

(2013) 06 CAL CK 0052

In the Calcutta High Court

Case No : A.C.O. No. 75 of 2013, A.P.O. No. 728 of 1998 and C.P. No. 302 of 1989

Spark Dealers Private Limited

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Citation : (2013) 3 CHN 564

Hon'ble Judges : Subhro Kamal Mukherjee, J;Asim Kumar Mondal, J

Bench : Division Bench

Advocate : S. Ghosh, A.C. Kar, Sakya Sen and Lal Ratan Mandal, for the Appellant;S. Talukdar and Gautam Chakraborty, for the Respondent

Judgement

1. Mr. Ghosh, learned advocate appearing for the appellant, submits that he has been instructed by the appellant not to proceed with this appeal. He, therefore, prays for dismissal of this appeal for non-prosecution. Mr. Talukdar, the learned senior advocate for the respondent, raises no objection.

2. Mr. Sakya Sen, learned advocate appears for the applicant in the application for additional of party. This application is filed by Omnitech Engineers (India) Private Limited for its addition in this appeal in the category of the appellant. Mr. Sen submits that this appellant and the respondent No. 2 are in collusion and, therefore, the appellant is not proceeding with the appeal. Thus, the petitioner is to be added in the category of the appellant and be granted permission to peruse the appeal.

3. When the appellant does not proceed with the appeal, the Court has no power to force him to continue. There is no provision in the CPC to refuse permission to the appellant to withdraw the appeal unconditionally and compel the appellant to proceed with the appeal.

4. The application by Omnitech Engineers (India) Private Limited is for addition of party and not for transposition. In other words, Omnitech Engineers (India)

Private Limited is not a party in this appeal. It is not that the appellant is not proceeding with the appeal and one of the respondents wants its transposition in the category of the appellant.

5. The Omnitech Engineers (India) Private Limited is not a party. Therefore, there is no question of nullifying any finding made by the Trial Court in its favour by granting permission to the appellant to withdraw its appeal.

6. When the appellant is not willing to proceed with the appeal, we dismiss the appeal for non-prosecution.

7. The application filed by Omnitech Engineers (India) Private Limited for addition, thus, becomes infructuous. In view of the dismissal of the appeal, the same is, also, dismissed as infructuous.

8. We, however, record that we have not gone into the merits of the claim of Omnitech Engineers (India) Private Limited and it shall be open to it to approach before the appropriate forum to ventilate its grievance.

9. The interim order, if any, stands vacated.

10. The records, if arrived, be sent back forthwith.

11. The office shall secure compliance of the order of this Court and shall not take the plea of non-communication of this order by the learned advocate-on-record to the office. We make no order as to costs.