(2002) 10 MAD CK 0184

In the Madras High Court

Case No : Company Application No. 1126 of 1989 in Company Petition No. 73 of 1985

Kasturi and Sons Ltd. APPELLANT

Vs

F.D. Stewart Pvt. Ltd.
Official Liquidator Vs Shree Krishna Woolen Mills Pvt. Ltd. RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Companies Act, 1956 — Section 446(2)
Limitation Act, 1963 — Section 19

Citation : (2003) 113 CompCas 438 : (2004) 54 SCL 272

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : J. Nithyanandam, for the Appellant; T.K. Seshadri, for the Respondent

Judgement

P. Sathasivam, J.—The official liquidator has filed this application seeking for a direction to the respondent to pay a sum of Rs. 1,47,797.60 being the amount due with interest of Rs. 1,53,298.65 from August 30, 1984, to the date of this application amounting to Rs. 3,01,096.25 with subsequent interest at the rate of 20 per cent. per annum on Rs. 1,47,797.60 from the date of the application till the date of realisation.

2. In the report filed in support of the above application, the official liquidator has stated that M/s. F. D. Stewart Private Limited (hereinafter referred to as "company in liquidation") was ordered to be wound up by an order dated September 7, 1987 in C. P. No. 73 of 1985. The erstwhile managing director of the company has delivered the statement of affairs on March 14, 1988. The applicant has taken into custody certain books and records of the company in liquidation which were handed over to him on January 21, 1988. This application could be preferred only after the receipt of the statement of affairs and books of account and records referred to above. The records revealed that on the date of winding up a sum of Rs. 1,47,797.60 was found due from the respondent to the Bombay branch of the company in liquidation. The company in liquidation had

certain transactions with the respondent in this application. The company in liquidation used to render service in advertisement publicity in all its branches. It used to undertake the release of advertisements on behalf of its clients in newspapers and used to undertake art work, printing booklets and placing hoardings, etc. The company in liquidation had released advertisements in the newspapers on behalf of the respondent herein and raised 63 bills for the services rendered to them from March, 1983, to August, 1984, aggregating to Rs. 2,55,533.85. The respondent had made payments on 14 occasions aggregating to Rs. 1,07,736.25 and still a sum of Rs. 1,47,797.60 is due and payable by the respondent as on the date of the winding up order of the company. The details of bills raised by the company in liquidation and the payments made by the respondent are enclosed and marked as annexure A. As per the bills, interest at the rate of 20 per cent. per annum is chargeable on the bills, if the same has not been settled within 60 days from the date of bills. Therefore, the respondent is liable to pay Rs. 1,47,797.60 towards the balance of principal with interest at the rate of 20 per cent. per annum thereon. A demand notice was issued to the respondent on February 8, 1989, and the said notice was acknowledged by them on February 11, 1989. In their letter dated March 29, 1989, it is replied that nothing is due and payable to the company in liquidation. Since the balance amount as per the ledgers and account books has not been paid, the applicant has been compelled to come forward with the present application u/s 446(2) of the Companies Act. It is further stated that as per Article 137 of the Limitation Act, 1963, read with Section 18/19 of the said Act and Section 458A of the Companies Act, the application is well within time and is not barred by limitation. Along with the report the official liquidator has filed statement showing the details of the amount as annexure A to the report.

3. The respondent has filed a written statement wherein it is stated that the application is barred by limitation. There is a bona fide dispute, hence the present proceeding is not appropriate.

4. Heard Mr. J. Nityanandam, learned legal assistant for the official liquidator and Mr. T. K. Seshadri, learned counsel for respondent.

5. The following points arise for consideration :

(1) Whether the claim of the official liquidator is barred by limitation ?

(2) Whether the applicant is entitled to the amount as claimed ?

6. Regarding the first issue, namely, the plea of limitation, the official liquidator in his report has stated that the period of limitation has been computed under Article 12 of the Limitation Act, 1963, read with Section 18/19 of the said Act and Section 458A of the Companies Act. It is further stated that the cause of action of this application arose on August 30, 1984, when the last bill was made, after excluding period of three years and 11 days being the period to be excluded u/s 458A of the Companies Act, this application is within the period of limitation. Apart from the specific assertion, learned counsel for the official liquidator has

furnished the following information :

"Date of order of winding up 7-9-87

Date of presentation of petition 26-8-85

11-0-02

Normal period of limitation 3 years

Period u/s 458A 1 year

11-0-06

Last payment made 27-3-84

Limitation valid till 7-11-89

Hence application not barred by limitation."

7. On the other hand, Mr. T. K. Seshadri, learned counsel for the respondent has filed a memo on limitation which is as follows :

"Winding up petition filed on (C. P. No. 73 of 1985) 26-8-85

Date of order of winding up petition 7-9-87

Application No. 1126 of 1989 filed on 7-11-89

As per statement annexed to O. L. report :

(a) Last date of bill 30-8-84

(b) Last date of payment as disclosed 27-3-84

I. Taking the starting point of limitation 30-8-84, the claim should be taken three years from 30-8-84.

Date of filing of petition 26-8-85

Date of right to sue 30-8-84

(11 months and 27 days on date of filing of petition) 27-11-00

II. Date of filing of C. A. No. 1126 of 1989 7-11-89

Date of filing of company petition 26-8-85

21-02-03

III. Extension of limitation un/s 458A-one year

Total time taken 27-11-0

For filing application 21-02-3

After right to sue accrued 18-02-4

There is thus delay of two months and 18 days in filing the application and hence barred by limitation.

This is on the basis that the last date of bill is August 30, 1984."

8. The details furnished by the official liquidator as well as the respondent show that the company petition was filed on August 26, 1985, and winding up order was passed on September 7, 1987. The present application, namely, Company Application No. 1126 of 1989, was filed on November 7, 1989. There is no dispute regarding all the three dates. As per annexure A filed along with the report of the official liquidator, the last date of the bill was August 30, 1984, and the last date of payment was on March 27, 1984. Mr. T. K. Seshadri, learned counsel for the respondent, by pointing out that there is no evidence whether it is mutual, open and current account, would contend that each bill gives rise to a separate cause of action, hence if the last bill dated August 30, 1984 is taken, a sum of Rs. 1,448 alone has to be taken into account and not the entire amount as claimed. He further contended that the demands referred to in the statement have no relevance. I am unable to accept the said contentions for the following reasons. There is no dispute regarding the application of Article 137 of the Limitation Act which gives three years period of limitation from the date on which the right to apply accrues. In addition to the above period, Section 458A of the Companies Act gives not only the exclusion of the entire winding up period, but also gives a further grace period of one year immediately following the date of the winding up order. These aspects have not been disputed. Though it is stated that each bill gives rise to a separate cause of action, after going through the continuous entries namely various dates, bill numbers and the amount due from the ledger entries (annexure A to the report of the official liquidator) and details regarding the payments made by the respondent, I am unable to appreciate the contention that each bill has to be considered separately for the purpose of cause of action and limitation. Though no oral evidence was let in to prove the statement in annexure A, since the official liquidator has collected those details from the books of account and ledgers, scrutinised by the auditors, I am of the view that there is no reason to suspect or disbelieve the same. On the other hand, since the statement and all the details of amount due in annexure A are continuous, mutual, open and current account, there is no acceptable reason to disbelieve those details.

9. It is relevant to refer to Section 19 of the Limitation Act.

"Section 19. Effect of payment on account of debt or of interest on legacy,--Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf ; a fresh period of limitation shall be computed from the time when the payment was made."

10. Here, I have already referred to the statement in annexure A wherein it shows that item 63 refers to the last bill dated August 30, 1984, and item 14

refers to the last payment made by the respondent on March 27, 1984. Accordingly, after taking note of the normal period of limitation as per Article 137 of the Limitation Act and the period prescribed u/s 458A of the Companies Act, as rightly stated by the official liquidator, the last payment was made on March 27, 1984, the applicant has valid limitation till April 8, 1990. If that is so, the present application filed on November 7, 1989, is well within the period of limitation.

11. Mr. T. K. Seshadri, learned counsel for the respondent, after taking me through Sections 59, 60 and 61 of the Indian Contract Act, 1872, would contend that in the absence of any specific indication by way of agreement of understanding between the parties, the last bill and the last payment cannot be taken into account. In the light of the said contention, I have carefully perused those provisions and I am unable to accept his contention. Admittedly, there is no instruction or direction that the payment is to be applied to the discharge of some particular debt. In the absence of such direction or material, as stated earlier, there is no reason to either reject the various bills and payments made on various dates and I am satisfied that various payments shown in the annexure cannot be construed that the same were made to the particular bill. It is a running account and the applicant official liquidator is fully justified in taking into account the last payment of the respondent dated March 27, 1984 ; accordingly I answer the issue in favour of the applicant and hold that the present application is not barred by limitation.

12. Coming to the merits of the claim, no serious argument was advanced, except stating that the claim is barred by limitation. When the respondent has paid or settled the amounts as claimed as referred to in the various bills (annexure A), undoubtedly it could have been mentioned in the account books and ledgers of the company in liquidation. In the absence of any such material, as stated earlier, those accounts were subjected to scrutiny by the auditors cannot be doubted and no reason to disbelieve the same. Accordingly, I accept the claim of the official liquidator. However, considering the grievance expressed and of the fact that the amount is due from 1984, there will be a decree for Rs. 1,47,797.60 with interest at 12 per cent. per annum from August 30, 1984, till the date of payment. Company application is ordered accordingly.

