

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-26-2012

Judge : Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

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ORDER

SHEET APO No.61 of 2012 C.P.No.79 of 2011 WITH APO No.62 of 2012 C.P.No.79 of 2011 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE QUALITY STEEL WIRE PRODUCTS PVT LTD .Appellant Versus ENGINEERING TRADE CENTRE (I) PVT LTD .Respondent BEFORE: The Hon'ble JUSTICE BANERJEE The Hon'ble JUSTICE SHUKLA KABIR (SINHA) Date :

26. h June, 2012.

Mr.Neloy Sengupta, Advocate for the Appellant Ms.Rakhi Shroff, Advocate for the Respondent The Court : The appellant filed a company petition before the learned Single Judge claiming an outstanding of a sum of Rs.1.45 lakhs from the respondent.

The respondent avoided the claim on the ground that payment was subject to a No Due Certificate.

being received from WBSEB, now, West Bengal State Electricity Distribution Co.LTD.The learned Judge also records that the petitioning creditor purposely withheld documents as claimed to be in their possession recording settlement of dues with the Electricity Company.

The learned Judge dismissed the winding-up petition.

Hence, the fiRs.appeal.

The appellant filed an application for review and wanted to disclose the letter of the Electricity Company being dated July 30, 3010 and its reply dated September 20, 2010 appearing at Pages 139-140 of the fiRs.Paper Book.

The learned Judge dismissed the application for review on the ground that the order attained finality and the appellant was not successful in proving that despite due diligence, they could not produce the subject documents at the time of hearing.

His Lordship dismissed the application for review.

Hence, the second appeal.

Ms.Rakhi Shroff, learned counsel appearing for the respondent submits that the second appeal was not maintainable.

On the fiRs.appeal, she contends that even if the documents referred to above are disclosed today, the situation would not change as the documents referred to above could not be considered to be a No Due Certificate from the Electricity Company.

We have considered the rival contention.

We are of the view that the learned Judge was right in dismissing the application as the petitioning creditor being the appellant abovenamed withheld the said two

documents, although possessing the same at the time of filing of the winding-up petition.

The learned Judge rightly dismissed the application for review as it did not come within the scope of the appropriate provision of the statute.

However, for the ends of justice, we wish to give the appellant one more opportunity to have its winding-up petition reheard taking those two documents on record.

The appellant must pay costs thrown away for infructuous hearing of the winding-up petition assessed at Rs.3400/- as a condition precedent in having the winding-up petition reheard.

In case such cost is paid to the respondent by account payee cheque in their name to be handed over to Ms.Shroff, Advocate within one week from date, all judgments and orders impugned would stand set aside and the winding-up petition being C.P.No.79 of 2011 would be heard afresh.

We abundantly make it clear that we have not gone into the merits of the matter and leave it open for the parties to reargue their views before the learned Single Judge if and when the same is heard.

The appeals are disposed of without any order as to costs.

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

(BANERJEE, J.) (SHUKLA KABIR (SINHA).J.) km

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