

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jul-14-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP648/2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction
ORIGINAL SIDE IN THE MATTER OF : AJANTA LEATHER FASHIONS
PVT.LTD.-ANDVINAY CHOJAR AND ANR.

BEFORE: The Hon'ble JUSTICE PATHERYA Date : 14th July, 2014.

Mr.L.R.Mondal, Adv.appeaRs.Mr.A.Sinha, Adv.appeaRs.The Court : This winding up application arises for payment of price of the goods sold and delivered.

The case of the petitioner is that for the goods supplied, bills were raised which bills so also the goods had been received by the company.

Part payment of Rs.1 lakh was made prior to issuance of the statutory notice; but as the balance sum remained outstanding, a statutory notice was issued on May 27, 2013.

paid.

After issuance of the statutory notice, Rs.1.50 lakh has been It is for the balance sum that the company petition, therefore, be admitted as no sum has been paid in respect thereof.

Counsel for the company submits that after issuance of the statutory notice, a settlement took place between the parties and the settled amount aggregates approximately to Rs.2,73,000/-.

been paid.

Thereafter a sum of Rs.1.50 lakh has Therefore the amount which remains due and payable is Rs.1.23 lakh.

The company is ready and willing to make payment of the said sum in four equal monthly instalments.

In fact by order dated April 4, 2014, the company was directed to deposit a sum of Rs.1,04,979/- and the said sum be adjusted towards the sums which are outstanding and payable by the company.

Having considered the submissions of the parties, the claim of the petitioning creditor will only arise in the event the goods have been received by the company.

company.

The bills for such supplies must also have been received by the On scrutiny of the documents annexed to the petition, it appears that none of the challans bear the seal of the company.

Except for one bill for Rs.3,13,417/- which has been received by the company and bears the seal of the company, no other bill of the petitioning creditor has been received by the company as no seal of the company appears thereon.

goods worth Rs.3,13,417/- cannot be disputed.

Therefore, the supply of The dishonoured cheques on which the petitioning creditor seeks to place reliance all have been signed by an existing director and an erstwhile director as the management underwent a change in December 2012 and the cheques have been issued in January 2013.

Therefore, one of the directors of the erstwhile management, i.e. Mr. Danny Chandani, was not in the management in January 2013 and it is quite possible that the cheques which had been earlier signed have now been utilised in January 2013 which could not have been done.

Accordingly, the company petition is admitted for a sum of Rs.63,000/- which sum along with interest is payable at 8% per annum on and from the date of issuance of the statutory notice till realisation.

While reaching the said figure of Rs.63,000/-, payments of Rs.1 lakh made prior to issuance of the statutory notice and Rs.1.50 lakh made after issuance of the statutory notice have been taken into consideration for which credit has been given to the company.

No reply has been given to the statutory notice by the company.

reply to The dishonour of the cheques has been sought to be relied on by the petitioning creditor in treating the said letter as a reply to the statutory notice.

Therefore, the said letter of May 31, 2013 cannot be treated as a reply to the statutory notice.

An opportunity is given to the company to make payment to the petitioning creditor of the sums mentioned above within a week from the date of receipt of this order.

In default, the petitioning creditor will have liberty to advertise once in Sangbad Pratidin and once in The Statesman.

Liberty is given to the company to withdraw the sums deposited by it pursuant to order dated May 6, 2014.

This order, however, will not debar the petitioning creditor from taking steps in accordance with law in respect of the balance claim, if any, subject to the laws of limitation.

The matter to appear in the list a fortnight hence.

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

(PATHERYA, J.) tk

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