

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-28-2012

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.87 of 2012 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : REFORM FERRO CAST PRIVATE LIMITED -ANDVIKASH KUMAR JAIN Appearance: Ms.Manju Bhuteria, Adv...for the petitioner.

BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date : June 28, 2012.

The Court : The company is not represented even at the second call.

No affidavit-in-opposition appears to have been filed by the company though a copy of the proposed affidavit has been made over to the petitioner.

The claim of the petitioner is on account of balance price of goods sold and delivered.

A statutory notice was issued on August 23, 2011 demanding a principal sum of Rs.5,13,883/- and interest thereon at 24% per annum.

The company replied to such notice by Advocates letter of September 12, 2011 claiming that the goods supplied by the petitioner were of substandard quality and that contemporaneous complaints had apparently been made by the company to the petitioner.

The reply of September 12, 2011, however, did not refer to any written complaint having been made by the company to the petitioner.

The petitioner issued a subsequent notice on February 9, 2012 by disregarding the companys reply.

The notice appears to have been received by the company as would appear from the copy of the document downloaded from the internet and appended to the petition.

The company did not issue any reply to the second notice.

The principal claimed in the second notice is Rs.3,13,883.16 and interest has been claimed thereon at 24% per annum.

It appears that the second notice was necessitated to rectify the mistake in the principal quantum claimed in the original notice.

The petitioner says that in the copy of the proposed affidavit forwarded to the petitioner a point has been taken that the statutory notice on which the present creditors winding-up petition is founded was not served at the registered office of the company.

The petitioner refers to the reply of September 12, 2011 when Advocate representing the company had asserted that the registered office of the company was at 43, Moti Sil Street, Calcutta

013.

It is at such address that the subsequent statutory notice was issued within six months of the previous notice having been served at the same office.

The petitioner has also relied on the primary documents in support of his claim, including copies of the bills raised on the company which appear to have been received by the company.

The presumption of the companys inability to pay that has arisen upon the company not responding to the statutory notice has not been rebutted in the companys absence and in the company not filing its affidavit despite directions.

C.P.No.87 of 2012 is admitted.

If the company pays off the petitioner the principal sum of Rs.3,13,833.16 together with interest thereon at the rate of 10% per annum from February 9, 2012, which is the date of the statutory notice, within a period of four weeks from date, the petition will remain permanently stayed.

In default, the petition will be advertised once in The Statesman and once in Bartaman. The advertisements should indicate that the matter will appear before Court on the fiRs.available working day after the expiry of a period of four weeks from the date of the publications being made.

Publication in the official gazette shall stand dispensed with.

There will be no order as to costs at this stage.

Urgent certified photocopies of this order, if applied for, be given to the parties subject to compliance with all requisite formalities.

(Sanjib Banerjee, J.) A/s.

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