

(1979) 08 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : C.P. No. 57 of 1974

Kaithal Cotton and General Mills Co. Ltd. (In Liquidation)	APPELLANT
Vs	
I.C. Latka and Others	RESPONDENT

Date of Decision : 30-08-1979

Acts Referred:

Companies (Court) Rules, 1959 — Rule 147, 148, 163, 164, 177

Citation : (1979) 08 P&H CK 0025

Hon'ble Judges : Bhopinder Singh Dhillon, J

Bench : Single Bench

Advocate : J.S. Narang, for the Appellant; Baldev Kapoor and I.C. Latka, for the Respondent

Final Decision : Dismissed

Judgement

Bhopinder Singh Dhillon, J.—The Kaithal Cotton & General Mills Co. Ltd. was ordered to be wound up. Various claimants preferred their claims before the official liquidator in response to the notice issued under Rule 148 of the Companies (Court) Rules, 1959 (hereinafter referred to as " the Rules "). Smt. Champa Vati Latka, Shri I. C. Latka and the firm, Seth Munna Lal Ishwar Chander through Shri Ishwar Chander Latka, filed different claims. The official liquidator asked them to prove their claims but they were unable to prove the claims. Consequently, the official liquidator vide his order dated August 1, 1974, rejected the claim of Shri I. C. Latka, and as regards the claims of firm Seth Munna Lal Ishwar Chander and Smt. Champa Vati Latka, the same were partly accepted and partly rejected. This order of the official liquidator was not appealed against as the appeal is provided under Rule 164 of the Rules. The said three claimants approached this court by way of three claim petitions claiming that their claims are well founded and this court may now adjudicate the same. In the reply to the claim petitions a preliminary objection was taken in all the three claim petitions, on the basis of which the following preliminary issue in each of these cases, has been framed :

" Whether the objection petition is maintainable in view of Rule 164 of the Companies (Court) Rules, 1959 ? "

2. After hearing the learned counsel for the parties and going through the Rules, I am of the opinion that the preliminary objection is well founded as is clear from the scheme of the Rules. Rule 147 of the Rules authorises the official liquidator, however, subject to the direction by this court, to fix a certain date which shall not be less than 14 days from the date of notice to be given to the creditors to prove their debts or claims. Under Rule 148 of the Rules, the official liquidator has to give 14 days" notice of the date so fixed by advertisement in one issue of a daily newspaper in the English language and one issue of a daily newspaper in the regional language circulating in the State or Union Territory concerned, as he shall consider suitable, to the creditors. It is in response to this notice that the procedure as prescribed in Rules 149 to 163 of the Rules, has to be followed and ultimately the official liquidator has been empowered under Rule 163 of the Rules to accept or reject the proof of the claims. Under Rule 164 of the Rules, which is in the following terms, appeal has been provided against the order passed by the official liquidator under Rule 163 of the Rules:

"164. Appeal by creditor.--If a creditor is dissatisfied with the decision of the liquidator in respect of his proof, the creditor may, not later than 21 days from the date of service of the notice upon him of the decision of the liquidator, appeal to the court against the decision. The appeal shall be made by a judge's summons, supported by an affidavit which shall set out the grounds of such appeal, and notice of the appeal shall be given to the liquidator. On such appeal the court shall have all the powers of an appellate court under the Code. "

3. In the present case, admittedly, no appeal has been filed Mr. Baldev Kapoor, the learned counsel for the claimants, relies on the provisions of Rule 177 of the Rules, which is as follows :

"177. Procedure on failure to prove the debt within the time fixed.--If any creditor fails to file proof of his debt with the liquidator within the time specified in the advertisement referred to in Rule 148, such creditor may apply to the court for relief, and the court may, thereupon, adjudicate upon the debt or direct the liquidator to do so."

Keeping in view the scheme of the Rules and the language of Rule 177 of the Rules, it is clear that Rule 177 will apply to those cases where the claimants failed to come to know about the notice published by the official liquidator under Rule 148 of the Rules and failed to file proof of their claims within the time specified by advertisement as referred to in Rule 148 of the Rules. Where the claimants appear in response to the said advertisement and are unable to substantiate their claims, in that case when order is passed by the official liquidator under Rule 163 of the Rules, an appeal is preferable under Rule 164 of the Rules. In the present case, it is not disputed that all the three claimants did appear before the official liquidator but their claims were not accepted by the

official liquidator to the extent they wanted the same to be accepted. It is, therefore, obvious that the provisions of Rule 177 of the Rules are not attracted.

4. Faced with this situation, the learned counsel for the claimants contended that these objections be taken to be an appeal against the orders of the official liquidator dated August 1, 1974. This obviously cannot be done. The present petition in this court was filed on October 4, 1974, whereas the order passed by the official liquidator is dated August 1, 1974. The period of limitation for preferring an appeal under Rule 164 of the Rules is 21 days from the date of the service of the notice from the decision of the official liquidator. Mr. Kapoor conceded that the present claim petition has been filed beyond that period of limitation. There is no application for condonation of the delay and even if the present claims are treated as an appeal against the order of the official liquidator the same is barred by limitation.

5. In view of what has been stated above, the preliminary issue is decided against the claimants and it is held that the objection petitions are not maintainable. In view of this finding, it is not necessary to record a finding on the issues regarding merits.

6. For the reasons recorded above, the claim petitions are dismissed. Since there is no other appeal against the order of the official liquidator and no claim petition is pending under Rule 177 of the Rules, the list of creditors as settled by the official liquidator is endorsed.