

(2009) 03 SC CK 0227

Supreme Court of India

Case No: Petitions for Special Leave to Appeal (Civil) No"s. 24772 of 2007

Exposure Insurance Services
Limited

APPELLANT

Vs

Larsen and Toubro Limited

RESPONDENT

Date of Decision: March 21, 2009

Citation: (2011) 12 SCC 511

Hon'ble Judges: Cyriac Joseph, J; Altamas Kabir, J

Bench: Division Bench

Advocate: Praveena Gautam, for the Appellant; U.U. Lalit Dhruv Kapoor, Sachin Midha, Rajneesh Chopra and Subramonium Prasad, for the Respondent

Final Decision: Dismissed

Judgement

1. This SLP is directed against the judgment and order dated 19th July, 2007, passed by the Division Bench of the Bombay High Court in Appeal No. 382/07 arising out of Company Petition No. 419/06, filed by the petitioner herein. Claiming to be a Holder in Due Course of two Bills of Exchange, both dated 15th December 2002, the petitioner filed the Company Petition No. 419/06 for winding up of the respondent Company. The Bills of Exchange were said to have been endorsed in favour of the petitioner on 28 th January, 2003, and the same were payable on 15th March, 2003. The claim of the petitioner is on the strength of the endorsement alleged to have been made in its favour and the petitioner claims thereunder as a Holder in Due Course. Opposing the petition, the respondent Company took the defence that nothing was payable in respect of the said two Bills of Exchange on account of two Credit Notes dated 27.2.2003 having been issued by the supplier to the petitioner confirming that goods supplied to the respondent had been received back by the supplier at Dubai and that, consequently, nothing further was payable on the basis of the said Bills of Exchange. It also appears that the Bills of Exchange were not presented for a period of two years after the date of maturity and only on 4th February, 2005, Carbon Technologies Limited issued notice demanding payment on

the basis thereof. On reply being sent on 7th March 2005, by the respondent Company, the said notice was withdrawn.

2. Subsequently, a similar notice was issued on 29th March, 2005 on behalf of a company by the name of Buxley Industries Limited. Pursuant to the similar reply being sent on behalf of the respondent company, no further proceedings have been taken although the notice issued has not been withdrawn. Thereafter, on 13th February, 2006, the present petitioner sent a notice to the respondent Company demanding payment of the said two Bills of Exchange again indicating that it was the Holder in Due Course of the same.

3. The defence taken by the respondent company indicates that there was a genuine dispute with regard to the claim put forward by the petitioner company. The said question has been gone into by the learned Company Judge while dismissing the Winding Up petition by his order dated 21st March, 2007. The same view was expressed by the Division Bench in Appeal No. 382/2007 arising out of Company Petition No. 419/2006.

4. Having heard learned Counsel for the respective parties, we are inclined to accept the reasoning of the Division Bench endorsing the judgment of the learned Single Judge, since having regard to the facts, we are also of the view that this is a matter which is required to be heard and decided in a properly constituted suit on account of the contentious nature of the objection taken by the respondent on account whereof the parties have been relegated to a suit.

5. The SLP is accordingly dismissed. But this will not prevent the petitioner company from pursuing its remedy before any other forum, in accordance with law.