

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.2622-2623 OF 2003

M/S. BLOSSOM AGRICARE

....APPELLANT

VERSUS

M/S. BASANTIPUR TEA CO. PVT. LTD.

...RESPONDENT

O R D E R

The appellant is a creditor who filed a petition for winding up of the company on the ground that it is unable to pay its debt. The Company Judge of the High Court of Calcutta by its order dated 28.08.2002, admitted the company petition and directed the creditor to advertise the petition in the specified newspapers. The company aggrieved by the same preferred the appeal.

The High Court by its impugned order dated 21.02.2003 allowed the appeal filed by the company, gave the creditor liberty to take recourse to file suit and dismissed the winding up petition.

It is relevant here to state that the company relied on certain letters to deny the claim of the creditor and for that the creditor had resorted to a proceeding under section 340 of the Code of Criminal Procedure.

Mr. Manu Nair, learned counsel appearing for the appellant-creditor points out that when the winding up proceeding itself has been dismissed, the proceeding initiated by the creditor under section 340 Cr.P.C. shall also come to an end.

We are of the opinion that the apprehension of the creditor is misconceived. The Division Bench of the High court had dismissed the winding up petition as it found that the same cannot be resorted to for the recovery of money, when there is genuine dispute in regard to the claim, the remedy of suit is available. We do not find any error in the same.

We are of the opinion that the dismissal of the winding up petition shall not preclude the creditor to pursue the proceeding which he has initiated under section 340 Cr.P.C., if so advised.

We dismiss the appeals, accordingly, with the aforesaid observations.

.....J
[Chandramauli Kr. Prasad]

.....J
[V. Gopala Gowda]

New Delhi;
April 22, 2013.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s).2622-2623 OF 2003

M/S. BLOSSOM AGRICARE

Appellant (s)

VERSUS

M/S. BASANTIPUR TEA CO. PVT. LTD.

Respondent(s)

Date: 22/04/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. Manu Nair, Adv.

Mr. Malak Bhatt, Adv.
for M/S Suresh A. Shroff & Co.

For Respondent(s)

Ms. Anushya D. Biswas, Adv.
Ms. Sampa Sengupta Ray, Adv.
For Ms. Shipra Ghose, Adv.

UPON hearing counsel the Court made the following
O R D E R

These appeals are dismissed in terms of the signed order.

(Sanjay Kumar)	Court Master (Indu Satija)	
	Court Master	

(Signed order is placed on the file)