

(2011) 09 KAR CK 0122
In the Karnataka High Court
Case No : O.S.A. No. 45 of 2010

Cauvery Software Engineering Systems Ltd.

APPELLANT

Vs

Besto Clutches and Spares

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Companies Act, 1956 — Section 433 (e), 433 (f)

Citation : (2011) 167 CompCas 346 : (2011) 110 SCL 573

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Ashok Haranahalli, for P. M. Vasudeva and Co, for the Appellant;
Anup S. Sham Law Firm, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar J.

1. This appeal is preferred challenging the order passed by the learned company judge (Besto Clutches and Spares v. Cauvery Software Engineering Systems Ltd. [2011] 167 Comp Cas 342 (Karn)) who has passed an order of winding up u/s 433(e) and (f) of the Companies Act, 1956. For the purpose of convenience the parties are referred to as they are referred to before the company court.

2. The case of the petitioner is that the respondent was in occupation of a premises belonging to the petitioner under a leave and licence agreement. Since the respondent-company failed to vacate the premises and to pay the licence fee, the petitioner filed a suit in LE and C Suit No. 32/38 of 1992 on the file of Small Causes Court, Bombay. During the pendency of the suit, the parties arrived at a compromise and accordingly the suit came to be decreed in terms of the compromise petition as per annexure G. Since the respondent-company failed to honour the terms of the compromise petition, the petitioner filed Misc. No. 289 of 1994 for issuance of contempt proceedings against the respondent-company. The said petition came to be dismissed with an observation that the petitioner can

enforce the decree by executing the decree. Thereafter the petitioner initiated execution proceedings in Misc. No. 272 of 1994. On an interlocutory order in the said proceedings, the respondent filed a revision petition before the High Court of Bombay in C.R.P. No. 125 of 1995. The said CRP also ended in compromise order dated February 15, 1995. As per the compromise the petitioner paid a sum of Rs. 22 lakhs to the respondent-company and in turn the respondent-company has delivered possession of the premises in question to the petitioner. Liberty was reserved to the petitioner to agitate with regard to the municipal taxes, telephone and other charges in accordance with law.

3. Since the respondent-company failed to pay the agreed charges for the period from 1992 to 1995, the petitioner issued a statutory notice on September 17, 1996 and another notice on October 12, 1996. The respondent-company issued a reply notice on November 6, 1996, denying the liability. Therefore, the petitioner was constrained to file this petition u/s 433(e) and (f) of the Companies Act, 1956, for winding up of the respondent-company.

4. This petition came to be admitted on January 18, 2005 and permitted the petitioner to take out advertisement. Accordingly, the advertisement was published on February 2, 2005, in English daily The Hindu. No objections are received opposing the winding up of the company.

5. In paragraph 5 of the impugned order, it is stated that in the statement of objections the respondent-company contends that the claim of the petitioner is barred by limitation and there is no specific determination of the claim and they are not liable to pay any dues. The statement of objections by the respondent-company to the company petition is placed on record. The statement of objections referred to runs about 8 pages. The statement of objections is in two parts. The respondent has specifically traversed each paragraph in the petition and in another part the respondent has set out what is his case. After filing of the said statement of objections, the petitioner has filed rejoinder which runs to about 20 pages. After the said rejoinder, the respondent has filed his additional objections which runs to about 3 pages. Unfortunately except a bare reference to the statement of objections filed, the defence taken by the respondent is not set out in the order. There is no reference to the rejoinder. There is no reference to the additional objection. The points for consideration are not framed. The parties were not permitted to adduce the evidence. The matter is taken up for arguments and the impugned order is passed based on the contents of the compromise petition filed by the parties in the proceedings which were disposed of.

6. The company proceedings are original proceedings. An order of winding up of the company would have serious consequences not only to the company which is ordered to be wound up but to the public in general and to the creditors and debtors of the company. If the company is a defunct company the consideration would be altogether different. An order of winding up makes no difference as the company is already defunct. In so far as going companies are concerned, the court has to be careful before passing an order of winding up. As it is a original

proceedings when both the parties have set out their case it is necessary to state in the order of winding up at least the substance of the respective contentions an opportunity is to be given to substantiate the respective contentions by adducing oral evidence. If any documentary evidence is produced that also has to be looked into. Thereafter points for consideration have to be formulated and answered in the light of the material on record both oral and documentary evidence and the arguments addressed by learned counsel as well as keeping in mind the statutory provisions and the case law if any which is relevant for determination of the controversy between the parties. It is only then it can be said the court has discharged its responsibility and passed a valid order on merits. Against such an order a right of appeal is provided under the statute. Therefore, the impugned order passed do not satisfy the legal requirements. Therefore, a case for interference is made out.

7. In that view of the matter, the appeal is allowed. The impugned order is set aside. The entire matter is remitted back to the learned company judge to restore the petition to its original file and provide opportunity to the parties to lead evidence and then to pass orders on merits keeping in mind the observations made in this order.

8. No costs.