

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7178-7180 OF 2013
(@ SPECIAL LEAVE PETITION (C) NOS.3652-3654 OF 2012)

NAGPUR CERAMIC PVT.LTD.

THROUGH ITS MANAGING

DIRECTOR

APPELLANT

VERSUS

CHANDRIKA S/O NANDILAL VISHWAKARAMA

ETC. ETC.

RESPONDENTS

O R D E R

1. Leave granted.
2. These appeals by special leave are directed against the judgment and order passed by the Company Court in Company Appeal Nos.8 and 9 of 1994, dated 21.12.2011. By the impugned judgment and order, the High Court has admitted the petitions and, thereafter, allowed the Company Court to proceed with the Company Petition under Section 433(e) of the Companies Act, 1956 (for short 'the Act').
3. The respondents had filed a Company Petition *inter alia* contending that the appellant is due in a sum of Rs.4 lacs and more before the Company Court under Section 433(e) of the Act, whereafter the Company Court had issued notice as contemplated under Section 433(1)(a) of the Act. After issuance of said notice, the appellant-company had filed its detailed reply, *inter alia*, disputing the claim made by the respondents. The learned Company Judge, taking into consideration the defence so pleaded by the appellant-company, had thought it fit to reject the petition filed under Section 433(e)

of the Act.

4. Being aggrieved by the said order, the respondents herein had preferred an appeal before the appellate Court in Company Appeal No.10 of 1994. The appellate Court has opined that the defence pleaded by the appellant-company is a moonshine defence and therefore it is unable to pay its debts as envisaged under Section 433(e) of the Act and, accordingly, has admitted the petition and had permitted the Company Court to proceed further in the matter. Aggrieved by the same, the appellant-company is before us in these appeals.

5. It is relevant to notice that during the pendency of these appeals, the appellant-company, in order to prove its *bona fides*, has deposited the claim made by the respondents along with simple interest. Since the respondent-company has claimed a compound interest on the principal amount payable, the appellant-company has also deposited the aforesaid amount. This clearly demonstrates that the appellant-company has the capacity to pay its financial debts.

6. Further, we have gone through the defence sought by the appellant-company before the learned Single Judge wherein they have taken a specific plea that the claim made by the respondents is not payable by them.

7. In view of the aforementioned, we are of the considered opinion that the defence so pleaded by the appellant-company cannot

be characterized as a defence taken only for the sake of negating the claim of the respondents nor could it be characterized as a moonshine defence.

8. In view of the aforesaid conclusion of ours, we are of the opinion that the appellate Court was not justified in admitting the company petition. In that view of the matter, while allowing these appeals, we set aside the judgment and order passed by the appellate Court in Company Appeal No.10 of 1994, dated 21.12.2011.

9. We reserve liberty to the respondents, if it so desires, to file an appropriate civil suit for recovery of the amounts said to be due from the appellant-company, if it is not barred by the law of limitation.

Ordered accordingly.

JUDGMENT.....

.....J.
(H.L. DATTU)

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI;
AUGUST 27, 2013