

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Dec-10-2013

Judge : Harish Tandon

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET C.A.No.523 of 2013 C.P.No.556 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction In the matter of : Visa International Limited And In the matter of : Marks Housing Private Limited BEFORE: The Hon'ble JUSTICE HARISH TANDON Date : 10th December, 2013.

Appearance : Ms.Manju Bhuteria, Adv.Mr.Aniruddha Mitra, Adv.The Court : This application is taken out by the company for permanent stay of the winding up proceeding on the plea that the claim as made in the winding up petition is apparently barred by limitation.

This application in substance is taken out as a demurrer and this Court invited the company to address on the admitted facts and not the disputed one.

The company relies upon the statement of the petitioning creditor made in the winding up petition to demonstrate that if those are taken to be true and correct

statement of facts, the claim is hopelessly barred by law of limitation and, therefore, this winding up petition should remain permanently stayed.

The attention of this Court was drawn to the averments made in paragraph 6 of the said winding up petition which proceeds that the work order was issued on 17th June, 2008 and clearly stipulates that the company would give mobilization advance to the petitioner which shall be adjusted against the fiRs.10 R.A.bills.

The petitioning creditor further proceeds in paragraph 7 of the winding up petition to aver that there was an agreement between the parties that an amount equivalent to 5% of the bill amount as shown in the R.A.Bills shall be deducted by the company at the time of making payments as Retention Money which shall subsequently be paid after three months from the date of payment of each bill.

The petitioning creditor clearly avers that the R.A.bills and the miscellaneous bills were raised to the company between the period from August 2008 to June 2010 which would be corroborated from the document annexed at page 118 of the winding up petition.

Although, the petitioner states that there was a running and continuous account between the parties but paragraph 16 would demonstrate otherwise.

Even the chart annexed at page 117 of the winding up petition depicts the manner of transactions and the payments made which certainly suggest that the company made the payments against each bill and the petitioning creditor also appropriated the same in the like manner.

The last R.A.bill was submitted on 2nd June 2010 and this winding up petition is filed on 6th August 2013.

Article 18 of the Limitation Act provides three years period of limitation for the price of work done by the plaintiff for the defendant when the work is done.

The R.A.bills as per the agreement are to be raised upon the execution of the work which was admittedly done on 2nd June, 2010 which necessarily implies that the work was done prior to the said date.

Therefore, the period of limitation would at best reckon from the date when the R.A.Bills were raised and if the three years are counted therefrom and the date of filing of the winding up petition is taken into account, there is no hesitation in my mind that the entire claim of the petitioner appears to be time barred.

This Court, therefore, stays the winding up petition permanently without any order as to costs.

Consequently, the application being C.A.No.523 of 2013 is accordingly disposed of.

(HARISH TANDON, J.) SB-1

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