

(2004) 07 KAR CK 0042

Karnataka High Court

Case No: Company Petition No. 97 of 2004

Dr. Vanitha K. Bhat and Another

APPELLANT

Vs

SMS Software Pvt. Ltd.

RESPONDENT

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**Date of Decision:** July 28, 2004**Acts Referred:**

- Companies Act, 1956 - Section 433, 433 (e), 434

**Citation:** (2005) 124 CompCas 155 : (2004) 4 KCCR 2343 : (2005) 59 SCL 602**Hon'ble Judges:** D.V. Shylendra Kumar, J**Bench:** Single Bench**Advocate:** S.R. Raviprakash, for the Appellant;**Final Decision:** Dismissed

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### Judgement

D.V. Shylendra Kumar, J.

The subject-matter of this company petition is essentially a lis between the landlords and the tenant. The petitioners are the landlords and the respondent is the tenant.

2. The petition averments indicate that the tenant had violated certain terms of the agreement and in respect of such violations had put forth certain claims in the nature of damages. The respondent-company having not complied with the demand of the petitioners to pay such amounts the petitioners had occasion to cause issue of a legal notice indicating that the provisions of Section 433 and 433(e) will be pressed into service, if the respondent does not comply with the demand in the notice.

3. The respondent-company having not responded to this notice also, the present petition is presented praying for an order to wind up the affairs of the respondent-company.

4. Sri Ravi Prakash, learned counsel for the petitioners submit that the respondent-company having not responded to the statutory notice that had been

issued by the petitioner, the provisions of Section 434 of the Act automatically come into play and it is deemed that the respondent-company is unable to pay its admitted debts. A fiction is created in law and as such the respondent-company should be ordered to be wound up. Learned counsel has relied upon a decision rendered in Registrar of Companies, Punjab v. Ajanta Lucky Scheme and Investment Company Private Ltd. [1973] 43 Comp Cas 314 (Punj) in support of his submission.

5. There cannot be any two opinions about the legal position. A fiction is created in law by the provisions of Section 434 of the Act for the default on the part of the company to whom a notice had been issued and who has failed to make payment of the amount within the stipulated time or has not even disputed the claim.

6. However, in the present case, I do find that the very claim was in the nature of damages. The dispute is between the petitioners and the respondent. Even to appreciate the claim of the petitioners that they are entitled for certain amounts, unless the terms of the agreement are looked into, violations on the part of the respondent-company are fixed and what consequential damages they may have to pay is to be determined. There is no way of concluding that the respondent-company owed a particular amount to the petitioner. There is no such determination of the quantum of damages that is payable to the petitioner-company. A fiction created u/s 434 of the Act is one, which is rebuttable. In the instant case, I am not even satisfied that the respondent-company owes the petitioners a determined or definite amount.

7. In the circumstances, I am of the view that this is not a fit case at all for the purposes of entertaining a petition to wind up the affairs of the respondent-company. It is open to the petitioners to work out their remedies in any other manner provided in law. Reserving such liberty, this petition is dismissed.