

REPORTABLE

IN THE HIGH COURT OF DELHI

CO. APPEAL NO.32/2004

Date of decision : 8th October, 2004

SHRI ROHIT MAHAJAN ... Petitioner
through: Mr. Vinay Bhasin, Senior
Advocate with Mr. S.S. Sastry,
Advocate

VERSUS

SHRI A.N. MALHOTRA & OTHERS Respondents
through: Mr. G.S. Sistani, Advocate
for Respondent No.1.

CORAM:

HON'BLE JUSTICE DR. MUKUNDAKAM SHARMA:
HON'BLE MS. JUSTICE GITA MITTAL.

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DR. MUKUNDAKAM SHARMA, J (ORAL)

The present appeal is directed against the order passed by the learned Company Judge on 4th August, 2004 in C.A. No.583/2003 arising

out of C.P. No.202/1996. This appeal is filed by the appellant who was a Director in M/s Wings Wear Private Ltd. which company is in provisional liquidation. Respondent No.8, namely, M/s Wings Wear Private Ltd. entered into a rent agreement with Respondent No.1 pursuant to which the property of Respondent No.1 was taken on rent by the company.

2. One of the creditors of M/s Wings Wear Private Ltd. filed Company Petition No.170/1992 before the learned Company Judge under Section 433, 434 & 439 of the Companies Act. The allegation made in this petition was that the Respondent Company was indebted to the Everest Advertisement Company (petitioner in the said company petition), and that even in spite of service of statutory notice, the Respondent Company could not pay the dues and, therefore, it should be ordered that the Respondent Company is unable to pay the debt.

3. In the said proceeding, an order was passed by the learned Company Judge admitting the petition and appointing the Official Liquidator as Provisional Liquidator. This order was passed on 31st May, 2001. The Company Court also directed the Provisional Liquidator to take over custody and possession and seal the premises and assets of the

Company. Pursuant to the said order, the Official Liquidator took over the custody and possession also of the premises which was leased to the Company by Respondent No.1.

4. The petitioner in C.P. No.170/1992 and the present Respondent No.8 negotiated and arrived at a settlement out of Court pursuant to which an application was filed before the learned Company Judge and the said petition was disposed of as compromised and dismissed as withdrawn on 20th May, 2002.

5. The registered office of the company, namely, Respondent No.8, as also the tenanted premises belonging to Respondent No.1, however, continued to remain in lock and seal of the Official Liquidator.

6. Later, C.P. No.202/1996 seeking winding up of the company /Respondent No.8 was filed by workmen. The position with regard to sealed premises was reiterated by the Company Judge in their order dated 7th November, 2002 in C.P. No.202/1996.

7. In the meantime, Suit No.181/1998 was filed by Respondent No.1 praying for a decree for possession of the premises in question and for payment, for mesne profit and for damage which was registered as S. No.181/1998 and a decree in the said suit came to be passed on 8th March, 2002.

8. Pursuant thereto, an application was filed by Respondent No.1 herein, seeking for handing over custody and possession of the property of Respondent No.1 after de-sealing the property. The same was registered as C.A. 583/2003 and was considered by the learned Company Judge. After considering the rival contentions of the parties, learned Company Judge passed an order dated 4th August, 2004, the legality of which is challenged in this petition.

9. As stated herein above, the order dated 4th August, 2004 is challenged by one of the former Director of M/s Wings Wear Pvt. Ltd. in respect of which company petition is pending wherein an order of eviction is passed. The Official Liquidator who has also been appointed as the provisional liquidator, has taken over the custody and possession of all the assets of the said company.

10. It is contended by the counsel appearing for the Appellant herein that the Official Liquidator, who was required to defend the Eviction Suit which was pending before the Trial Court, did not defend the said suit and, therefore, an ex parte decree came to be passed. It is submitted that taking advantage of the aforesaid decree, Respondent No.1 has filed the aforesaid application in this Court resulting in the impugned order and, therefore, the said order passed by the Company

Judge is required to be set aside. We have also heard the counsel appearing for Respondent No.1 in this appeal.

11. We have carefully perused the order passed by the learned Company Judge which is impugned herein. A bare perusal of the same indicates that the learned Company Judge has held that even if the decree passed by the Trial Court is not taken notice of or considered, yet there could be no dispute that Respondent No.1 is the owner of the premises. It is an admitted position that rent was paid by the Respondent Company in provisional liquidation to Respondent No.1. However, no rent has been paid to Respondent No.1 since December, 1994 and, therefore, the said premises should be returned back to Respondent No.1.

12. We find no infirmity with the aforesaid observations made by the learned Company Judge. In our considered opinion, even if the decree passed by the learned Trial Court decreeing the suit for eviction is ignored, still the landlord could always file an application before the Company Judge seeking for release of its property in his favour as no business is being transacted by the Company for a number of years. Such an application is maintainable under the provisions of the Companies Act. In the present case also, such application was entertained by the Company Judge. There can be no dispute with regard

to the fact that the rent of the premises in question was earlier paid by the Company (in provisional liquidation) to Respondent No.1 atleast till November, 1994. Therefore, for all practical purposes, the appellant as also the Company accepted respondent No.1 as the landlord of the premises and, therefore, the suit property could be handed over to Respondent No.1 by the Company Court as has been done in the present case. Therefore, there is no infirmity in respect of the same.

13. It was also pointed out that no rent has been paid by the company in liquidation to Respondent No.1 since December, 1994. The company is also in provisional liquidation. Dues are payable by the said company to the workers as also to the banks. There is no scheme pending before the Company Court for restructuring and rehabilitation of the company. It is also stated by the company in provisional liquidation before the Company Judge that the assets of the company are being sold by the bank pursuant to the payment order in the sum of Rs.3,40,90,548/- obtained by the Canara Bank from the Debt Recovery Tribunal, Delhi and auctions in this behalf are being conducted.

14. We may notice that the sole contention of the of the Appellant before us was that the order of eviction was passed without taking notice of the winding up proceedings and that Section 446 of the Companies

Act precluded such an order. In this behalf, it is an admitted position that neither the company nor the erstwhile directors informed either the landlord or the Trial Judge of the pendency of the winding up proceedings. The Appellant claims to be a director in the company which had gone into liquidation and has filed the present appeal. If so aggrieved, the Appellant could have taken steps to apprise the landlord, the Provisional Liquidator and the Trial Judge about the pendency of the winding up proceedings before the learned Judge. No such steps were taken. It is admitted before us that the eviction decree has not been challenged in any appropriate proceedings.

15. In as much as the impugned order is not based on the eviction decree, we are not expressing an opinion on the effect of Section 446 of the Indian Companies Act on the decree passed by the learned Trial Judge in ignorance of the pendency of the winding up proceedings.

In that view of the matter, we are of the considered opinion that the order passed by the learned Company Judge for release of the tenanted premises in favour of the landlord is just, legal and valid. There is no infirmity in the said order. We find no merit in the appeal and the appeal is dismissed.

(DR. MUKUNDAKAM SHARMA)
JUDGE

(GITA MITTAL)
JUDGE

OCTOBER 08, 2004

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