28 January 2009 to 16 December 2009, and in making repayment, the company was to pay to the appellant double the amounts received by it. It is to be noted that there is no material whatsoever to accept this assertion of the appellant that there was some agreement between the parties that the money which was advanced by the appellant to the respondent would be required to be paid in double and after a period of five years. Moreover, though the amounts were advanced during the period from January 2004 to December 2004, the amount was claimed for the first time only after six years that is in the year 2010 by issuing a statutory notice to the respondent. Thus, for almost about six years, there was no demand raised by the appellant to call upon the respondent to repay the said amounts. This issue goes to the root of the matter to consider whether jurisdiction under the Companies Act needs to be exercised. The learned Single Judge thus would be right in observing that prima facie it appears that the claim itself was barred by limitation and hence the summary procedure under the Companies Act has been resorted by the appellant.

7. There are also contradictions in the assertion of the appellant namely on one hand the appellant has claimed repayment of double the amount which was advanced and on the other hand in setting out particulars of claim, calculating interest at the rate of 18.5% from the respective dates of the cheques of the advances. Although the appellant has confirmed that it has received Rs.12,500/- in cash on 15 June 2009, no such entry is reflected in the ledger account maintained by the appellant for the period 1 April 2009 to 31 March 2010. All this clearly indicates that there are disputed issues requiring evidence to be led by the parties, this cannot be the subject matter of company proceedings for the Court to exercise powers, to pass an order to wind up the company under Section 433 and 434 of the Companies Act.

8. We accordingly see no reason to interfere in the impugned order. The appeal is accordingly dismissed. No costs.

(G.S.KULKARNI, J.) **(NARESH H. PATIL, J.)**