(1988) 01 MP CK 0020

In the Madhya Pradesh High Court

Case No : Company Petition No. 3 of 1986

Hind Syntex Ltd. APPELLANT

Vs

Dewas Textile Mills (P.) Ltd. RESPONDENT

Date of Decision : 08-01-1988

Acts Referred:
Companies Act, 1956 — Section 433, 442

Citation : (1989) 66 CompCas 927

Hon'ble Judges : P.D. Mulye, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.D. Mulye, J.—This order shall govern the disposal of I. A. No. 3121 of 1986 dated August 21. 1986, and LA. No., 2460 of 1987 dated August 13, 1987, which are filed under Rule 6 of the Companies (Court) Rules, 1959, read with Sections 10 151 and 141 to the CPC with a prayer that further procedings in the present winding-up petition filed on behalf of the petitioner against the respondent company be stayed till Criminal Case No. 93 of 1987, filed by the petitioner against Shri Jawaharlal Daga, managing director of the respondent company, for an alleged offence u/s 420 of the Indian Penal Code, which is pending in the Court of Judicial Magistrate, Devas, is decided.

2. The petitioner has filed the present winding-up petition on the ground that the respondent company is insolvent and unable to pay its debts. According to the petitioner, on the basis of a contract entered into between the petitioner and the respondent company, the petitioners who are manufacturers of yarn sold the same to the respondent company to enable them to manufacture shirtings and suitings against hundis and under the said contract, the petitioners have to recover a sum of Rs. 6,11,715.65 from the respondent company which, despite service of demand notice dated Jariuary 29, 1986, the respondent-company has failed to pay. The petitioner has therefore filed the present winding-up petition.

3. A show-cause notice was issued to the respondent-company as to why the winding-up petition should not be admitted for hearing. However, instead of filing any reply to the show-cause notice, for which the respondent-company was given sufficient time, they have filed these applications on the ground that as a criminal complaint has been filed by the petitioner against Shri Jawaharlal Daga, in respect of the said transaction, the respondent-company cannot be called upon to file a reply to the show-cause notice as that would prejudice their case before the criminal court and, therefore, till the criminal case is decided it is prayed that further proceedings in this winding-up petition be stayed and in support of his submission, learned counsel for the respondent-company placed reliance on the decisions in M.S. Sheriff Vs. The State of Madras and Others, , [1981] MPLJ 24 . In Re: Sulekha Works Ltd., and The Official Liquidator Vs. Dharti Dhan (P) Ltd., and civil revisions decided on this point.

4. Learned counsel for the respondent-company submitted that even according to the petitioner, the transaction between the parties was entered into on the basis of the hundis as referred to in the petition and as in respect of the same hundis, a criminal compliant has been filed against Shri Jawaharlal Daga, who is the managing director of the respondent-company, in the interest of justice, further proceedings in this petition deserve to be stayed.

5. On the other hand, learned counsel for the petitioner, who by their replies filed to these applications have opposed the said prayer, submitted that no criminal case has been filed aginst the respondent-company, that the criminal complaint has been filed against one of the directors of the company, Shri Jawaharlal Daga, in his individual capacity and thus the criminal proceedings filed against Shri Jawaharlal Daga are separate and independent as the parties to the two matters are different, that the cause of action of the company petition and the criminal complaint are also different, that the cause of action of the former is that hundis drawn for recovery of the price of goods supplied to the company were dishonoured, while that of the latter is that false inducements were made by Shri Jawaharlal Daga to procure goods. Other directors/shareholders of the respondent-company or the respondent-company itself have not been prosecuted. The relief sought in the company petition is the recovery of the price of goods supplied to the respondents whereas in the criminal complaint the accused person is sought to be punished.

6. Learned counsel further submitted that it is only u/s 442 of the Companies Act that a company can apply for stay of any suit or proceeding pending before any court other than the Supreme Court or any High Court, which is not the case here. It is not alleged by the respondent that any such proceedings are pending against the respondent-company. Therefore, the criminal complaint having been filed against Sri Daga in his individual capacity there is no reason to stay further proceedings, as in fact only a show-cause notice has been given to the respondent-company as to why the petition should not be admitted for hearing. Learned counsel, therefore, submitted that no prejudice is likely to be caused to

the respondent-company and that the authorities cited by learned counsel for the respondent-company do not relate to a winding-up petition arising out of the provisions of the Companies Act as such directly, but relate to the civil disputes out of which the criminal cases were also filed. Learned counsel for the petitioner, therefore, submitted that in fact there are provisions under the Companies Act itself relating to offences antecedent to or in the course of winding-up commencing from Section 538 onwards for punishing an officer of the company in case any offence under the Companies Act has been committed by him.

7. Thus, after hearing learned counsel and after going through the case law as also the allegations and counter-allegations made by the respective parties, I am of the opinion that the applications filed by the respondent-company deserve to be dismissed.

8. The winding-up petition is filed against the respondent-company, whereas the criminal case has been filed against Shri Jawahar-lal Daga, in his individual capacity. Therefore, the reliefs sought in this petition as also the relief sought against Shri Daga in the criminal case are quite distinct and separate. The present petition is filed on the ground that the respondent-company has failed to pay the dues whereas the criminal case has been filed on an allegation that Shri Daga in his individual capacity practised fraud upon the petitioner by inducing him. Shri Jawaharlal Daga himself is not the company as defined under the Companies Act and, therefore, even though a criminal case has been filed against Shri Jawaharlal Daga, in his individual capacity, on that basis, further proceedings in the winding up petition cannot be stayed as at this stage the respondent- company has been only called upon to show cause as to why the petition should not be admitted for hearing. The authorities cited by learned counsel for the respondent do not directly touch on the point raised by learned counsel for the respondent-company. The Calcutta decision, In Re: Sulekha Works Ltd., , on which learned counsel for the respondent-company has placed reliance is on a different point. Similarly, the Supreme Court decision, referred to above, refers to powers to stay proceedings depending on the facts and circumstances of each case. Therefore, the facts of that case are also distinguishable. Similarly, the decision reported in [1981] MPLJ 24 which had placed reliance on the decision in M. S. Sheriff v. State of Madras AIR 1964 SC 397, also arose out of a civil suit and criminal proceedings arising out of the incident. Therefore, that authority also does not help the respondent-company.

9. In such a situation, as the relief sought in this petition as also in the criminal complaint are quite distinct and separate and the criminal case having been filed only against Shri Jawaharlal Daga in his individual capacity, I am of the opinion that further proceedings in the present winding-up petition cannot be stayed on that ground.

10. In the result, both these applications are dismissed. The respondent-company is, therefore, directed to file reply to the show-cause notice on or before February 12, 1988.

