

(2008) 02 RAJ CK 0102
In the Rajasthan High Court

Hari Ram

APPELLANT

Vs

Official Liquidator of Amfort Agro Finance Ltd.

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

COMPANIES ACT, 1956 — Section 446, 447

Citation : (2008) 88 SCL 236

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Company Application No. 25/2000 in Company Petition No. 1/95 was decided by this Court on 1-3-2001.

2. It was observed that applicant Hari Ram and Anr. were shown in the list of debtor and notice was initially served in the office of Official Liquidator for demand of a sum of Rs. 1,90,000 with interest at the rate of 12 per cent per annum dated 24-9-1999 which was duly served upon them. The notice and postal acknowledgement receipt were also placed on record. Since the present applicant failed to make payment despite notice being served, application was filed by the Official Liquidator under Sections 446 and 447 of Companies Act, 1956. Notices were issued of the aforesaid application, which as per the office report, was issued and duly served upon the present applicant Hari Ram on 12-12-2000. Since he failed to appear despite service of Company Application No. 25/2000, this Court passed the order on 1 -3-2001- operative portion whereof is reproduced as under:

Under these circumstances, this Court has no other option but to accept and allow the present application as prayed for and there will be a direction to the Official Liquidator to recover the amount of Rs. 3,11,600 together with the interest at the rate of 12 per cent namely as on 27-8-1999.

3. In compliance of order of this Court dated 1-3-2001, Company Execution

Petition No. 9/04 was filed by Official Liquidator which was admitted on 24-9-2004 and notices were issued to the present applicant. After the notice of execution petition was served, the applicant Hari Ram filed present Company Application No. 1/07 in which it was specifically alleged that notices were never served upon them issued by this Court of Company Application No. 25/2000. As such, the order dated 1-3-2001 deserves to be recalled and the premise on which execution petition which has been filed against them is not maintainable. After notices were issued of the present application, record of Company Application No. 25/2000 was also summoned and on its perusal, it has been shown to the counsel for applicant Hari Ram as well.

4. From the record which conspicuously shows about notice being served upon present applicant Hari Ram and office report as per available record cannot be doubted in any manner.

5. Counsel for applicant after being satisfied in regard to notice being served, raised further objection that as per instructions extended to him by his client, in fact loan was never disbursed to him. As such, the question of making recovery from him does not arise.

6. Suffice it to say at this stage that at two different stages the present applicant had an opportunity to come out with his defence - at the first stage when Official Liquidator served him notice dated 24-9-1999 and at a later stage when notices were issued and served upon him of Company Application No. 25/2000.

7. Despite the same for the satisfaction of this Court, counsel for Official Liquidator has placed xerox copy of documents, i.e., loan application form and other documents which show about loan being disbursed to the applicant Hari Ram and in this regard, notice was served upon him for making recovery being a debtor.

8. Since the very premise on which applicant filed the present application about notice not being served, does not hold good on perusal of record.

9. This Court does not find any merit in the instant application, the same stands dismissed.