

Before D. S. Tewatia & Surinder Singh, JJ.

STEPHEN CHEMICAL LTD. CHANDIGARH,—Appellants.

versus

M/S INNOSEARCH LTD., NEW DELHI,—Respondent.

Company Appeal No. 16 of 1984.

July 25, 1984.

*Companies Act (I of 1956)—Sections 433(e), 434, 439 and 483—Punjab and Haryana High Court Rules and Orders, Volume V, Chapter 3-B Rule 1(i)—Winding up petition by a creditor—Company admitting liability regarding the principal amount—Liability to pay interest, however, disputed—Such dispute—whether could be decided by the Company Judge—Company Appeal under section 483—Whether to be admitted as a matter of routine.*

*Held*, that where the company Judge was seized of the matter and when the liability to pay the principal debt had not been disputed by the company sought to be wound up and, in fact, paid the debt in order to avoid winding up, the forum of the company Judge is the appropriate forum for determining as to whether the creditor was entitled to interest on the amount in question or not. The basic policy of law is to avoid multiplicity of litigation.

(Para 4).

*Held*, that Rule I of Chapter 3-B in Volume V of the Punjab and Haryana High Court Rules and Orders clearly provides that a motion for the admission of matters mentioned in clause (i) thereof shall ordinarily be heard and disposed of by a Judge sitting alone. The explanation is an exception clause (i) and by virtue of the explanation in matters, including company appeals for the above purpose, that is, a motion for the admission be set down before a Bench of two Judges instead of a Judge sitting alone. It would, thus, be evident that the relevant rules of this Court expressly envisage a company appeal to be listed for motion hearing before a Division Bench. Once a matter comes up for admission purposes, it would be for the Division Bench while hearing the matter either to admit it for final hearing or to dismiss it, if it finds no merit therein.

(Para 10.)

M/s Unisystems (P) Ltd. v. Stephen Chemical, Company Petition 77 of 1983 decided on 20th July, 1984.

**OVERRULED.**

G. R. Majitha, Sr. Advocate with Arun Sanghi, Advocate, for the Appellant.

## JUDGMENT

D. S. Tewatia, J.

(1) Messrs Innosearch Limited, 2E/25, Jhandewalan Extention, New Delhi, petitioned this Court under section 439 read with sections 433 and 434 of the Companies Act, 1956, hereinafter referred to as the Act, for winding-up Messrs Stephen Chemical Limited, Flat No. 119-120, Sector 17-B, Chandigarh, with the allegations that the former company supplied goods worth Rs. 48,308 to the latter company, against order No. 572/2110, dated 18th December, 1979, under the petitioning company's bill No. B/A-III/5, dated 25th December 1979; that despite reminders the said company did not clear the bill; that on 18th November, 1981 the petitioning company issued demand under section 434 of the Act requiring the other company to pay Rs. 50,842.05 Paise together with a sum of Rs. 200 towards the costs of notices within the specified period; and that in spite of the said notices the other said company failed to make payment.

(2) Messrs Stephen Chemical Limited before the company Judge admitted its liability regarding the price of the goods in question and paid up the principal amount. It, however, disputed its liability regarding the payment of interest on the said amount. The learned Judge,—*vide* his order dated 31st May, 1984, directed Messrs Stephen Chemical Ltd; to pay the petitioning company twelve per cent interest on the principal amount.

(3) Messrs Stephen Chemical Ltd: (hereinafter referred to as the appellant) have challenged the said order of the company Judge. The stand taken on behalf of the appellant is that there was no agreement between the parties regarding the payment of interest nor there existed any trade custom providing for the payment of interest. It is also the stand of the appellant that in case the company, whose winding up is sought, raises a *bona fide* dispute regarding its liability to pay to the creditor company, then appropriate forum for determining that dispute is the civil Court and not the company Judge. In support of his submission, the learned counsel for the appellant placed reliance on *Amalgamated Commercial Traders (P) Ltd: v. A. C. K. Krishnaswami and another*, (1) and drew pointed attention to the following observations of their Lordships made therein :

“It is well settled that a winding up petition is not a legitimate means of seeking to enforce payment of a debt which is

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(1) 1965 Company cases 456 (S.C.)

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*bona fide* disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatised as a scandalous abuse of the process of the Court."

In our opinion, the ratio of the *Amalgamated Commercial Traders (P) Ltd.s case* is not attracted to the facts of the present case. That was a case where a *bona fide* dispute was raised regarding the liability of the company sought to be wound-up to the creditor to pay any debt and their Lordships felt that the creditor had initiated winding-up proceedings to put pressure upon the said company. In the present case, the principal amount of debt is not only not disputed but, in fact, had been paid to the creditor after the winding up proceedings had been initiated before the company Judge. The only question that remains is as to whether the creditor was also entitled to interest upon that amount and whether the creditor should take proceedings in the civil Court to recover the interest or the company Judge was competent to go into that question.

(4) In our opinion, where the company Judge was seized of the matter and when the liability to pay the principal debt had not been disputed by the company sought to be wound-up and, in fact, paid up the debt in order to avoid winding-up, the forum of the company Judge is the appropriate forum for determining as to whether the creditor was entitled to interest on the amount in question or not. The basic policy of law is to avoid multiplicity of litigation.

(5) The learned counsel for the appellant also referred us to the order of Goyal, J. rendered in (*Messrs Unisystems (P) Ltd :v. Stephen Chemical*) (2), wherein Goyal, J. had observed that where no agreement for the payment of interest existed and the creditor had claimed interest, no winding-up order could be passed.

(6) With respect, if the said observations are intended to cover the cases of the present kind, then we find ourselves unable to concur in that view. The said observations may be correctly applicable to a case where winding-up initially is sought by a party on

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(2) C. P. No. 77 of 1983 decided on 20th July, 1984.

the ground that certain amount by way of interest was due from the other party which the other party had failed to pay up despite demand notice and the other party raises a *bona fide* dispute as to the right of the creditor to claim interest in the absence of any agreement regarding payment of interest or any other plausible ground, but the position would be entirely different where the amount alleged to be due from the company sought to be wound-up included the principal amount has been accepted before the company Judge and the creditor is sought to be relegated to the civil remedy for getting the interest on the said principal amount.

(7) Lastly, the learned counsel argued that the company's appeal should be admitted as a matter of routine. In support of his contention, he relied upon *M/s Golcha Investment (P) Ltd : v. Shanti Chandra Bafna*, (3) and *Shanta Genevieve Pommerat v. Saical Paper Pvt. Ltd* : (4).

(8) These decisions relate to the interpretation of the Rules and Orders of the Bombay High Court. Chapter XLII of the Bombay High Court Rules provides for appeals to appellate court. Rule 965 thereof prescribes the form of memorandum of appeal. Rule 966 prescribes what documents should be filed along with the memorandum. Rule 966-A prescribes :

“966-A. In the following cases the appeal shall be placed, in the first instance, for admission before a bench of the High Court to be appointed by the Chief Justice :

- (1) An appeal from an order summarily rejecting a writ petition under Article 226 of the Constitution ;
- (2) An appeal from an order on an interlocutory application by way of Notice of Motion or Chamber Summons ; and
- (3) An appeal from an order on a Summons for judgment in a Summary Suit.

If the appeal is admitted, then the provisions hereinafter contained with regard to appeals shall apply to such appeal.”

(3) A.I.R. 1970 S. C. 1350.

(4) (1983)1 S.C.C. 295.

(9) Their Lordships interpreting rule 966-A held that "from this rule it is clear that appeals other than those mentioned therein are not to be placed for admission. In other words, they are entitled to be admitted as a matter of course. Therefore, the appellate, bench erred in summarily, dismissing the appeal. It was bound to entertain the appeal and dispose of the same on merits."

(10) The Bombay High Court Rules are not in *pari materia* with the Rules of the Punjab and Haryana High Court and, therefore, the ratio of *M/s Golcha Investment (P) Ltd* : and *Shanta Genevieve Pommerate's cases* (supra) is not attracted to the facts of the present case. The relevant amended Rule 1(i) of Chapter 3-B, Volume V, of the Punjab and Haryana High Court reads as under:—

"1. Subject to the provisions hereinafter set forth, the following classes of cases shall ordinarily be heard and disposed of by a Judge sitting alone:—

- (i) a motion for the admission of First Appeal against decree of subordinate court, Regular First Appeal under the Land Acquisition Act, Regular Second Appeal, First Appeal against orders, First Appeal against order under Central or State Acts, unless otherwise provided in the Act, Execution First Appeals, Execution Second Appeal Second Appeal against orders, Second Appeal against order under Central or State Acts unless otherwise provided in the Act, Civil Revision Petitions and any other application or petition under Code of Civil Procedure or under any other Central or State Act, unless otherwise provided in the Code or Act.

*Explanation* : The preliminary hearing for the admission of appeal against award rendered by Motor Accident Claims Tribunal, appeal against the decree or order passed under Hindu Marriage Act, 1955, Letters Patent Appeals, Civil Appeals (Contempt), Company Appeals, Sales Tax cases and Gift Tax cases shall be before a Bench of two Judges."

Rule 1 above-stated clearly provides that a motion for the admission of matters mentioned in clause (i) thereof shall ordinarily be heard

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and disposed of by a Judge sitting alone. The explanation is an exception to clause (i) and by virtue of the explanation in matters, including company appeals for the above purpose, that is, a motion for the admission, be set down before a Bench of two Judges instead of a Judge sitting alone. It would thus be evident that the relevant rules of this Court expressly envisage a company appeal to be listed for motion hearing before a Division Bench. Once a matter comes up for admission purposes, it would be for the Division Bench while hearing the matter either to admit it for final hearing or to dismiss it, if it finds no merit therein.

(11) For the reasons aforementioned, the appeal is dismissed *in limine*.

Surinder Singh, J.—I agree

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N. K. S.