(1988) 11 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 69 of 1985

Bareja Knipping Fasteners Ltd. APPELLANT

Vs

Kochar Brothers RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:

Companies Act, 1956 — Section 468
Sales of Goods Act, 1930 — Section 61(2)

Citation : (1988) 11 P&H CK 0058

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : D.P. Verma, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—The official liquidator has filed this petition u/s 446(2) read with Section 468 of the Companies Act, 1956 (for short "the Act") for recovery of Rs. 2,476.02 against the respondents.

2. The facts briefly stated are that the petitioner-company was ordered to be wound up by this court vide order dated October 27, 1983, in Company Petition No. 57 of 1983. The official liquidator attached to this court was appointed as official liquidator of the petitioner-company. After examining the books of account of the petitioner-company, it was found out that a sum of Rs. 2,476.02 was due from the respondents to the petitioner company on account of the price of the goods supplied to the respondents. The petitioner claimed interest at the rate of 12 per cent per annum on this amount.

3. The respondent-company controverted the allegations of the petitioner. It was, inter alia, pleaded that the petitioner-company did not supply any goods of the value of Rs. 2,476.02 to the respondents. It was also pleaded that the petition was barred by time.

4. On the pleadings of the parties, the following issues were framed :--

1. Whether the petitioner supplied goods to the respondent, if so, of what amount ?

2. Whether the petitioner is entitled to interest, if so, at what rate?

3. Relief.

Issue No. 1 :

The petitioner examined Lalit Mohan Bareja who was a director of the petitioner-company from its very inception. He proved the ledger entry exhibit P-1. He, in unequivocal terms, stated that the accounts were maintained by the company in the ordinary course of business and that no amount was received from the respondent against the outstanding sum before the company was wound up.

5. P. W. 2 Santokh Singh, junior technical assistant, attached to the office of the official liquidator proved the issuance of notice, exhibit P-2, and the acknowledgment due slip, exhibit P-3.

6. The respondent was afforded four opportunities to lead evidence but no evidence was produced. On November 27, 1987, an opportunity was afforded to lead evidence subject to payment of costs. The costs were not paid on the adjourned date of hearing. Consequently the evidence of the respondent was closed under orders of the court.

7. A copy of the ledger has been produced as exhibit P-l. It has been proved by P. W. 1, Lalit Mohan Bareja. From the statement of this witness, it is apparent that the account books were regularly maintained and that the ledger entries reveal that a sum of Rs. 2,476.02 is due from the respondent. Accordingly, I hold that the petitioner-company is entitled to recover a sum of Rs. 2,476.02 from the respondent. Issue No. 1 is decided accordingly.

Issue No. 2:

Sub-section (2) of Section 61 of the Sale of Goods Act, reads thus :

"(2) In the absence of a contract to the contrary, the court may award interest at such rates as it thinks fit on the amount of the price-

(a) to the seller in a suit by him for the amount of price--from the date of the tender of the goods or from the date on which the price was payable ;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller--from the date on which the payment was made."

8. The liability on the part of the buyer to suffer interest is a statutory liability arising under Sub-section (2) of Section 61 of the Sale of Goods Act. The respondent is liable to pay interest on the unpaid price of goods supplied to it. In the circumstances of this case, I hold that the petitioner is entitled to interest at the rate of nine per cent per annum from the date the decretal amount became

due till realisation. Issue No. 2 is decided accordingly.

9. In view of my findings on issues Nos. 1 and 2, I allow this petition and pass a decree for a sum of Rs. 2,476.02 in favour of the petitioner and against the respondent with nine per cent per annum interest from the date the decretal amount became due till realisation. The parties are, however, left to bear their own costs.