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(1994) 04 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No. 21 of 1990

Maruti Udyog Ltd. APPELLANT

Vs

Ram Gopal Ram Karan and Others RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:
Companies Act, 1956 — Section 446

Citation : (1998) 94 CompCas 900 : (1994) 108 PLR 145

Hon'ble Judges : R.P. Sethi, J;G.C. Garg, J

Bench : Division Bench

Advocate : J.S. Narang, for the Appellant; Rakesh Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sethi, J.—Giving benefit of the claim of set off to respondent No. 1, the learned company judge dismissed the petition of the appellant-company filed under Sections 446 and 468 of the Companies Act (for short "the Act") read with Rule 9 of the Companies (Court) Rules, 1959. It is contended that the benefit of set off could not be granted against the company which was in liquidation and that the claim of set off preferred by the respondent was barred by time.

2. Some of the facts relevant in the case for proper adjudication of the controversy are that petitioner No. 1, that is, Maruti Ltd., was ordered to be wound up and a provisional liquidator appointed on July 22, 1977. Upon final order of winding up dated March 6, 1978, the appellant herein acquired the undertaking of the wound up company by virtue of the Maruti Limited (Acquisition and Transfer of Undertakings) Act, 1980, along with all rights, title and interest. The account books of the company showed a balance of Rs. 34,071.22 recoverable from the respondent. The official liquidator sent a registered notice calling upon the respondent to pay the amount with interest at the rate of 12 per cent, per annum from the date the amount fell due. The amount was not paid with the result that a petition for recovery was filed in this court.

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3. In the reply filed on behalf of the respondents the existence of the running account was admitted and it was emphatically denied that the appellant-company was entitled to receive the amount from the respondent. It was further submitted that according to the reconciliation statement furnished by the appellant-company goods of the value of Rs. 17,731.65 were shown to have been returned to the respondents and in fact no such goods had ever been returned by the appellant-company. The reconciliation statement furnished by the appellant-company was disputed and it was prayed that the petition filed be dismissed.

4. On the pleadings of the parties, the following issues were framed :

1. Whether an amount of Rs. 34,071.22 inclusive of interest was due to the petitioners under the running account between the parties on March 31, 1977 ?

2. Whether the materials worth Rs. 17,731.65 were returned by the petitioner to the respondents ?

5. In order to prove their case, the appellant-company produced Shri Ashok Gulati, Shri Mohinder Singh, Shri Harkaran Singh as their witnesses and in rebuttal the respondent examined Shri Vidya Sagar, a partner of respondent No. 1. After scrutinising the evidence led in the case, the learned company judge held that the appellant had failed to prove the case and rejected their application, vide judgment impugned in this appeal.

6. Shri Ashok Gulati who was the accounts officer of the appellant-company produced and proved the ledger entries, exhibit PW-1/1A, to show that an amount of Rs. 19,694.60 was payable by the respondents and the amount reflecting the over payments made to the respondents. He further deposed that in case a party does not make the payment of the amount to the company within a reasonable time, such party was liable to pay interest at 12 per cent, per annum. The payment of the interest was claimed on the practice prevalent in the area.

7. Shri Mohinder Singh, assistant manager of the company, deposed that the ledger entries, exhibit PW-1/1A, had been attested as true copy by him. He further submitted that whatever goods were returned to the suppliers the same were entered in the delivery note prepared in that behalf.

8. Shri Harkaran Singh, PW, proved the reconciliation statement, exhibit PW-3/1, which was prepared by Shri K. G. Balakrishna, accounts officer working with the appellant-company.

9. From the statements of the aforesaid witnesses it was established that an amount of Rs. 19,694.60 was due to be paid by the respondent to the appellant-company. The oral testimony of the witnesses was corroborated by the documentary evidence in the form of exhibit PW-1/1A. Shri Vidya Sagar, a partner of the respondent-cdmpany, has appeared as a witness in rebuttal in order to submit that materials valued Rs. 17,731.65 relating to Bill No. 89, dated

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April 4, 1977, were never returned to them. Appellant No. 1 is admitted to have sent Form ''C'' regarding Bill No. 89 and no amount was due to the appellant-company from them. The learned company judge rejected the claim of the appellant-company on the ground, "the oral evidence does not advance the case of the petitioner." The true position is that the oral evidence was based upon documentary evidence in the form of the record of the company and exhibited as PW-1/1A, The mere fact that the original voucher on the basis of which the entries were made in the ledger book were not produced was not a ground to reject the testimony of PWs particularly when it was not disputed that account books of the appellant-company had been maintained in the ordinary course of business transaction. No ground has been assigned by the learned company judge to hold that the ledger entries did not appear to be correct. The learned company judge relied upon the oral testimony of respondent No. 1 and rejected the cogent and reliable evidence led by the appellant-company to prove that materials of the value of Rs. 17,731.65 was returned to the respondent. The learned company judge has, therefore, drawn his conclusions merely on hypothesis and conjectures without having regard to the material produced in the case. The appellant-company had, therefore, unequivocally proved that materials worth Rs. 17,731.65 relating to Bill No. 89, dated April 4, 1977, earlier supplied to it had been returned to the respondent. Issue No. 2, therefore, was wrongly decided against the appellant-company. The finding of the learned company judge on issue No. 2 is, therefore, set aside and it is held that the materials worth Rs. 17,731.65 were returned by the petitioner to the respondent-company. This issue is accordingly decided in favour of the petitioner-company.

10. There was no evidence on the file to justify the grant of interest at the rate of 12 per cent, per annum as according to the prevalent practice in the area the respondent was to pay interest at the rate of 12 per cent, only if the amount is not paid within a reasonable time and without just cause. The appellant-company has not produced any evidence that the amount of Rs. 19,694.60 was not paid by the respondent-company within a reasonable time as specified by the company or without reasonable excuse. The claim of the appellant-company regarding demand for payment of interest apparently appears to be exaggerated and not based upon the prevalent practice. The prayer made in the petition shows that the appellant-company had prayed for payment of interest at the rate of 12 per cent, only whereas interest prior to the date of the filing of the petition was claimed at the rate of 18 per cent, per annum. In the instant case, it has not been proved that the appellant-company was entitled to the payment of any interest from the respondents. However, as the respondents have failed to make payment of the amount after the filing of the petition against them, the appellant-company is held entitled to the payment of interest at 12 per cent, per annum with effect from the filing of the petition and not prior to that. Issue No. 1 is, therefore, decided accordingly.

11. Under the circumstances, the appeal is allowed by setting aside the judgment and decree of the learned company judge. The decree for the recovery of Rs.

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19,694.60 along with interest at the rate of 12 per cent, with effect from the date of filing of the petition in this court till the realisation of the whole amount is passed in favour of the appellant-company and against respondents Nos. 1 and 2 with proportionate costs.

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