(1974) 03 DEL CK 0020

In the Delhi High Court

Case No : Company Appeal No. 3 of 1974

Capital Chit Fund (P.) Ltd. (In Liquidation)

Date of Decision : 21-03-1974

Acts Referred:

Citation : (1974) 44 CompCas 547 : (1974) 10 DLT 232 : (1974) ILR Delhi 205

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : R.P. Sharma and Santosh Jain, for the Appellant;

Judgement

D.K. Kapur, J.

(1) In this appeal, which is by one of the creditors of M/s Capital Chit Fund (P.) Limited, counsel for the Official Liquidator wants to adduce proof in support of the decision of the Official Liquidator appealed against. I think this procedure cannot be followed in this particular case.

(2) The facts of the case are that Mrs. Parkash Bhasin, appellant in this Court, had placed proof before the Official Liquidator concerning her claim that the company in liquidation was in debited to her to the extent of Rs. 3,585.80. Instead of ascertaining as to how much out of this claim should bs rejected, the OFficial Liquidator by his letter, dated 29th September, 1973, communicated to the appellant that he accepted the claim to the extent of Rs. 2585.00. This led to some further correspondence between the appellant and the Official Liquidator which is also annexed to the appeal. Eventually, the Official Liquidator informed the appellant that the sum of Rs. 2585.00 was correctly admitted and the appellant could file an appeal under Rule 164. It is necessary to say at once, that I find the procedure prescribed by Law has not been followed by the Official Liquidator, and it is not possible to hear the appeal merely by calling the Official Liquidator to produce proof in support of the decision appealed against. In fact, the true position is that, in accordance with the provisions of Rules 163, 164 and 165. the Official Liquidator has not yet passed the order, required by Rule 163.

(3) The procedure prescribed by Rule 163 shows how the Official Liquidator is to

deal with the proof adduced by a creditor of the company in liquidation; he can accept the proof or he can reject the proof or he can reach a conclusion partly rejecting the proof and partly rejecting the same. The Official Liquidator is not required by Rule'' 163 to give any reasons when he accepts the proof, but, if he rejects the proof, then the rejection has to be in Form No. 69. The important words of Rule 163 are as follows :

"where the Liquidator rejects a proof, wholly or in part, he shall state the grounds the rejection to the creditor in Form No. 69. Notice of admission of proof shall be in Form No. 70." If we turn to Forms 69 and 70, we find that Form No. 69 contains words to the following effect : "I have this day rejected your claim against the company (or to the extent of Rs...........), on the following grounds." On the other hand. Form 70 is in a very short form. It says "you are hereby informed that your claim against the above-named company has been allowed at the sum of Rs. ......". The difference in these two forms is that if the claim is rejected in full, then no reason whatsoever is necessary, but, if the claim of the creditor is rejected wholly or in part. then the Official Liquidator has to give reasons. Those reasons are appealable under Rule 164 to the Court."

(4) Rule 164 requires a creditor to appeal to the Court, if he so desires, within 21 days. If he does appeal, them the court has all the powers of an Appellate Court under the Code of Civil Procedure. I omitted to mention one feature of Form 69, referred to above ; the Form also states that the order is appealable within 21 days. The purpose of Form 69 is obviously to inform a-creditor that he can file an appeal against the Official Liquidator''s order if he so desires, within 21 days and the * * * Form are obviously those very grounds which are subject to judicial review by the Court. In this case, the original order, which, in effect, rejected the claim of the appellant to the extent of Rs. 1,000.00 was framed under Form 70 as an allowance of claim instead of as a rejection of claim. Consequently, the appellant did not file an appeal within the time prescribed by Law. Instead of appealing, the appellant proceeded to carry on further correspondence with the Official Liquidator. The correspondence finally ended on 12th December, 1973, With the letter of the Assistant Official Liquidator informing the appellant that she could appeal to the High Court. Obviously, this procedure is not warranted by Law The original order should have been an order rejecting the claim and not an order admitting the claim. The exact terminology used in the order, dated 29th September, 1973, written by the Official Liquidator to the appellant is as follows:

"you are hereby informed that your claim against the above named company has been allowed at the sum ofRs.2585.00".

This is exactly the terminology of Form No. 70. This means that the Official Liquidator mistakenly used Form No. 70'' instead of Form No. 69 and consequently the appellant did not appeal and corresponded with the Official Liquidator and eventually filed an appeal when the Official Liquidator failed to alter the decision.

(5) Leaving aside the question of time, which is fixed'' by Rule 164, I find that the powers of the Appellate Court in dealing with an appeal of this type are those of an Appellate Court under the Code This is what Rule 164 says. The power of the Appellate Court or the steps taken by the Appellate Court will depend on the decision, which is appealed against, if the decision does not contain any grounds and no facts are stated in the decision, .it would obviously become a case in which the Court below has failed to decide the issues arising in the case or to determine the point of controversy. In other words, the .Official Liquidator has not given a judgment at all. This is exactly a case where a remand should be made under Order 41 Rule 23 or under Order 41 Rule 25 or under the amended powers of remand as available under the amended provisions of Order 41 applicable to this Court. In the absence of a judgment, it is impossible for this Court to decide whether the Official Liquidator was justified in rejecting the claim of the appellant to the extent of Rs. 1000.00 or not. The Court could reject the decision concerning the correctness of the decision only by having a de novo trial by itself. That would not be a justified procedure for the purpose of hearing an appeal. I, Therefore, think that in any event, this case has to be remanded back to the Official Liquidator for redecision. Now, I come to one of the difficulties I face in dealing with the appeal an account of limitation. Rule 164 provides that an appeal against the decision of the Official Liquidator should be instituted within 21 days. The decision in this case was made on 29th September, 1973, and the appeal was filed on 31st December, 1973. It is an appeal which is hopelessly barrel by time under Rule 164. The point of limitation would normally be quite an un-answerable one, if we take into consideration, the date of the order and the date of the appeal. The only point to be stated in support of the appellant''s case for having the appeal heard is the failure of the Official Liquidator to pass an order under Form No. 69. If the Official Liquidator does not reject the claim under Rule 163, no appeal can be filed under Rule 164. The letter, which for the purposes of this case may be treated as the decision of the Official Liquidator, is dated 29th September,1973.1tis an order allowing a claim and not an order rejecting the claim. Consequently, there was no occasion for the appellant to file an appeal under Rule 164 in respect of this order. After this letter of 29th September. 1973, there was considerable correspondence between the appellant and the Official Liquidator, which culminated in the eventual letter of the Official Liquidator, dated 12th December, 1973. I may mention that the final letter was written by the then Assistant Official Liquidator, Mr.S.C. Mittal, who is now the Official Liquidator. He stated that "this js to inform you that your claim admitted by this office on 29th September, 1973 amounting to Rs. 2585.00 is correctly admitted as per records available .with the company. "He also stated that "if you are aggrieved, you may file an appeal under rule 164." It was only at this stage that the appellant can be said to have been informed that the claim for Rs. l,000.00 was rejected. I would, Therefore, treat this appeal as having been filed against the information of rejection which can be gathered from the letter, dated 12th December, 1973. In any case, no order in Form No. 69 has been passed and, Therefore, in the interest of justice, I would be justified in dealing

with this appeal under the powers of this Court available far controlling the exercise'' of the Liquidator''s powers. I think the Court has ample jurisdiction u/s 460, sub-section (6) of the Companies Act, 1956, to rectify an error of the type which has occurred in this case. I may quote sub-section (6) of Section 460 of the Companies Act, 1956. It reads:

"any person aggrieved by any act or decision of the liquidator may apply to the court; and the Court may confirm, reverse or modify the act-or decision complained of, and make such further order as it thinks just in the circumstances."

This power has obviously to be used by the Court in a suitable case. This is a suitable case and, Therefore, I would treat this appeal, even if it can be said to be beyond time, as an application u/s 460(6) and direct the Official Liquidator to pass an order under Rule 163. The appear Or application, whichever way one may look at this proceeding, is allowed and the case remanded back to the Official Liquidator for passing an order under Rule 163 concerning the appellant''s claim as a creditor of M/s. Capital Chit Fund Private Limited. No costs.

