
(2012) 04 DEL CK 0205
In the Delhi High Court
Case No : Co. Appeal No. 35 of 2012

Rajesh and Co		APPELLANT
	Vs	
Ravissant (P.) Ltd		RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 6
Companies Act, 1956 — Section 433(e), 434, 439, 483

Citation : (2012) 173 CompCas 451 : (2012) 114 SCL 87

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sunil K. Mittal, Kshitij Mittal and Pranav Rishi, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This appeal u/s 483 of the Companies Act, 1956 impugns the order dated 24th February, 2012 of the learned Company Judge dismissing Co. Pet No. 63/2001 preferred by the appellant u/s 433(e) r/w Sections 434 and 439 of the Act for winding up of the respondent Company. The appellant claims, the respondent-company to be indebted to it in the sum of Rs. 17,26,952/-, towards price of the fabric supplied by the appellant to the respondent-company and which liability was admitted by the respondent Company in its letter dated 26th March, 1998 to the appellant.

2. The respondent-company in response to the statutory notice of winding up has also in the reply to the winding up petition, set up a case of adjustment; it is stated that M/s RMP Fabrics, being a sister concern of the appellant herein owed monies to M/s Indian Handicrafts, a sister concern of the respondent Company.

3. It is the case of the appellant before us, as was also was before the learned Company Judge that the case of M/s RMP Fabrics owing money to M/s Indian Handicrafts is highly improbable and unbelievable and a sham. Without prejudice to the said plea it was/is also contended that once liability is unequivocally

admitted by the respondent-company to the appellant, adjustment with the transaction of other concerns which are independent legal entities could not have been made.

4. The learned Company Judge however did not find any merit in the said argument, finding that (i) M/s. RMP Fabrics has filed CS(OS) No. 582/2001 against M/s Indian Handicrafts for recovery of money and in which the respondent Company has also been impleaded as a defendant, for recovery of the amounts allegedly due to M/s RMP Fabrics; (a) the defence of M/s Indian Handicrafts and of the respondent-company in the said suit is the same as in the company petition; (iii) M/s RMP Fabrics filed an application under Order 12 Rule 6 of CPC for judgment on admissions in the said suit, again arguing that the said defence was sham and amounted to an admission; (iv) the said application was dismissed and which order has attained finality. The learned Single Judge has thus held that once the Suit Court has negatived the plea of the sister concern of the appellant, of the defence of M/s Indian Handicrafts and the respondent-company being sham and amounting to admission, and which order had attained finality, no contrary view could be taken in the company petition.

5. On the other aspect, the learned Company Judge relying on Pankaj Aluminium Industries (P.) Ltd v. Bharat Aluminium Co. Ltd. 2011 107 SCL 113/ 11 taxmann.com 47 (Delhi) and DHN Food Distributors Ltd, v. London Borough of Tower Hamlets 1976 3 ALL MR 462 at Page 467, held that doctrine of single economic entity is acceptable in law and thus the plea of the respondent Company of adjustment, in transaction between sister concern, could not be thrown out as sham and is required to be proved.

6. The learned Company Judge further found, (a) that the appellant also had already instituted a Suit for recovery of the said sum of Rs. 17,26,952/- with interest etc.; (b) the adjudication required recording of evidence; (c) defence of the respondent Company is bona fide Accordingly, relying on IBA Health (I) (P.) Ltd. v. Info-Drive Systems SDN Bhd. 2010 104 SCL 367/8 taxmann.com 1 (SC) the learned Company Judge dismissed the winding up petition leaving it open for the disputes to be decided in the Suit already filed by the appellant.

7. On enquiry, the counsel for the appellant informs that the Suit was filed as far back as in the year 2001.

8. The counsel for the appellant before us has contended that the learned Company Judge has been erroneously influenced by the dismissal of the application under Order 12 Rule 6 of the CPC (supra) in the Suit filed by the M/s RMP Fabrics against M/s Indian Handicrafts and the respondent-company. It is contended that while under Order 12 Rule 6 of the CPC, M/s RMP Fabrics, the plaintiff therein was required to show admission of liability, the test to be applied in the winding up petition is different. It is argued that the dues claimed by M/s Indian Handicrafts and against which the sum of Rs. 17,26,952/- admittedly due is claimed to have been adjusted, are on the basis of debit notes issued long

after the transaction and after M/s Indian Handicrafts also had admitted liability in the sum of Rs. 4,39,976.93 to M/s RMP Fabrics.

9. We are however unable to agree. Though Order 12 Rule 6 CPC is concerned with admissions, but it has been interpreted by a Division Bench of this Court speaking through one of us (Acting Chief Justice) in *Vijaya Myne v. Satya Bhushan Kaura* 2007 142 DLT 483, though in the context of a suit for specific performance of an agreement to sell, that admissions within the meaning of Order 12 Rule 6 CPC can even be constructive admission and can even be inferred from the facts and circumstances of the case, after scrutinizing the pleadings and ignoring vague, evasive and unspecific denials as well as inconsistent pleas. Similarly another Division Bench in *Col.(Retd) Dalip Singh Sachar v. Major General (Retd) Prabodh Chander Puri* [2007] 141 DLT 209 also held that in exercise of powers under Order 12 Rule 6 of CPC, the Court can even see whether the objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential, impossible of succeeding. It would thus be seen that the test to be applied under Order 12 Rule 6 of the CPC is not very different from the test to be applied in a winding up petition. In that light of the matter, once it has been held by the Suit Court that the defence of M/s Indian Handicrafts on the basis of the said debit notes is not baseless and an opportunity has to be given to M/s Indian Handicrafts and the respondent company to prove the same, the Company Court could not have taken a different view of the matter.

10. The counsel for the appellant has also been unable to show any error in the doctrine of single economic entity applied by the learned Company Judge. We therefore do not find any merit in this appeal and dismiss the same. Needless to state that any observations made herein would not influence the decision of the Suits aforesaid.

No order as to costs.