

(2004) 12 MP CK 0061
In the Madhya Pradesh High Court
Case No : Company Petition No. 12 of 2002

Vimal C. Sodhani

APPELLANT

Vs

Parag Fans and Cooling System Ltd. and Others

RESPONDENT

Date of Decision : 04-12-2004

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (2006) 133 CompCas 286

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : A. Asudani, for the Appellant; R.T. Thanevala, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—The decision rendered in this company petition shall also govern disposal of other two connected company petitions being Company Petition Nos. 13 and 14 of 2002 because all these petitions involve common points.

2. This is a company petition filed by one Vimal Sodhani u/s 433(e) of the Companies Act, 1956, seeking winding up of respondent No. 1 company. The winding up is claimed essentially on the ground of inability to pay the alleged debt.

3. The petition though filed or I may say claimed to have been filed by Mr. Vimal Sodhani but the same is filed by one Rajesh son of Shanti Swaroop Sodhani as power of attorney holder of Vimal Sodhani, i.e., petitioner. In other words, the petition is signed, verified and affirmed by Mr. Rajesh Sodhani in his capacity of the petitioner's power of attorney holder. In support of this a copy of power of attorney is filed as annexure PI.

4. A perusal of this power of attorney (annexure PI) would indicate that in the first place, it does not bear any date. In other words, it is not known as to on what date it is executed by Vimal Sodhani. Secondly, it does not empower Mr. Rajesh to file company petition for and on behalf of Vimal Sodhani.

5. In my opinion, these two defects taken note of supra renders the power of attorney bad in law and as a consequence the filing of the company petition. In order to have a valid and legal power of attorney it must bear the date, as to on what date the same was executed by the person concerned. Secondly, it must have a place where it is executed. Indeed, these are the bare requirements of any legal and valid power of attorney. Absence of these two renders it invalid.

6. Clause (iii) of the so-called power of attorney, even if it is held to be legal, does not empower/authorise Mr. Rajesh to file a company petition against the respondent-company. Clause (iii) only empowers the power of attorney holder to file suit for recovery of any debt or any legal proceeding for such recovery. This clause cannot be construed to empower the power of attorney holder to file this company petition. I am fortified with my reasoning by a decision of the Bombay High Court reported in the case of Shantilal Khushaldas and Bros. P. Ltd. v. Smt. Chandanbala Sughir Shah [1993] 77 Comp Cas 253.

7. In this view of the matter, I am of the view that the petition as filed on the strength of power of attorney (annexure PI) is not a valid presentation and hence, cannot be entertained for being tried on the merits. In other words, it cannot be held to be validly and properly filed by the petitioner through his power of attorney holder. Since, admittedly it is not filed by the petitioner in his own capacity because it does not bear his signature, nor affidavit, this court cannot entertain the same.

8. In view of foregoing discussion, the petition fails and is dismissed as being not properly filed.

9. No costs.