

(2013) 12 KAR CK 0518
In the Karnataka High Court
Case No : O.S.A. No. 20 of 2013

Sri B.V. Srinivasa, Smt. B.V. Sarasavalli and Smt. B. Geetha
Ramesh

APPELLANT

Vs

M/s. Vinyasa Engineers Private Limited

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0518

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : Venkatesha Murthy G.K. and Sri P.E. Umesh, for the Appellant; Y.K. Narayan Sharma, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—Heard the learned Counsel for the parties. The company petition is filed u/s 433(e) and (f) read with Section 434(1)(a) and 439(1)(b) of the Companies Act, 1956, for winding up of the respondent company under the provisions of the Companies Act and for appointment of the official liquidator and some other consequential reliefs.

2. The petitioner in support of his allegations made in the petition, has produced innumerable documents. When the petition was listed for admission, the petition came to be dismissed by the following order:

In the absence of relevant material constituting substantial legal evidence of the fact that the 1st petitioner has extended demand loan of Rs. 23,00,000/-, 2nd petitioner extended demand loan of Rs. 11,00,000/- and 3rd petitioner extended demand loan of Rs. 14,10,000/- to the respondent subject to "payment of interest at the rate of 12% p.a., it cannot be said that there is a determined debt which the respondent is due and payable.

The company petition is accordingly rejected.

3. Learned Counsel for the petitioner submits that the petitioner not only has made material allegations in the petition but he has produced documents to substantiate the same. Learned Company Judge without referring to the pleadings and the documents produced in support of the said pleadings, has rejected the petition on the ground that the relevant material constituting legal evidence of the fact is absent in this case. It is a clear case of non-application of mind by the learned Company judge.

4. Learned Counsel for the respondent contended that the said order came to be passed even without issue of notice to the respondent. Respondent had no opportunity to set out his case. He submits that from the documents now available on record, he is able to demonstrate that the order passed by the learned Company Judge is just and proper. He also submits that appellate court has a power to look into the pleadings, appreciate the evidence on record and pass the order which the Company Court can do. There is no quarrel with the said legal position. But the proceedings under the provisions of Company Act is original proceedings before the High Court. A statutory appeal is provided under the law. When once the statutory appeal is provided, the original authority has to set out the facts of the case and refer to the documents produced, if he wants to dismiss the petition as meritless, he has to give reasons. In the absence of the facts and the reasons in the order, the order passed by the learned Company Judge cannot be sustained. It is not a speaking order. The application of mind is not demonstrated in the order. Therefore, the said order cannot be sustained and it is liable to be set aside. In the result the following order is passed:--

ORDER

- a. The appeal is allowed.
- b. The impugned order of the learned Single Judge is set aside.
- c. The matter is remitted back to the learned Single Judge to consider the case on merits in accordance with law.
- d. It is open to the respondent to appear before the learned Company Judge and put forth the same, if he chooses to do so.