

(1991) 12 DEL CK 0041

In the Delhi High Court

Case No : Company Appeal No. 2 of 1991 and Civil Miscellaneous Appeal No's. 1907 and 1979 of 1991

Puran Chand Packaging Industries Pvt. Ltd.

APPELLANT

Vs

Sona Devi and Another

RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

Citation : (1993) 49 DLT 242

Hon'ble Judges : G.C. Mittal, C.J.; Sat Pal, J

Bench : Division Bench

Advocate : Swatantar Kumar and S.K. Bhaduri, for the Appellant;

Judgement

G.C. Mital, C.J.

(1) It is not disputed that the appellant company took possession of the premises in dispute, which is an industrial premises, from Smt. Sona Devi and Smt. Bimla Devi on license, monthly license fee being Rs. 16,500.00. The appellant had not paid the license fee with effect from 12/12/1989. On account of arrears, which amounted to debt, the Lessers filed a company petition for winding up of the appellant company. Since in spite of opportunities, granted by the learned Company Judge, the appellant did not pay the amount, the learned Company Judge ordered the citation of the winding up petition and provisional liquidator was appointed. Against this order of the Company Judge, this appeal has been directed.

(2) While admitting the company appeal, this Court had ordered that the appellant should deposit sums of Rs. 44,000.00 and Rs. 40,000.00 as a condition precedent for granting stay of the order of the learned Company Judge. The appellant complied with that order and directions.

(3) Now it has been pointed out by the Lessers that the appellant is in huge arrears of over Rs. 4,00,000.00 even after adjusting the amount of the security given by the appellant to the Lessers and the amount deposited under the orders

of this Court.

(4) The interest of justice demands that the lessee or whosoever took possession from Smt. Sona Devi and Smt. Bimla Devi, must deposit the arrears of license fee. at least in this Court, if there is some dispute pending about the title of the property. Accordingly, we direct the appellant to deposit with the Registrar of this Court, the entire amount towards the arrear of license fee, to be calculated at the rate of Rs. 16,500.00 per month and by adjusting the amount already paid and the security amount lying with the two ladies. Counsel for the appellant states that probably the arrear up to May, 1989 has been paid. This has been disputed by Counsel for the Lessers. The matter of counting should be fairly considered by the parties. The arrears should be paid in two equal monthly Installments with the Registrar of this Court. The first Installment being payable on or before 1 1/11/1991. This will be without prejudice to the rights and contentions of the parties in this litigation or any other litigation pending between them. The appellant is also directed to keep on deposit the license fee each month.

(5) Counsel for the appellant states that in view of the aforesaid order, thing survives in the appeal.

(6) Since the appellant has paid the entire arrears due to which the company petition was moved, we set aside the order of the learned Company Judge ordering citation of the winding up petition and allow the appeal.

(7) In case this order is violated, it will be open to the two ladies to file a petition for contempt and also move the Company Judge for appropriate orders. The two ladies are at liberty to apply to the Company Judge for withdrawal of the amount, which matter shall be decided after notice to the appellant and M/s. Star Traders.

(8) It is clarified that the two ladies can withdraw the amount of Rs. 44,000.00, Rs. 40,000.00 and Rs. 50,000.00 i.e. Rs. 1,34,000.00 pursuant to the order dated 17/07/1989, subject to furnishing security to the satisfaction of the Registrar.

(9) CRL. M. 138 and 139 191 On the peculiar facts of this case, we are not inclined to procedure the two ladies. The applications are disposed of accordingly.

(10) CMS. 1907 and 1979 191 After hearing Counsel for the parties, we make correction in the opening paragraph of our order dated 9/10/1991 by substituting 1/12/1988 instead of 12/12/1989, for the reasons given in the application, but without prejudice to the rights of the appellant to agitate this matter before the Company Judge as to from which date the appellant has not paid the license fee.

(11) Another point raised in the application is that there was an agreement that after the lapse of 35 months, the license fee has to be enhanced by 30 per cent. This matter was not agitated before the Company Judge because 35 months had not lapsed, but lapsed later on. That is why at that time no prayer was made and probably rightly because the prayer had to be made firstly before the Company

Judge. Accordingly, in case there is an agreement to the effect of increase after the lapse of 35 months, we give liberty to the respondents to make prayer before the Company Judge by an application to seek enhancement of the license fee in terms of the agreement. Before deciding the application for enhancement, the appellant would be heard by the Company Judge and the pleas raised by the appellant will be considered and decided on merits.

(12) With this order and direction, the application stands disposed of.