
(1967) 10 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 8 of 1965

Bharat Traders Ltd. (In Liquidation)	Vs	APPELLANT
S. Sadhu Singh		RESPONDENT

Date of Decision : 11-10-1967

Acts Referred:

Companies Act, 1956 — Section 468, 518, 518(1)

Citation : (1968) 38 CompCas 537 : (1968) 70 PLR 28

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : Roop Chand, for the Appellant; D.R. Nanda, for the Respondent

Judgement

Harbans Singh, J.—Messrs. Bharat Traders Limited have gone into voluntary liquidation with effect from 26th of March, 1959. The present application was filed by the voluntary liquidator against Sadhu Singh respondent alleging that Sadhu Singh was appointed as the chief agent by the board of directors whose main duties were to sell the shares of the company and invest funds in the purchase of the goods of the kind in which the company was trading, namely, cycles, sewing machines, radio, etc., on hire-purchase system. The chief agent was also under contract to contribute himself to the funds of the company on certain basis ; that the respondent was appointed as a chief agent in 1951, for the area of Phagwara extending up to Hoshiarpur ; and that in furtherance of his appointment and the terms of contract between the company and the respondent, the respondent carried on the work of the chief agent and contributed Rs. 11,000 up to the end of February, 1954, towards the business of the company. The chief agent was to be supplied with receipt books for issuing provisional receipts to the customers which he used to send to the company together with the amount realised. Subsequently, he failed to send the money to the company ; and thereafter a resolution dated 18th of May, 1955, was passed in a meeting of the board of directors of the company, presided over by the respondent himself, wherein it was resolved that " Sadhu Singh shall withdraw

such an amount from the company's assets of his unit at Phagwara that his balance remains to the extent of Rs. 5,000 with the company". He did not do so and continued to accumulate with himself the money due to the company. The company was wound up and he was asked to render accounts to the voluntary liquidator and hence this application was made by the voluntary liquidator on 24th of September, 1964.

2. This application was resisted by Sadhu Singh. The company was asked to put in their revised claim, which was done and the following issues were settled--

1. Is the claim of the liquidator barred by time ?

2. If not, what is the amount due from the respondent to the company (in liquidation) ?

3. With regard to issue No. 2, as agreed to by the parties, Mr. A.D. Kapur, a chartered accountant of Jullundur, was appointed as a local commissioner to go into the accounts and furnish a report as to how much amount was due from the respondent to the company. The report was received, on which objections were filed on behalf of the company. According to the report, on behalf of the company, a local claim of Rs. 6,249.61 paise was put in against Sadhu Singh. As reported by the local commissioner, Rs. 1,249.61 paise was " the total amount claimed in addition to Rs. 5,000, which were claimed as payable to Sirsa head office according to the resolution passed by the board of directors on 18th of May, 1955, referred to above, that is, a total amount of Rs. 6,249.61 paise. The question whether a sum of Rs. 5,000 was due to the company or not was left open to be decided by the court. With regard to remaining Rs. 1,249.61 paise, it was stated by the local commissioner that this amount consists of various items mentioned in the claim and the same were accepted as correct. Again it was agreed between the parties that the company did not hold any claim of Rs. 898.08 paise ; thus leaving a balance of Rs. 351.53 paise only which the respondent has to pay to the company.

4. Two points were urged on behalf of the company (1) that the total claim against Sadhu Singh was in two parts ; on the first page is the account relating to " items of company's credit with Sadhu Singh " and the credit balance of the company comes to Rs. 1,651.61 paise. On the second page are given the items of claim against Sadhu Singh which comes to Rs. 1,249.61 paise. Apparently, the local commissioner was under the impression that the previous items of Rs. 1,651.61 paise had been carried over to the second page and the total of Rs. 1,249.61 was the running total, which, it was alleged, was not the case. On seeing the claim, I find that there is force in this contention. The credit balance of the first page amounting to Rs. 1,651.61 paise has not been carried over and the total claim at the bottom of page 2 did not contain this item. This was rather a wrong way of putting a claim because all the items should have been added up together to make up the total claim that was put in by the company. Be that as it may, it is obvious that the figure of Rs. 1,249.61 paise was not arrived at by

taking into consideration the figure of Rs. 1,651''61 paise, the credit balance shown by the company on the first page. I am, therefore, of the view that in addition to Rs. 5,000 with which I will deal a little later, the amount due to the company on other items which, as stated by the local commissioner, were not disputed, apart from Rs. 898.08 paise, comes to Rs. 2,003.14 paise.

5. On behalf of the company, however, it was urged that it was never agreed that Rs. 898.08 paise were not due from Sadhu Singh, as stated by the local commissioner. On the record of the local commissioner, I do not find any agreement to that effect. However, it is obvious that this amount is claimed without there being any basis for it because it is stated that the amount is still to be realised. Sadhu Singh is not to be made liable for what he may have yet to realise but he has to render account of the amounts actually realised by him on behalf of the company. This item of Rs. 898.08 paise was rightly disallowed by the local commissioner. After deducting this amount, the net amount due to the company on this account is Rs. 2,003-14 paise.

6. With regard to Rs. 5,000 no doubt there is a resolution that Sadhu Singh will withdraw such amounts from the company's assets of his unit at Phagwara so that his balance remains to the extent of Rs. 5,000 with the company. Now that the agency is concluded, the accounts are to be rendered and Rs. 5,000, if it had been left in deposit with the company, would be realisable by him and, therefore, this amount was rightly adjusted on the first page of the claim. No additional amount of Rs. 5,000 was, therefore, due to the company. In view of the above, I find that, on issue No. 2 relating to the amount due from the respondent to the company, Rs. 2,003.14 are due to the company.

7. As regards issue No. 1, objection taken on behalf of the respondent is that he ceased to be an agent as stated by the liquidator, in the year 1955. The limitation provided by the Limitation Act for calling upon him to render accounts was three years, which period expired long before the date of actual winding up of the company and, therefore, the aid of the Act was not available. It was urged that the suit had become barred by time even before the company went into liquidation and, therefore, the winding-up order could not revive such a claim against the respondent. On the other hand, the learned counsel for the company stated that although he (the respondent) had ceased to be an agent, yet the details of the accounts put in by the company show that he continued to collect the money on behalf of the company till 17th of August, 1956, and the winding-up having taken place on 26th of March, 1959, the claim against the respondent was not barred even if it be taken, for the sake of argument, that three years was the period of the limitation. Having looked into the accounts, I am inclined to agree with this contention. Agency comes into existence either expressly or impliedly. If Sadhu Singh continued to work on behalf of the company, as is clear from his correspondence, R.W. 1/3 and accounts, he would continue to occupy the position of an agent and the period of limitation will begin when the agency ceases or the agent is called upon to render accounts. I am, therefore, of the

view that on the date of the winding-up of the company, the respondent had not ceased to be the agent of the company more than three years before.

8. On behalf of the company, it was further urged that, in effect, the application is u/s 468 read with Section 518 of the Companies Act, 1956, although it is shown as u/s 518. Section 468 of the Act runs as follows :

"468. The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributor-ies and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is prima facie entitled. "

9. This section occurs under the heading "General powers of Court in case of winding up by court". On behalf of the company it is urged that if Section 468 is read with Section 518, then some order can be passed by the court. Sub-section (1) of Section 518 runs as follows :

" 518. (1) The liquidator or any contributory or creditor may apply to the Court--

(a) to determine any question arising in the winding up of a company ; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the Court."

10. Section 518 occurs under the heading "Provisions applicable to every voluntary winding up".

11. The sole question for determination, therefore, is whether the words " any other matter " occurring in Section 468 can cover an order to be made in voluntary winding up. Section 468 of the Companies Act corresponds to Section 258 and Section 518 to Section 307 of the English Companies Act of 1943. While dealing with Section 258 (corresponding to Section 468 of our Act), in Buckley on the Companies Acts, Thirteenth Edition, at page 537, it is stated:

"Section 307 (corresponding to Section 518 of our Act) enables an order under this Section 258 (equivalent to Section 468 of our Act) to be made in voluntary winding up."

12. In Vemuri Paraandhamiah v. Narasimha Rao, [1950] 20 Comp. Cas. 1 Sastri J. was of the view that mention of the words "any other matter" in Section 216 (now 518(1)(b)), cannot be interpreted in a restricted manner by applying the doctrine of ejusdem generis because these words follow such wholly and dissimilar topics as enforcing calls and staying of proceedings and the Bench came to the conclusion that by virtue of the provisions u/s 236 (now Section 518) the court can exercise powers for proceedings against the directors and other officials for misfeasance u/s 235, as it then existed.

13. On the other hand, on behalf of the respondent a reference was made to a Division Bench judgment in *Muzaffar Hussain v. Hakim Rai* [1947] 17 Comp. Cas. 157 Pnh in which the voluntary liquidator had applied for public examination of a director and it was held that the words " any other matter " in Section 216 must be read ejusdem generis and it does not authorise the court to direct the examination of the director at the instance of a voluntary liquidator. It is not necessary to decide the question whether the words " any other matter " should or should not be read ejusdem generis for the simple reason that even if these words are read ejusdem generis with the enforcement of calls and directions for delivering the property of the company, the amount due to the company being in the hands of the directors or agents, is a matter which can be said ejusdem generis with the enforcement of the calls. Both matters relate to the recovery of amounts due to the company. I am, therefore, inclined to take the view that read with Section 518 a voluntary liquidator can move an application, on which the court can make an order u/s 468.

14. The main contention of the learned counsel for the respondent thus being negatived, the only other question that remains for consideration is whether there is any limitation period fixed for the court passing such an order and if so, what that provision is ? The contention of the learned counsel for the respondent was that these proceedings are in the nature of a suit, for which he has to take the permission as laid in Section 512 and for a suit, limitation prescribed in the Limitation Act is three years and that this application was made more than three years after the date of winding up proceedings and even if the terminus a quo is taken to be the date of winding up, this application was barred by time, being in the nature of a suit. I do not find myself in agreement with this contention. Once the provisions of Section 468 are found applicable, then that section provides that the court can pass an order " at any time ". No limitation is laid and the matter is entirely left to the discretion of the court. If the application is delayed unreasonably, the court may not exercise its discretion by declining the same, but there is no period of limitation. Similar words, e.g., " at any time " occurring in Section 42 of the Consolidation Act have been held to mean what it says in the Full Bench decision in *Nar Singh v. State of Punjab* ILR [1966]Punj. 933. I find issue No. 1 against the respondent and hold that this application is within time.

15. In view of the above, the respondent is directed to pay a sum of Rs. 2,003.14 to the voluntary liquidator of the company within three months from today. The respondent will also pay costs of the company. Counsel's fee Rs. 200.