

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1059169

Court : Kolkata

Decided On : Aug-30-2013

Judge : Harish Tandon

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET C.A.No.389 of 2013 C.P.No.501 of 2004 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction IN THE MATTER OF : APARESH BHATTACHARYYA AND P.K.BNROTHERS PVT.LTD.BEFORE: The Hon'ble JUSTICE HARISH TANDON Date :

30. h August, 2013.

Appearance: Mr.Debmalya Ghosh,Advocate for petitioner.

Mr.S.Ghosh, Advocate for company.

The Court : This is an application at the instance of the petitioning creditor for modification and/or rectification of an order dated 28th June, 2013.

It is pointed out that the winding up petition being C.P.No.501 of 2004 had already been admitted on 15th March, 2013 for a sum of Rs.1,92,000/- together with

interest at the rate of 9% per annum beginning from October 1, 2001 till realization.

The said order was carried in an appeal before the Division Bench and the Division Bench directed the company to deposit the said sum of Rs.1,92,000/- with the Registrar, Original Side of this Court.

The Division Bench relegated the matter to the Company Court for its reconsideration.

By an order dated 15th March, 2013 the petitioning creditor was relegated to a civil suit to be filed within four weeks from date.

In default, the company was permitted to take out an application for the refund of the deposit made in terms of an order of the Division Bench.

The company took out an application being C.A.No.264 of 2013 for refund of the said amount deposited in terms of the order of the Division Bench.

The said application was listed on 28th June, 2013 and on the said date, the petitioning creditor submits that the suit has already been filed in terms of the said order dated 15th March, 2013.

The company after being aware of the institution of the suit intends to withdraw the said application.

The said order was passed recording the withdrawal of the said application, that is, C.A.No.264 of 2013 but it has been wrongly recorded that the winding up petition was intended to be withdrawn and the petitioning creditor was directed to pay costs assessed at 200 G.M.s.The aforesaid fact has not been disputed by the company.

This Court, therefore, modifies the order dated 28th June, 2013 by deleting the words winding up.

wherever appearing in the said order and be substituted by the words an application.Furthermore, the last paragraph of the said order is deleted and be

substituted by the words the company is directed to pay costs assessed at 200 G.M.s to the advocate-on-record of the petitioning creditor.

This application is, thus, disposed of.

ssaha AR(CR) (HARISH TANDON, J.)

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