

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.426, 437 and 438 of 2018

O.S.A.No.426 of 2018

Amit Kumar Jain HUF
Represented by its Karta Amit Kumar Jain,
Indian Resident residing at No.14,
Narayana Mudali lane, Chennai 600 079. ..Appellant/Petitioner

-vs-

N.V.Paper Products Private Limited,
A company incorporated under the provision
of the Companies Act 1956 and having
its registered office at No.2-B,
SIDCO Industrial Estate,
Ambattur, Chennai 600 098. ..Respondent/Respondent

Appeal filed against the order made in C.P.No.506 of 2015
dated 16.04.2018.

For Appellant : Mr.Pawan Jhabakh

O.S.A.No.437 of 2018

Geetu Jain ...Appellant/Petitioner

-vs-

N.V.Paper Products Private Limited,
A company incorporated under the provision
of the Companies Act 1956 and having
its registered office at No.2-B,
SIDCO Industrial Estate, Ambattur, Chennai 600 098.
..Respondent

Appeal filed against the order made in C.P.No.507 of 2015
dated 16.04.2018.

For Appellant : Mr.Pawan Jhabakh

O.S.A.No.438 of 2018

Rashmi Jain

-vs-

... Appellant

N.V.Paper Products Private Limited,
A company incorporated under the provision
of the Companies Act 1956 and having
its registered office at No.2-B,
SIDCO Industrial Estate, Ambattur,
Chennai 600 098.

... Respondent

Appeal filed against the order made in C.P.No.508 of 2015
dated 16.04.2018.

Prayer in C.P.No.506, 507 and 508/2015 :

Company Petition filed under Sections 433,434 read with
Section 439 of the Companies Act,1956 praying

(a) This Respondent, viz., M/s.N.V.Paper Products Private
Limited having its registered office at No.2-B, SIDCO Industrial
Estate, Ambattur, Chennai - 600 098 be wound up by an order and
direction of this Hon'ble Court under the provisions of the
Companies Act, 1956;

(b) For the appointment of the Official Liquidator, High
Court, Madras, to take charge of the assets of the respondent
company namely, M/s.N.V.Paper Products Private Limited;

(C) The Respondent to directed to bear and pay the costs
of this Petition and the proceedings to the Petitioner; and

(d) Such further and other reliefs be granted as this
Hon'ble Court may deem fit and proper in the facts and
circumstances of the case.

For Appellant : Mr.Pawan Jhabakh

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

Mere availability of provision of law is not enough to be
invoked by parties, especially, when an efficacious alternate
remedy is available, that too, when a civil suit is pending
between the same parties.

2. The case of the appellants is that there were loan
transactions between the appellants and the respondent company.

The amounts were not repaid. According to the appellants, the statement of confirmation of accounts filed by the respondent confirms the debt and therefore, there is no denial or dispute with regard to the liability. Since the money has not been paid, company petitions have been filed to dissolve the private limited company. The said petitions were dismissed by the learned single Judge, holding that company petitions cannot be filed, invoking the provisions of the Companies Act, as the respondent had already filed a suit for recovery of money against the very same appellants and father of the appellants.

3. Heard the learned counsel for the appellant. The learned counsel for the appellants would submit that the appellants have got every right to invoke provisions of the Companies Act, especially when money is due from the respondent. No doubt, the appellants are at liberty to file company petitions, if the money, which is due to them has not been paid. However, peculiarly in this case, already there is a suit between the same parties viz., C.S.No.780 and 781 of 2017 for a direction to one Mr.Ashok Kumar Jain, father of appellant Mr.Amit Kumar Jain (O.S.A.No.426 of 2018) to pay a sum of Rs.64,15,168/- and other reliefs. In the said suit respondent/plaintiff made the appellants as well as appellants' father and other family members as parties. That apart, admittedly the respondent's company is a profit making company to the tune of Rs.3 crores as recorded by the learned single Judge. Moreover, it seems that payments had already been made to the appellants pursuant to the settlement made by an Auditor.

4.The individual appellants have filed individual Company Petition Nos.506 to 508 of 2015, who are all the family members, the son, daughter and daughter in law of Mr.Ashok Kumar Jain. All the three persons have been made as defendants and the suit is still pending. When comprehensive suits have been filed for a direction to pay substantial amount, in which, not only the appellants, but also the father of Mr.Amit Kumar Jain is also a party, though it is stated there is no dispute with regard to the liability, the transactions have to be spoken to by the parties by adducing oral and documentary evidences and moreover, the learned single Judge noted that there are serious disputed questions of fact involved in these cases and there are numerous transactions involved between the parties.

5. The learned single Judge noted paragraph 5 of the counter affidavit, in which 17 transactions were enlisted. The payment of Rs.59,81,499/- made by the respondent company to Mr.Ashok Kumar Jain, pursuant to the direction of the Auditor has been taken note of, which was also not denied by the appellants.

6. In those circumstances, it has to be seen only in the Suit, as to whether the settlement is full and final or a partial one.

7. The respondent company is a solvent company, making profit and therefore, the petitions were rightly dismissed by the learned single Judge. There is a liability on the part of the respondent company to be paid to the appellants and it is open to the appellants to file a counter claim.

8. For the above reasons, the learned single Judge rightly dismissed the company petitions giving reasons. Therefore, Appeals fail and they are dismissed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sai

To
The Sub Assistant Registrar,
(Original Side)
High Court, Madras.

+3cc to Mr.G.Kumud Jhgabakh, Advocate SR.No.79617

O.S.A.Nos.426, 437 and 438 of 2018

GJ(CO)
GMY(08/01/2019)

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