

(1993) 04 DEL CK 0007

In the Delhi High Court

Case No : Company Petition No. 159 of 1988

V.K. Jain

APPELLANT

Vs

Richa Laboratories (P) Ltd.

RESPONDENT

Date of Decision : 20-04-1993

Acts Referred:

Citation : (1993) 78 CompCas 283 : (1993) 50 DLT 378

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : I.C. Kumar and A.K. Pathak, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is a petition filed by the petitioner against the respondent company alleging that the respondent company is indebted to the petitioner to the tune of Rs. 3,15,165.00 which the respondent company failed to pay despite a notice of demand dated 25/03/1988 u/s 434 of the Companies Act having been served on the company. It is further pointed out that the company kept on shifting its Registered Office without filing any return with the Registrar of Companies and that a notice was ultimately served on 21/05/1988. Despite such service the respondent company did not pay the dues of the petitioner nor took any steps to compound the dues.

(2) The petition was resisted on various ground which have been refuted by the petitioner in the rejoinder. The respondent has alleged that there exists a bonafide dispute about the claim of the petitioner. The respondent while disputing the liability and delivery of goods the price whereof is claimed by the petitioner has taken the plea that the respondent received license to manufacture pharmaceuticals by the Drug Control and Licencing Authority, Delhi only on 13.5.1986 whereas all the bills on the basis whereof the present action has been initiated relate to period prior to May 1986. The respondent has denied having been supplied any basic drugs by the Manufacturer through the petitioner.

This plea, as would appear from what is noticed hereinafter is without any merit. The respondent has also raised a plea that the notice was fabricated and no statutory notice had been served. However, this plea at the time of arguments was given up by the Counsel for the respondent on being confronted with the A.D. card. In any event. I must notice that this plea on the face of the record is malafide and false. Another objection raised by the respondent is that the letter of balance confirmation signed by Mr. A.K. Racharya is fabricated in as much as the said letter was given on 26/10/1985 by Mr. A.K.. Racharya in his capacity as sole proprietor of Richa Laboratories which is alleged to be his sole proprietorship concern. It is alleged that the date on this letter has been changed from 26.10.85 to 26.12.85 only to bring the petitioner's claim within the period of limitation, with regard to the stamp of the respondent company ,Counsel stated that the petitioner Mr. Vijay Kumar Jain, proprietor of v. Parkash and Company was also one of the Directors of the respondent and in that capacity he had in his possession a rubber stamp of the company and such stamp was affixed by Mr, Jain himself after interpolating the date thereon .I may note that although this letter is being attributed to the sole proprietorship concern which is alleged to be different from the Respondent Company ,yet the carbon copy of the original was produced by the respondent's Counsel from the respondents custody. Furthermore, no Explanation is forthcoming as to how the respondent was in possession of the carbon copy of the letter dated 26.12.85 when according to them this letter did not pertain to the company and had been forged and fabricated by the petitioner by altering the date and also by affixing the rubber stamp of the company .It was further stated that the proprietary concern was changed to a partnership and the assets and liabilities of the partnership were taken over by the respondent Company. The petitioner has also refuted the plea of interpolating the letter confirming the balance. It was pointed out that if the letter had been signed in October 1985 the balance amount would have been only Rs. 1.75,165.00 which was the debit balance up to 26/10/1985. The amount of Rs. 3,50,000.00 was the debit balance on 26.12.85 only, in the light of this I feel that the correction of date, if any, must have been carried out by Mr. Racharya himself.

(3) Next it was contended that the petitioner has already instituted a suit for the recovery of the amount referred to in the, present petition and as such that matter will be done into on its own merits after recording evidence. For that reason also, this Hon''ble Court should not proceed with this petition .

(4) The petitioner has filed with the rejoinder photocopies of a number of documents including the sales tax declarations, all signed by Mr. A.K. Racharya who is admittedly the Managing Director of the respondent Company. These sales tax declarations also bear the rubber stamp of the respondent. The plea raised by respondent was that all the sewere signed by Mr. Racharya in the name of his own proprietorship concern and not on behalf of the respondent Company and rubberstamps were affixed, by the petitioner since Mr. Jain happened to be in possession thereof. The respondent has alleged that those declarations were

also fabricated, but no Explanation is forthcoming about the reasons for Mr. A.K. Racharya's signatures, which are not disputed, on those declaration slips. The respondent has not produced in the Court their sales tax Registration Certificate nor have they got produced the record of the sole proprietorship to sustain their allegations that the sales tax declarations related to the proprietorship concern. Production of the record of the alleged proprietorship would have been no problem since the alleged proprietor and Managing Director of respondent are the same person, In para 8 of the reply the respondent has stated that it has been lying closed since 11.7.86 which clearly indicates that the Company had not been carrying on any business since that date.

(5) My attention has been drawn to an agreement between all the Directors including Mr. A.K. Racharya and Promoters of the respondent company dated 30/04/1985. Clause 3 thereof provides that all the assets and liabilities of M/s. Richa Laboratories, partnership concern of which the first (i.e. Mr. A.K. Racharya) and second party (i.e. Mr. Salil Racharya) are the partners shall be transferred to the said company M/s. Richa Laboratories Pvt Ltd. In fact from the said agreement it appears that M/s Richa Laboratories was a partnership firm of which A.K.. Racharya and Salil Racharya were the partners. There is no evidence placed on record by the respondent to show that apart from the partnership firm and the respondent there existed another business concern by the same name i.e., Richa Laboratories of which A.K. Racharya was the sole proprietor. Even a copy of the Sales Tax Registration Certificate has not been produced to support the story of Mr. A.K. Racharya being the sole proprietor of Richa Laboratories whose assets and liabilities had not been taken over by the respondent Company. The petitioner in his rejoinder has mentioned that the respondent Company had earlier a license to manufacture pharmaceuticals from the Drug Controller. Delhi for its premises which was at that time located at E-249/10 Okhla Industrial Area, Phase-11, New Delhi. No further effort was made or documents produced to show that the drug license for the said premises related only to a proprietorship and not the respondent Company as referred to in para 2 of the rejoinder. The petitioner has further filed a letter from the manufacturer i.e. Ranbaxy Laboratories Limited wherein they have listed all the bills which are the subject-matter of the claim of the petitioner against the respondent stating therein, inter-alia, as under :-

"THIS is to certify that we have received payment from you against our various invoices as per the details given for supplies made through you to M/s. Richa Laboratories Pvt. Ltd..."

(6) The petitioner has also filed a copy of its own statement of account showing the debits relating to the aforesaid bills to the manufacturers and debits have been raised after payment against the respondent after payment to the manufacturer. They have also filed a copy of the relevant account showing the balance as on 1.4.87 in the account books and the balance sheet of the petitioner relating to the respondent Company showing a debit balance of Rs.

3,15,165.00. The arguments were postponed to enable the respondent to obtain from M/s Ranbaxy Laboratories Limited a Certificate showing as to where the goods were actually delivered to sustain their allegation that they never received any goods from Ranbaxy Laboratories Ltd. but no such certificate was produced.

(7) In the light of this discussion and also keeping in view the fact that the respondent has been lying closed since 11.7.86 and the did not respond to the notice of demand u/s 434 of the Companies Act there does arise a presumption in favor of the petitioner and against the respondent that the respondent is unable to pay its debts. Only question that remains to be seen is, if filing of the suit by the petitioner would non-suit him in the present case. I cannot agree with this contention of the Respondent. This question was duly considered in a case reported as 62 (1987)CC 239 wherein it was held that the proceedings for winding up will not be invalidated if a suit is filed by the petitioner by way of abundant caution to save the claim getting barred by limitation, in the present case also the suit appears to have been filed by way of abundant caution to save the limitation from running out.

(8) The respondent placed reliance on the judgment of this Court reported as 1990(1) Company Law Journal 289 wherein it was held that winding up proceedings are no substitute for proceedings for recovery. In that case it was in the light of a substantial defense raised by the Company that the Court was pleased to dismiss the Company petition. While taking the above view they left the petitioning creditor free to seek his remedy byway of a Civil Suit. In the present case I am not in a position to agree with the respondent that there exists a bona fide dispute. The petitioner has however not produced any agreement between the petitioner and the respondent to pay interest on the outstanding balance nor has any evidence been produced wherefrom such a liability could be inferred. In the circumstances, in the absence of evidence it cannot be concluded that the petitioner was entitled to charge interest at the rate of 18% p.a. as alleged.

(9) In the light of the above discussion. I admit this petition and direct that one citation each be published in "Statesman". "Nav Bharat Times" and Delhi Gazette for 27/09/1993, with a further direction that in case the respondent pays the amount due minus the interest claimed within 2 months from the date of this judgment, the citations shall not be published .In case the principal amount due is paid, this petition shall stand dismissed with liberty to the petitioner to pursue his remedy with regard to interest in the suit instituted by him.