(1992) 09 DEL CK 0013

In the Delhi High Court

Krishko International APPELLANT

Vs

Adwait Steel And Metals Pvt. Ltd. RESPONDENT

Date of Decision : 16-09-1992

Acts Referred:

Citation : (1993) 76 CompCas 398 : (1992) 24 DRJ 268

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : N.N. Aggarwal, for the Appellant; Naval Bhatia, for the Respondent

Judgement

Y.K. Sabharwal, J.—The petitioner has filed Company petition No. 79 of 1991 seeking winding up of the respondent company on the ground of its inability to pay the amounts stated in the petition to be due to the petitioner from the respondent company. According to the petitioner the principal amount payable by the respondent company is Rs. 11,29,444 representing the cost of the goods supplied by the petitioner to the respondent under three bills, all of September 1990. The further case of the petitioner is that the respondent company not only gave ST-35 forms but also issued various cheques covering the amount of the bills. In all the respondent issued 15 cheques. According to the petitioner the all cheques were dishonoured by the bank with the remark "insufficient funds". The petitioner further says that neither any replay was given by the respondent - company to the statutory notice of demand sent to it nor any payment, whether principal or interest, was made.

2. In the winding up petition notice was issued to the respondent to show cause why the petition be not admitted. The respondent appeared in the matter for the first time in June, 1991. On September 30, 1991, in spite of the strong opposition by the petitioner, two weeks, time was granted to the respondent to file a reply. It was not filed. The respondent company, however, on March 9, 1992, filed the present application praying for stay of the proceedings. In the application the respondent pleaded that in May 1991, the petitioner had filed a criminal complaint u/s 138 of the Negotiable Instruments Act, and u/s 420 of the

Indian Penal Code and that the criminal complaint and the present petition has arisen out of the same set of facts. The respondent says that by filing a reply to the winding up petition, the respondent - company will be compelled to disclose its defense which it has to take up in the criminal proceedings and that is bound to adversely affect the trial of the criminal complaint and thus the winding up ;proceedings are liable to be stayed.

3. In support learned counsel for the applicant/respondent company, relies upon the decision of the Supreme Court in M.S. Sheriff Vs. The State of Madras and Others, , for granting stay of the proceedings of the civil suit till the conclusion of the criminal case.

4. The decision in M.S. Sheriff Vs. The State of Madras and Others, , has no applicability to the facts and circumstances of the present case. The Supreme Court did not hold that in every case the civil suit is liable to be stayed but granted stay of civil suit because of the facts of the case which the Supreme Court was considering. The Supreme Court did not lay down any hard and fast rule but rather held that special considerations obtaining in any particular case might make some other course more expedient and just. The legal position, in my view, is that between civil and criminal proceedings, the criminal proceedings should be given precedence but that is not a had and fast rule. It is not necessary to always stay civil proceedings. On the facts of a case even both proceedings can go on simultaneously. In such matters the main factor to be taken into consideration for deciding whether any of the proceedings are liable to be stayed or not is the likelihood of embarrassment.

5. The question to be considered now is whether there is any likelihood of embarrassment in case the present proceedings are continued and whether it is likely to prejudice the defense of the accused in the criminal case. One of the factors which weighed with the Supreme Court for granting stay of civil suit was that often the civil suit drags on for years and it was undesirable that a criminal prosecution should wait till everyone concerned forgets about the crime itself. The present proceedings are, however, summary in nature. The Companies Act is a code by itself and, Therefore, the ground which weighed with the Supreme Court strictly is not applicable to the present proceedings. As noticed above, the respondent took nearly nine months, i.e., from June 1991, to March, 1992, in filing the present application. Before filing the application the respondent has been taking time to file reply to the winding up petition. Furthermore, except stating that the criminal complaint and the present winding up proceedings are based on the same set of facts, the respondent has not explained as to in what manner its defense in the criminal proceedings will be embarrassed and what prejudice will be caused in case these proceedings continue and are not stayed. Only vague averments have been made in the application. In Star Paper Mills Ltd. Vs. Behari Lal Madan Lal Jaipuria Ltd. and Others, , I have held that it is not necessary to always stay proceedings in a civil action and whether the proceedings in a civil action should be stayed or parallel proceedings, both civil

and criminal, may continue depend upon the facts and circumstances of each case. There is no legal bar to the continuance of civil and criminal proceedings simultaneously. Having regard to all the facts and circumstances of the case, I have no hesitation in coming to the conclusion that the present application is misconceived and has been filed with a view to delay these proceedings. The application is accordingly dismissed