

(1984) 12 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 141 of 1983

Depro Foods Ltd. (In Liquidation)

APPELLANT

Vs

Lohri Singh and Another

RESPONDENT

Date of Decision : 07-12-1984

Acts Referred:

Limitation Act, 1963 — Section 3

Citation : (1985) 57 CompCas 818

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : H.S. Bajwa, for the Appellant; A.K. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

Mittal, J.—Briefly, the facts are that the petitioner was a limited company and was engaged in the business of manufacturing and sale of packed and canned food at Rai district, Sonapat. It was ordered to be wound up, vide order dated August 21, 1980, in C. P. No. 234 of 1977 presented on November 7, 1977. It is alleged that the petitioner-company was supplying goods to respondent No. 1 and that, according to the ledger account and statement of affairs furnished by the ex-managing director of the company u/s 454 of the Companies Act, 1956 (hereinafter called "the Act"), an amount of Rs. 1,307.96 was due from him on account of the price of the goods. He did not pay the amount in spite of the notice dated February 17, 1981, served by the official liquidator on him.

2. Respondent No. 2, it is further averred, was the managing director of the company and was duty bound to recover the amount while the company was functioning but he failed to do so ; therefore, he was personally liable to pay the amount u/s 453 of the Act. Consequently, a prayer has been made that a decree for recovery of Rs. 1,307.96 with interest be passed against the respondents.

3. Today it was found that prima facie the petition was barred by limitation. Consequently, I framed the following preliminary issue :

Whether the petition is within limitation ?

4. According to the allegations in the petition, an amount of Rs. 1,307.96 was due from respondent No. 1 on October 21, 1976. The limitation under the Limitation Act, 1963, for recovery of such amounts is three years. In addition, the petitioner is entitled to exclude the period from the period of limitation, for which the petition for winding up remained pending in this court and a further period of one year u/s 458A of the Act. The petition remained pending in the court for a period of two years, nine months and fourteen days. Thus, in all, the petition could be filed within a period of six years, nine months and fourteen days. According to the calculations, the limitation expired on September 5, 1983. However, the petition was filed on October 24, 1983. Thus, it is clearly barred by limitation. Section 3 of the Limitation Act, 1963, provides that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. It is well settled that the provisions of this section are mandatory and it is the duty of the court to dismiss the petition if it is barred by limitation.

5. For the reasons aforesaid, I dismiss the petition as barred by limitation.

6. No order as to costs.