IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPEAL NO. 2 OF 2019

WATERWAYS SHIPYARD PVT. LTD., THR. ITS JOINT MANAGING DIRECTOR, ANOOP TREHON. ... Appellant

Versus

RAVINDRA ANAND KAMAT. ... Respondent

Mr. Ethelwald Olimpio Mendes, Advocate for the Appellant.

Mr. R. G. Ramani, Advocate for the Respondent.

Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.
Date:- 14th January, 2020

P.C.

Heard Mr. E. Mendes, learned counsel for the Appellant and Mr. Ramani, learned counsel for the Respondent.

2. With the consent and at the request of the learned counsel for the parties, this appeal is taken up for final disposal at the stage of admission itself.

3. This appeal is directed against the order dated 3rd August, 2018, made by the learned Company Judge in Company Petition No.33 of 2014, ordering winding up of the Appellant company and making of

consequential orders in that regard.

4. The Company Petition No.33 of 2014 in which the impugned order came to be made was instituted by the Respondent, who was an employee of the company. It was the case of the Respondent that the company was due and payable to him an amount of Rs.3,93,259.33 towards the unpaid wages/salary. The company, it appears had not chosen to contest the petition, despite valid service. Accordingly, the impugned order came to be made.

5. Mr. Mendes, learned counsel for the Appellant Company now submits that the entire amount of Rs.3,93,259.33 has already been paid to the Respondent on 26th December, 2018. He submits that this is not a case of any neglect to pay but there were some communication gaps, on account of which the amount remained to be paid. He submits that it is on account of communication gaps no valid defence was put up in company petition which came to be decided *ex-parte*. He submits that at the highest some reasonable interest may be granted to the Respondent but the order of winding up of the company may be set aside. He points out that the order of winding up, will not assist the Respondent but rather will disproportionately affect the Appellant company which is going concern. He points out that even the other employees which are about 40 in numbers of the Appellant company will be affected, if the winding up of

order is to stand.

6. Mr. Ramani, learned counsel for the Respondent submits that this is a fit case where the Appellant must be called upon to pay interest at the rate of 8% per annum from 1st April, 2014 till the date of actual payment on principal amount of Rs.3,93,259.33. He submits that this amount comes to Rs.1,49,438. He submits that this is also a fit case where the Appellant should be directed to pay some costs to the Respondent. He points out that the Respondent was constrained to institute winding up petition because no justifiable reason, the amount due to him on account of his salary came to be withheld.

7. Upon consideration of the aforesaid contentions and looking to the fact that the Appellant company is going concern which has employed about 40 employees, we are satisfied that no useful purpose will be served by maintaining the impugned order, which has directed the winding up of the Appellant company. No doubt, some conditions can be imposed upon the Appellant company in the matter of payment of interest and costs.

8. Mr. Mendes, on the basis of the instructions, has fairly accepted that the Appellant company will pay to the Respondent the interest at the rate of 8% per annum as now claimed. He also states that

the issue of costs will be left to the Court to decide.

9. According to us, in the peculiar facts and circumstances of the present case, it will be appropriate that the Appellant company pays the costs of Rs.10,000/- to the Respondent.

10. The Appellant company has already deposited in this Court an amount of Rs.2 lakhs. Accordingly, we grant liberty to the Respondent to withdraw an amount of Rs.1,59,438/-. The amount of Rs.1,49,438/- is towards the interest at the rate of 8% per annum and Rs.10,000/- is towards the costs. Registry to permit such withdrawal.

11. Registry is also directed to thereafter refund to the Appellant company the amount which remains after making payment to the Respondent as aforesaid together with interest accrued thereon, if any.

12. The impugned order dated 3rd August, 2018, is hereby set aside. The appeal is allowed in the aforesaid terms accordingly.

SMT. M. S. JAWALKAR, J. **M. S. SONAK, J.**

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