(2010) 05 KAR CK 0037

In the Karnataka High Court

Case No : C.A. No. 926 of 1996 in C.P. No. 23 of 1994

Agro Inputs Ltd. (In Liqn.) APPELLANT

Vs

Ravishankar Traders RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:
Companies Act, 1956 — Section 454

Citation : (2010) 102 SCL 174

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.S. Mahadevan and V. Jayaram, for the Appellant; S.V. Prakash, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The applicant company when ordered to be wound up on 7-4-1995 in COP 23/94 filed this application on 28-6-1996 to recover Rs. 1,73,175 with interest at the rate of 12 per cent p.a. from the date of application on Rs. 1,28,956 from the respondent M/s. Ravishankar Traders, on the premise that the respondent was a trade debtor. This application is opposed by filing statement of objections dated 5-8-2008 of the respondent inter alia denying the claim including payment of Rs. 7,800 on 21-8-1993 to the applicant, and further that the application filed beyond time is barred by limitation. The respondent admitted that the Firm was registered with the Registrar of Firms under the Partnership Act, of which Mr. Ravishankar, S/o Sri. G. Rangoji Rao, was one of the partners.

2. The order sheet discloses that the matter was taken up before the Division Bench in OSA 22/04 and thereafter to the Supreme Court in SLP 24025/05 whence, the SLP was allowed and the proceeding remitted to the Division Bench and on remand, the OSA was allowed and the proceeding stood remitted to this Court for fresh consideration.

3. On remand the parties entered trial, whence the Official Liquidator examined one witness as PW-1, marked five documents as Exs. P1 to P5, while for the respondent the Partner by name Ravishankar was examined as RW-1 and no documents were marked.

4. In the premise of the pleadings of the parties, the point for decision making is, whether the applicant proves that the respondent is due and payable Rs. 1,73,175 together with interest at the rate of 12 per cent p.a. on Rs. 1,28,956?

5. Heard the learned Counsel for the parties. There is considerable force in the submission of the learned Counsel for the respondent that the applicant, failed to establish that respondent is due and payable the sum of money claimed in the application. Ex. Pl as rightly pointed out though said to be a receipt dated 21-8-1993 in the name of the applicant company for having received Rs. 7,800 from the respondent firm, does not bear the signature of the Sales representative or job in-charge, as also does not record particulars of the accounts for which the amount is received and accounted for; Ex.P2 a receipt voucher dated 21-8-1993 only mentions the receipt of Rs. 7,800 and accounted towards the Head of Account of respondent-Firm and in column figure "Rs. 1,37,800" is mentioned; Ex.P3 is said to be a copy of the cash book, Folio No. 56 wherein as against dated 21-8-1993 the name of the respondent is mentioned and figures Rs. 7,800, while in Ex. P4 a copy of the Ledger folio at page No. 66 states that as on 1-4-1993 the balance is Rs. 1,36,756 and on 21-8-1993 there is a credit by way of cash of Rs. 7,300 in the account of the respondent; Ex. P5 is the statement of affairs in terms of Schedule II to List-A of Annexure-I of the Companies Act, furnishing details of trade debtors and at S1. No. 10 the name of the respondent-Firm is shown against whom it is stated that Rs. 1,28,956.60 is due as on 21-8-1993.

6. Learned Counsel for the respondent is correct in his submission that none of the records exhibited by the applicant are in the direction of establishing that the respondent is due to the applicant the amounts claimed. In the face of denial of the claim made by the applicant, it was for the applicant to place before Court substantial legal evidence of the fact in issue, and in the absence of which, it cannot but be said that Exs.P1 to P5 can hardly be said to be satisfactory proof that the respondent is due and payable to the applicant Rs. 1,28,956.60. Although learned Counsel for the Official Liquidator submits that the statement of affairs filed as required by Section 454 of the Companies Act is sufficient to establish the liability of the respondent. I am afraid that contention cannot be countenanced Merely because the Ex-directors of a company-in-liquidation file a statement of affairs, indicating that the respondent is due in a specified sum of money, that by itself and nothing more cannot be said to constitute substantial legal evidence of the fact in issue. The contention that the application filed is beyond the period of limitation, in the circumstances need not be adverted to.

In the result, the application is dismissed.

