

(2002) 10 SC CK 0104**Supreme Court of India**

Case No: Civil Appeal 9246 of 1994, Civil Appeal 9247 of 1994, Civil Appeal 9249 of 1994, Civil Appeal 672 of 1995, Civil Appeal 776 of 1995 and Civil Appeal 1108 of 1995

Bala Financer (P) Ltd.

APPELLANT

Vs

Ambala Bus Syndicate
(P) Ltd. and OthersRESPONDENT

Date of Decision: Oct. 29, 2002**Acts Referred:**

- Companies Act, 1956 - Section 433, 434, 436

Citation: (2003) 96 FLR 173 : (2002) 10 JT 199**Hon'ble Judges:** S. B. Sinha, J; G. B. Pattanaik, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement**@JUDGMENTTAG-ORDER**

1. All these appeals by grant of special leave are directed against the judgment of the division bench of Punjab & Haryana High Court in company appeals which arise out of claim petitions filed under the provisions of Companies Act before the learned company judge and the company judge allowed the claim petitions in question. The companies having gone on liquidation, the official liquidator had been put in charge of the management of the affairs of the companies and the said official liquidator filed the application in question. The learned company judge framed as many as five issues of which the three important issues were - {i} whether the hire purchase agreement dated 15th November, 1978 is illegal; (ii) whether the hire purchase agreement is without consideration; and (iii) whether the so-called entries in the books of account of the company must be held to have been fabricated. On the basis of the materials produced before it, both oral and documentary, the learned company judge came to the conclusion that the transactions were genuine and accordingly allowed the claim petitions filed.

2. On an appeal being carried, the division bench re-appreciated the materials on record and then on setting aside the findings of the company judge, came to hold that the hire purchase agreements are invalid and unenforceable; and no liability can be fastened on the appellant company on the basis of such invalid hire purchase agreements. The division bench also, on appreciating the evidence of PW-1, Bhupender Singh, came to the conclusion that there has been a fair admission on his part that the vehicles in question had not been owned or possessed by the company and, in fact, the so-called hire purchase agreements had been entered into without the conditions precedent being satisfied. The division bench did consider the entry made in the ledger/books of account which was the only documentary evidence appear to have been adduced in support of the claim in question and ultimately came to hold that the agreements were not only invalid for the grounds indicated earlier, but they were not backed by any consideration. With these conclusions, the findings of the company judge having been set aside and the company appeals having been allowed, the present appeals have been preferred.

3. Mr. Ashok Mathur, learned counsel appearing for the appellants, contended with force that the division bench being a court of appeal against the judgment of the learned company judge was duty-bound to consider all the relevant materials which had been considered by the company judge in arriving at his conclusion and committed error in not considering several relevant materials. He also further contended that the evidence of Bhupender Singh has been misconstrued and misread and such misconstruction has led to the conclusion of the division bench, which must be held to be erroneous.

4. Though ordinarily, this Court is not required to re-examine the evidence on the basis of which the court of appeal has based its conclusion, in view of the contention raised, we have been taken through the evidence of the said Bhupender Singh. In our considered opinion, it is difficult for us to agree with the submissions that the evidence of Bhupender Singh has either been misread or misconstrued by the division bench while considering the legality of the conclusions arrived at by the learned single judge. That apart, as stated earlier, the only item of documentary evidence which had been produced in the case in question is the entry in the ledger. Even the cash-books, which could have possibly corroborated the factum of payment of considerations, had not been produced before the company judge and no reason has been indicated as to why such documents had not been produced. Be that as it may, the ultimate conclusion of the division bench that the agreement is a sham transaction not backed by any consideration cannot be said to be perverse in any manner on the materials produced in the proceeding. We are, therefore, not inclined to interfere with the conclusions arrived at by the division bench in the appeals preferred against the judgment of the company judge.

5. Having perused the impugned judgment of the division bench and on examining the relevant materials that were placed before us by Mr. Mathur, appearing for the appellants, we see no infirmity with the conclusions arrived at by the division bench.

6. Accordingly, these appeals fail and are dismissed with no order as to costs.