

THE SUPREME COURT OF INDIA

SUBJECT : WINDING UP

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4767 OF 2008
[Arising out of SLP(C) No.21105/2006]

DATE OF DECISION : August 1, 2008

PRATIBHA

APPELLANT(S)

VERSUS

THE OFFICIAL LIQUIDATOR OF M/S. VIDARBHA
PHARMACEUTICALS PVT. LTD.

RESPONDENT(S)

Leave granted.

This appeal is directed against the judgment and order dated 11.10.2006 passed by the High Court of Judicature at Bombay in Company Appeal No.1 of 2003, summarily rejecting an appeal filed under Section 483 of the Companies Act, 1956, stating :

"In view of the affirmation of the impugned order by the Hon'ble Apex Court in C.A.No. 1156/2006 in the case of Avinash Hansraj Gajbhiye vs. Official Liquidator, we do not find any reason to entertain this appeal. The appeal is dismissed in limine with no order as to costs."

Civil Appeal No. 1106/2006, referred to in the impugned order of the High Court, was filed by one Shri Avinash Hansraj Gajbhiye. Only because the appeal preferred by another Director of M/s. Vidarbha Pharmaceuticals Pvt. Ltd. had been dismissed, in our opinion, the Division Bench of the High Court committed a serious error in dismissing the appeal of the appellant; particularly when according to the appellant, although she was appointed a Director of the said company on 8.8.1978, she resigned from the said post in the year 1986 itself; whereas the default on the part of the Company took place in the year 1990. It furthermore appears that the appellant had filed her reply in the proceedings in the year 1995 and as her Advocate had expired in 1996 she did not receive any notice from the High Court and an ex-parte order passed in the year 1999. An application for recalling of the said ex-parte order was rejected by the High Court without considering these facts. For the reasons aforementioned, we set aside the impugned judgment and remand the matter back to the Division Bench of the High Court for consideration of the matter afresh on merit. The appeal is disposed of accordingly

NEW DELHI,
August 1, 2008

Sd./-
S.B. SINHA,J
Sd./-
CYRIAC JOSEPH,J