

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-02-2012

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.123 of 2008 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction In the matter of :THE BENGAL DOOARS NATIONAL TEA Co.LTD.And SANJAY BANSAL Appearance Mr.K.C.Garg, Advocate Ms.Manju Bhuteria, Advocate BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

2. d January, 2012.

The Court : The claim is on account of money lent and advanced.

The petitioning creditor claims that the petitioning creditor had advanced money in cash to the company as and when it required it and the company apparently agreed to refund the amount together with interest.

The petitioner cannot show any primary documents in support of the transactions.

In any event, the payments, according to the petitioner, were made in cash.

The petitioner relies on a purported balance confirmation document executed on behalf of the company.

The petitioner also says that cheques of total value in excess of Rs.48 lakh were made over by the company to the petitioner and upon the dishonour of such cheques, there arose a statutory presumption which the company has not been able to rebut.

A statutory notice was issued by the petitioner to which there was a teRs.reply from the company.

The petitioner claimed in the statutory notice that cheques had been issued to it by the company against value received and that such cheques were dishonoured upon presentation.

The company responded by claiming that the management in the company had been changed and that there were no records in the companys books relating to the petitioners claim.

The company also suggested that an amount in excess of Rs.38 lakh had been paid by the company to the petitioner but the management of the company was not aware of the further claim.

For a petitioner to succeed on a creditors winding-up petition, the claim has to be affirmatively established.

In the instant case there are no primary documents that the petitioner can rely on and the petitioner relies on supplemental documents, the veracity whereof has been questioned by the company.

The petitioner has not been able to make out a clear claim to entitle the petitioner to an order of admission.

C.P.No.123 of 2008 is permanently stayed with liberty to the petitioner to pursue the claim before the appropriate forum.

There will be no order as to costs.

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

(SANJIB BANERJEE, J.) sg.

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