

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION No.114 of 2016

ORDER:

This Company Petition is filed under Section 433(e), 434(1)(a) & 439 (1)(a) of the Companies Act, 1956, seeking winding up of the respondent company, alleging non-payment of Rs.2,79,879/- towards freight charges for the goods, which have been transported to the respondent under five consignments.

It is the case of the petitioner that the respondent company has engaged its trucks on 16.07.2014, 17.07.2014, 23.02.2014, 25.07.2014 and 29.09.2014 for various destinations for transportation of goods. In all, towards the transporting charges, the respondent is due and payable a sum of Rs.2,79,879/-. Therefore, on 04.02.2015, a legal notice was got issued to the respondent company demanding to pay the said amount. Having received the said notice, denying its liability, the respondent got issued the reply notice, dated 11.02.2015. It is the case of the petitioner that the respondent admitted non-payment of the transportation charges by it, however, a false claim is raised by the respondent in their reply notice. It is the further case of the petitioner that after issuance of notice, a counter affidavit has been filed by the respondent admitting the petitioner's services for transportation to various destinations. However, it is asserted that the petitioner, a common carrier, having accepted to transport the goods, had delivered only four consignments as against five and the 5th consignment booked under FTL BL0604-0000498, dated 29.09.2014, was not delivered at the destination. Further, it is asserted that the respondent company has a claim against the

petitioner and the respondent company had filed O.S.No.638 of 2016 on the file of learned IV Senior Civil Judge, City Civil Court at Hyderabad, to recover a sum of Rs.20 lakhs along with interest. Thereafter, a reply affidavit was filed by the petitioner, wherein it is admitted by the petitioner that, as a matter of fact, consignment under F-410247, dated 29.09.2014 was not delivered in spite of their best efforts. It is further asserted that the 5th consignment was returned as unclaimed. However, the respondent has postponed the matter on one pretext or the other and it had failed to pay the freight charges in spite of its best efforts.

In the counter affidavit, it is asserted that the respondent has filed O.S.No.638 of 2016 before the learned IV Senior Civil Judge, City Civil Court at Hyderabad. Though it is asserted that they have made false claim, the inability on the part of the petitioner company is reiterated in the reply affidavit. The matter was listed number of times and during the interregnum, the suit filed by the respondent company came to be decreed by the learned IV Senior Civil Judge, City Civil Court at Hyderabad and a copy of the Judgment was filed along with a Memo, dated 18.04.2018 by the respondent. The suit was decreed for a sum of Rs.7,76,917/-, to be paid by the petitioner, after deducting the freight charges of Rs.2,23,083/- from the value of the goods i.e., Rs.10,00,000/-, with 6% interest. In other words, the claim for Rs.2,79,879/-, which was made by the petitioner, came to be discharged to the extent of Rs.2,23,083/- and on account of the fact that goods, which have been entrusted to the petitioner company, were not delivered and the value of which in a sum of Rs.7,76,917/- is due and payable by the petitioner company, by no stretch of

imagination, it can be said that the petitioner is entitled to any amount, much less Rs.2,23,083/-. In those circumstances, the company petition is not maintainable and does not deserve any consideration, much less admission. Accordingly, the company petition is dismissed with costs of Rs.5,000/-.

Consequently, Miscellaneous Petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J.

Date: 16.07.2018.

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