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O.S.A.No.75 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2023

CORAM

THE HON'BLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

O.S.No.75 of 2014

Anjani Associates

.... Appellant

Vs

Dhandapani Spinning Mills Limited
Registered Office:
17F, Rajaji Road,
Salem-636 007

.... Respondent

Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Section 15 of the Letters Patent Act against the order passed in Company Petition No.254 of 2012 dated 29.10.2013.

For Appellant : Mr.K.P.Prabhuraj
For M/s A.K.Mylsamy & Associates

For respondent : Mr.Karthik Seshadri
For M/s Iyer & Thomas

JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN,J.,**)

Aggrieved by the refusal of the Company Court to admit the Company Petition, the petitioner before it is on appeal.



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2. The petitioner filed a petition in C.P.No.254 of 2012 under Section 433(1)(e), 433(1)(f), 434(1)(a) and Section 439 of the Companies Act, 1956, seeking winding up contending that the Company is unable to pay its debts.

3. The Company Court found that the Company is indebted to the petitioner it, however, refused to exercise the discretion in admitting the Company Petition on the ground that the matrimonial discard between the petitioner in the Company Petition and the sister of the Managing Director of the respondent Company is the reason for seeking winding up.

4. Mr.K.P.Prabhuraj, learned counsel appearing for the appellant would submit that no doubt the Company Court has a discretion either to admit or to reject the Company Petition, but the said discretion must be based on sound judicial reason. Pointing out the fact that the divorce proceedings had ended even in during August 2013 and there is no scope for further matrimonial discard between the parties to the marriage, learned counsel would contend that the Company Court has wrongly exercised its discretion in favour of a defaulter.



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5. Mr.Karthik Seshadri, learned counsel appearing for the respondent Company is unable to support the order of the Company Court. Though he would very seriously contend that the Company Court has got a discretion and once the discretion has been exercised, we cannot interfere with such exercise of discretion.

6. We are unable to sustain the order of the Company Court inasmuch as the discretion has been exercised on a reason that is totally foreign to the business of the Company. We also find force in the submission of the learned counsel for the appellant when he contends that since the matrimonial dispute has ended in divorce on 03.08.2013 itself, the said dispute should not have been made a basis for rejecting the claim for winding up in September 2013.

7. We therefore set aside the order of the Company Court passed in C.P.No.254 of 2012 and we admit the Company Petition. The Company Court will proceed further with the Company Petition in accordance with law. All defences including the question of enforceability of the debt as on today are left open to the respondent.



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AND
V.LAKSHMINARAYANAN.J**

8. The Original Side Appeal is allowed with the above observation,. No costs.

**(R.S.M.J.) (V.L.N.J.)
07.08.2023**

Index : Yes
Website : Yes
sr
To

The Assistant Registrar(O.S).,
High Court,
Madras

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