

(2005) 03 GUJ CK 0027
In the Gujarat High Court

Case No : O.J. Appeal No. 66 of 2002 and Company Application No. 191 of 2002

Naranbhai R. Patel

APPELLANT

Vs

O.L. of G.S.T.C.

RESPONDENT

Date of Decision : 29-03-2005

Acts Referred:

Citation : (2005) 03 GUJ CK 0027

Hon'ble Judges : R.S. Garg, J; R.R. Tripathi, J

Bench : Division Bench

Advocate : D.S. Vasavada, for the Appellant; R.M. Desai, for Respondent Nos. 1-2, for the Respondent

Judgement

R.S. Garg, J.—Heard the learned counsel for the parties. The applicant/appellant, a practising lawyer, being aggrieved by the order dated 19.8.2002, passed in Company Application No. 191 of 2002 in Company Petition No. 205 of 1996, wherein the application filed by the appellant for payment of fees has been rejected, is before this Court.

2. Mr. Vasavada, learned counsel for the appellant submits that though the Company, i.e. Gujarat State Textile Corporation was wound up on 6.2.1997, in number of the cases, the present appellant had been appearing for the said Company. His submission is that the appellant had appeared for the said Company in number of the cases and in accordance with the agreement entered into between the parties, fee was required to be paid to the present appellant, but fee was not paid to the counsel despite the demand and submission of the details.

3. It appears that the present appellant made an application to the learned Company Judge that the Company be directed to make payment of Rs.1,83,425.00, being the balance amount of the bills of the applicant towards the professional fees with 12% interest per annum. The learned Company Judge found that that the Gujarat State Textile Corporation was wound up on 6.2.97

and the application in question came to be filed by the present appellant in 2002 in a Company Petition which was filed in 1996, i.e. after the period of six years of filing of the Company Petition. The learned Judge also observed that in a matter like the present, if a suit was to be filed for recovery of the fee, limitation would have come against the present appellant. He also observed that the appellant was not in a position to satisfy the judicial conscience of the Court that under what provisions of law, the application was maintainable. The learned Single Judge also made certain observations on merits and rejected the application.

4. Mr. Vasavada, learned counsel for the appellant submits that the Company has made payment of the fees to the other professionals such as advocates, Chartered Accountants, Solicitors and so on, at the time when the matters were pending before the BIFR, therefore, the applicant who also appeared as a counsel for the Company, is entitled to the payment. Shri R.M. Desai, the learned counsel appearing for the Official Liquidator submits that the payments which were made prior to filing of the Company Petition or before the order of winding up was passed, were under different colour, because, the Company had the fullest authority to make the payment, while in the present matter, the Official Liquidator can make payment to those advocates only who have been engaged under the authority of the Official Liquidator or under the authority conferred by the Court. His submission is that the position of the present appellant would be that of a creditor and while the assets of the Company are being distributed this matter may be considered by the learned Company Judge or by the Official Liquidator while distributing the assets pro-rata.

5. After hearing the learned counsel for the parties, we are of the opinion that the order passed by the learned Company Judge takes a very harsh view of the subject without appreciating that a creditor whosoever he is, would be entitled to his share at the time of distribution of the assets, if any are left for distribution. In the present matter, we do not know what assets are left with the Company and who are the creditors or secured creditors or unsecured creditors. If after satisfying the creditors in accordance with priority, the appellant's claim can also be satisfied to full or some extent, then, that will have to be taken care of.

6. The order passed by the learned Company Judge is set aside and the matter is remitted to the learned Company Judge with a request that when assets of the Company are being distributed, claim of the appellant be also taken up for consideration and if he is found entitled to anything in pro-rata distribution, that is in accordance with his share, the money be paid to him. The appeal to the extent indicated above is allowed.