
(1998) 02 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No. 420 of 1997 in Company Petition No. 75 of 1997

Century Steel Industries

APPELLANT

Vs

Eider PWI Paging Limited

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Companies Act, 1956 — Section 434

Citation : (1998) 119 PLR 47 : (1998) 3 RCR(Civil) 220

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : A.C. Jain, for the Appellant; R.K. Garg, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The present application has been filed by M/s. Eider PWI Paging Limited for setting aside the exparte order dated 25.7.1997. Vide this order the payment of the amount due from it to the petitioner company in the main petition (M/s. Century Steel Industries) and having failed to show any bonafide dispute at that stage, passed the order admitting the petition for widening up. It was ordered that 14 days requisite notice prior to the date of hearing be published in Indian Express, Dainik Tribune and the Chandigarh Administration Gazette. The compliance of this order was made and affidavit of service was filed in the main petition by the petitioner. The present company application has been filed on 17.10.1997 for setting aside this order.

2. Upon notice, the non-applicants have filed their reply and have stated that averments made in this application are not factually correct.

3. I have heard the learned counsel for the parties at some length. The notice of the main petition was sent to the respondent Company at the correct address of the company. In fact the correctness of the address is not even disputed in this application. In the affidavit annexed to this petition same address has been, given by the applicants themselves. The notice was returned back with the

remarks of refusal and the Hon"ble Judge had considering it to be a proper service and directed the matter to be proceeded against exparte against the applicant. All that is said in this application, is that the applicant company is not aware as to how the remarks of refusal have been recorded. The defence taken does not appear to be bonafide. The applicant does not appear to be so innocent because before filing of the petition a notice was served on 25.2.1997 u/s 434 of the Companies Act which was duly served and the postal acknowledgement thereof has been placed on record. This notice, served on behalf of the petitioner company upon the applicant company was not even responded to.

4. The hollowness of the stand taken by the applicant-company is further evident from the stand taken in paragraph No. 4 of this application even in regard to the merits of the case. Paragraph No. 4 reads as under :-

"4. That earlier the petitioner supplied furniture to the respondent company worth Rs. 1,26,000/- and the bills raised by the petitioners were duly paid except the bill in question. In fact the petitioner supplied the defective furniture and the respondent complained about the same to the petitioner. The petitioner promised to replace the furniture but did not do so. With the result the respondent withheld the payment of the bill. The petitioner concealed this fact while filing the present company petition."

5. It is clear from the above admitted facts that material was received and the bill was raised for the correct amount. If the material was defective the applicant company could take some action in accordance with law. No correspondence has even been filed along with this application to show that there was any understanding between the parties for replacing the furniture. The bills were raised for supply of the material in the name of the applicant company as back as in July, 1996. The petitioner company had served notice u/s 434 of the Companies Act upon the applicant company which was not even replied to. This attitude of the applicant company indicates towards lack of bonafides of the defence raised by the applicant company now in these proceedings before this Court.

6. No sufficient reason has been disclosed in the application which will persuade the Court to set aside the order dated 25.7.1997. In fact the application at the face of it is a delaying tactic and lacks bonafides. In any case, the amount claimed is only Rs. 10,939/- which to my mind, the respondents are obliged to pay. The order passed by the Hon"ble Company Judge dated 25.7.1997 is a detailed order. Lack of bonafides in its defence on the part of the applicant company is an impediment to persuade the Court to set aside the order dated 25.7.1997. Consequently, finding no merit in this application, the same is liable to be dismissed, which is hereby rejected without any order as to costs.