(2001) 07 AHC CK 0179

In the Allahabad High Court

Case No : Company Petition No. 77 of 1999

In Re: Khaitan Overseas and Finance Ltd.

Date of Decision : 30-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Companies (Court) Rules, 1959 — Rule 6
Companies Act, 1956 — Section 433

Citation : (2001) 3 CompLJ 423

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; R.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—This amendment application has been filed under Order 6, Rule 17, Code of Civil Procedure, 1908 (''the Code'') read with Rule 6 of the Companies (Court) Rules, 1959, for amending paragraphs 2(1) to 2(5) and sub-paras 11-A, 11-B, 11-C and 11-D along with supplementary affidavit annexing documents which include, confirmation of loan, letters issued by the applicant-company, photostat copies of the cheques issued by the respondent-company which were dishonoured, and a Form No. 16A in respect of certificate of deduction of tax at source. The counsel for the respondent-company has objected to the amendment application. According to him, such an amendment application cannot be allowed inasmuch as the preliminary hearing of the winding up application had been concluded by the then Hon''ble Company Judge, and that no reason has been given for filing the amendment application after such a long time. He has further submitted that the documents enclosed with the supplementary affidavit cannot be taken on record without there being a proper explanation. He has relied upon the provisions of Rule 7, Rule 8, Order 13, Rule 2 of the Code, and the decisions of Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York, , Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, and Gopal v. Hira Chand AIR 1994 Raj. 110. These decisions have been cited for the proposition that amendment to the pleadings could not be allowed where it changes the cause of action and introduces a new claim for a time barred debt and that the delay of production of documents must be supported by cause shown for not producing them earlier.

2. Rule 6 is quoted below:

"6. Practice and Procedure of the court and provisions of the Code to apply, - Save as provided by the Act or by these rules, the practice and procedure of the court and the provisions of the Code so far as applicable shall apply to all proceedings under the Act and these rules. The Registrar may decline to accept any document which is presented otherwise than in accordance with these rules or the practice and procedure of the Court."

3. A bare reading of the aforesaid rules shows that the Code is applicable to the-provisions of winding up so far as they arc made applicable by the Companies (Court) Rules. The proceedings of winding up are summary in nature and the principles under the Code may be utilised for expeditious and effective disposal of winding up petition, but no party can claim as a matter of right [the application] of the rigours of Code. In Aluminium Corporation of India v. Laxmi Ratan Cotton Mill [1969] 1 Comp. LJ 38 (All.) - It was held that a petition for winding up is different from that of a suit, governed by the Code. The Companies (Court) Rules, contains the procedure for dealing with the matters of winding up.

4. By the amendment application, the applicant company has given reasons for delay and details of the acknowledgement of debt, i.e., to inter corporate deposit given to Khaitan Hostombe Spinels Ltd. and dates of payment of interest, the numbers and dates of cheques which were dishonoured, copies of confirmation of loan, and the details of TDS certificates. The respondent-company has filed a counter affidavit of Narendra Kumar Jha in which the dues are not denied. A defence has been taken that the dues are not legally enforceable debt; and that the claims are time-barred. The company petition has not been admitted or advertised.

5. In order to find as to whether the dues are time-barred, and the effect of such claim in a winding up petition, it is just and fair and in the interest of justice to allow the amendment application. The amendment application is accordingly, allowed.