(2014) 07 KAR CK 0140

In the Karnataka High Court

Case No : O.S.A. No. 24/2012

Vanivilas Cements Pvt. Ltd. — APPELLANT

Vs

Manjunath Granites — RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:
Companies Act, 1956 — Section 433(e), 434

Citation : (2014) 07 KAR CK 0140

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : Sunil S. Rao, Advocates for the Appellant; B.S. Aravinda Babu, Advocates for the Respondent

Judgement

N. Kumar, J.—The Company has preferred this appeal against the order admitting the company petition filed under sections 433(e) and 434 of the Companies Act, 1956.

2. The respondent claimed that the Company has borrowed a sum of Rs. 11,50,000/- along with interest at 10% which works out to Rs. 3,73,000/-. Therefore, the Company is due in a sum of Rs. 15,23,000/-. In the audited balance sheets as on 31.3.2007, which are produced before this Court, it can be seen that the Company itself has stated that it has incurred losses for the aforesaid periods. Infact in the Company''s balance-sheet, the aforesaid amounts are also reflected and therefore, the respondent issued statutory legal notice dated 8.9.2008 calling upon the Company to pay a sum of Rs. 15,23,000/- which was duly served. The Company neither replied the said legal notice nor made payment. Therefore, the respondent was constrained to file the petition for winding up of the Company on the ground that the Company was unable to pay the amount.

3. On service of notice, the respondent entered appearance, filed detailed statement of objections and detailed defence was filed denying the liability. The learned Company Judge after considering the pleadings of the case, the

documents which are produced by the parties and after hearing the arguments, has recorded a categorical finding that though the amount due to the petitioner was reflected in the balance sheet till 31.3.2007, as in the subsequent period the name of the petitioner was not mentioned, it was contended that it has been cleared. In other words, the debt was admitted, a plea of discharge was set up which plea was not supported by any evidence. In these circumstances, the learned Company Judge was of the view that a case for admission is made out. Aggrieved by the said order, the present appeal is filed.

4. The learned counsel for the appellant assailing the impugned order contends that the Company to show its bona fides has deposited the entire amount in the Court. On that ground alone, the company petition is liable to be dismissed. He also contended that there is no liability on the part of the Company. The defenses raised by the appellant-Company are not considered by the learned Company Judge. The dispute is purely of civil nature. Intricacies are involved. Therefore, the parties are permitted to relegate to civil suit. The company petition cannot be converted into the proceedings for recovery of debt and therefore submits that the order of admission passed should be set-aside.

5. The Division Bench of this Court in the case of Airwings Private Limited Vs. Viktoria Air Cargo Gmbh Langer Kornweg, had an occasion to consider the scope of enquiry to be conducted by the Company Judge at the stage of admission. After referring to various judgments including the judgments of the Hon''ble Supreme Court on the point, it has held that at the stage of admission the Court necessarily will have to prima facie find out whether any fixed amount of debt or ascertained amount of debt is due by the Company to the petitioning creditor, whether the debt due to the petitioning creditor is within limitation and is payable by the Company and whether the defence to be forwarded by the Company not paying the debt to the petitioning creditor is a valid one or is a mere moonshine and also to find out whether the Company appears to be commercially insolvent meaning thereby it is unable to pay its debt.

6. In the light of the aforesaid law laid down by this Court, the same is applied to the facts of this case. The respondent claims that the appellant Company has borrowed a sum of Rs. 11,50,000/- along with interest at 10% i.e., Rs. 3,73,000/- which works out to Rs. 15,23,000/-. A legal notice was issued calling upon the Company to pay a sum of Rs. 15,23,000/-. The notice was duly served. In reply, no payment was made. Therefore, there is initial presumption in favour of the creditor. That apart, objections were filed denying the liability and infact the petitioner is himself due to the Company a sum of Rs. 25,00,000/-. Further when the balance sheet was produced to show that the Company in the balance sheet has admitted the liability, an attempt was made to produce the balance sheet for the subsequent period where the name of the Company was not found though liability continues. It was contended that the amount had been paid. In other words, a plea of discharge is raised. It is not substantiated. In these circumstances, when the debt claimed is certain, plea of discharge which is not

supported by any evidence coupled with the fact that the Company had no bank account at all, the learned Company Judge was justified in admitting the petition and ordering for paper publication. In that view of the matter, we do not find any error in the discretionary order passed by the learned Company Judge after considering the entire material on record.

Accordingly, the appeal is dismissed.

It is submitted that in the impugned order, the learned Company Judge had made certain observations which would affect the interest of the Company on merits. All the observations made by the learned Company Judge and this Court in this order are to be treated as made at interlocutory stage. The learned Company Judge shall decide the case on merits without being influenced by any of these observations.