

A prima facie case is made out that the Petitioner has fabricated evidence for the purpose of the SLP proceedings before this Court.

CASE BRIEF: M/s New Era Fabrics Ltd. V/s Bhanumati Keshrichand Jhaveri & Ors.

Case no - Interlocutory Application No. 61907 Of 2018 In Miscellaneous Application No. 1301 Of 2018 In Special Leave Petition (Civil) No. 3309 Of 2018

Court - IN THE SUPREME COURT OF INDIA

Bench - MOHAN M. SHANTANAGOUDAR, J.

R. SUBHASH REDDY, J.

Decided on - MARCH 03, 2020

Relevant Acts - Section 340 with Section 195(1)(b) of the Criminal Procedure Code, 1973 , the Maharashtra Rent Control Act, 1999.1 , Sections 77A, 77B and 159 of the Companies Act, 1956 , Sections 193 and 199 of the Indian Penal Code, 1872

Brief facts and procedural history -

1. The Respondents/plaintiffs claim to be the lessors of suit premises being C.S. No. 560 and 561, final Plot No. 268, T.P.S. III of Mahim Division, Ward No. 6/North 5546 (1-1A) situated at Mogul Lane, Tulsi Pipe Road, known as Senapati Bapat Marg, Mahim, Mumbai-400 016. The Petitioner/defendant Company was a monthly tenant of the suit premises.
2. The Respondents terminated the tenancy by notice to quit dated 11.02.2009 and subsequently filed Suit No. 48/62/2009 before the Court of Small Causes, Mumbai ('Trial Court') for possession and injunction against the Petitioner. The Respondents averred in their suit that the Petitioner is a public limited company having a paid-up sharecapital of more than Rs. 1 crore; hence it would not be protected under the Maharashtra Rent Control Act, 1999

3. The Petitioner claimed in its written statement that as of 31.02.2007, it had a paid up share capital of Rs. 1,03,64,000 however, by resolution dated 01.03.2007, it had reduced its share capital to Rs. 93,74,000.
4. The matter was directed to be heard on the preliminary issue of whether the Trial Court had jurisdiction to entertain, try and decide the suit. the Petitioner argued before the Trial Court that the share capital had been reduced by way of 'buy-back' of shares on 1.03.2007, and hence the paid-up share capital for the financial year 2007-2008, ending on 31.03.2008, was Rs. 93,74,000.
5. However, the Trial Court rejected the Petitioner's contentions, finding that there were material discrepancies in the evidence of their witnesses, which made their case regarding 'buy-back' of shares improbable.
6. The Trial Court's findings were affirmed by the Court of Small Causes (Appellate Bench). The High Court dismissed the revisional application filed by the Petitioner. Subsequently, on 09.04.2018, a three-Judge Bench comprising one of us dismissed SLP (Civil) No. 3309/2018 filed by the Petitioner before this Court, out of which the present application arises.

Ratio of the court:

1. The learned counsel for the Petitioner sought to place reliance on the contents of the manipulated balance sheet before this Court, which clearly showed that the document was forged specifically to mislead this Court. Had the interpolated document been authentic, the Petitioner would have naturally placed reliance on the same before the Courts below.
2. It was further contended by the counsel of respondent that the Petitioner's advocate has not relied upon Column 12 of the balance sheet while arguing the SLP before this Court, and as such the contents of Column 12 had no bearing on the dismissal of the SLP. Hence it was submitted that there was no merit in the Applicant's contention that the Petitioner had committed perjury.
3. The court after perusing the original copies of the Trial Court record, found prima facie merit in the Applicant's case that the Petitioner has committed perjury. it is evident that the handwritten modification made by the Petitioner in Column 12 of the balance sheet dated 19.09.2008 is a significant alteration from the terms as used in the original document. Hence, we find that a prima facie case is made out that the Petitioner has fabricated evidence for the purpose of the SLP proceedings before this Court.

4. The court observed that it appears that the Petitioner, in order to overcome the discrepancy between Column 7 and Column 12 of the Auditor's Report at the stage of SLP proceedings before this Court, changed the words 'Weighted average number of Equity Shares' to 'number of Equity Shares as on 1/4/07' by hand. This would indicate that the number of outstanding equity shares held in the Petitioner Company continued to be the same as of 1.04.2007, and the revised 'Weighted Average' and EPS were not calculated as the buy-back process had not yet been completed by that date.

Decision held:

1. The court directed the Secretary General of this Court to depute an officer of the rank of Deputy Registrar or above of the Court to file a complaint under Sections 193 and 199 of the Indian Penal Code, 1872 against the Petitioner Company in SLP (Civil) No. 3309/2018 and Mr. R.K. Agarwal, before a Magistrate of competent jurisdiction at Delhi. The officer so deputed is directed to file the aforesaid complaints and ensure that requisite action is taken for prosecuting the complaints.
2. Thus, the present application is allowed in the above terms.