

(1980) 08 KL CK 0019
In the High Court Of Kerala
Case No : M.F.A. No. 71 of 1977

K.C. Pangunni

APPELLANT

Vs

Official Liquidator, Wandoor Jupiter Chits (P.) Ltd. (In Liquidation) and Others

RESPONDENT

Date of Decision : 21-08-1980

Acts Referred:

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

Citation : (1981) 51 CompCas 453 : (1981) 1 ILR (Ker) 420

Hon'ble Judges : V. Khalid, J;P. Subramonian Poti, J

Bench : Division Bench

Advocate : A.P. Chandrasekharan, for the Appellant; P.V. Venkitasubramonia Iyer and N. Madhavan, for the Respondent

Final Decision : Dismissed

Judgement

Subramonian Poti, J.—By the judgment under appeal the learned judge of this court has allowed a claim by the official liquidator representing the Wandoor Jupiter Chits (P.) Ltd. (in liquidation) against the appellant and two others. The claim was for the recovery of a sum of Rs. 3,488.12 with interest thereon and the claim showed the execution of a demand pro-note for Rs. 4,000 on March 30, 1970, in favour of the company, now in liquidation. The claim was filed on July 11, 1975. In the remarks portion of the claim statement it was mentioned that the claim was not barred and evidently as justification it further stated "payment after D.P.N. till 6-2-1973 ". The suggestion appears to be that after the execution of the pro-note payments had been made, the last of the payment being on February 6, 1973. That, it is said, is supported by a copy of the ledger said to have been filed along with the claim, but actually filed very much later, on orders of court. The learned judge has observed in his judgment that the case was posted a number of times for evidence and hearing and no evidence was let in by the respondents to prove the plea of discharge. Therefore, that was found against. The plea of limitation for the plaint claim had been raised and this was

met by the learned judge in the following words :

"There is no limitation also for the plaint claim since default alleged is only on 6-2-1973."

2. There is no default alleged on February 6, 1973, in the claim petition. The last payment is said to be on February 6, 1973. It is seen from the copy of the ledger produced later that after the execution of the pro-note on March 30, 1970, the next payment is made nearly 14 months later on June 19, 1971, and that is only of a sum of Rs. 170. The monthly instalment is said to be Rs. 325. We are only indicating that the default must have commenced much earlier. Whatever that be, February 6, 1973, is the date on which a sum of Rs. 170 is said to have been paid to the company and that being the last payment it is pleaded as saving limitation. Noticing that date as the date of default the learned single judge found that there was no (bar of) limitation. Before us the date, February 6, 1973, is agreed to be the date of payment of Rs. 170 and that is the last of the payments.

3. The liquidator seems to have assumed that a date of payment and particularly of the last payment is relevant in the matter of limitation. We say so because the words in the remarks column "payment after D.P.N. till 6-2-1973" follows the observation that the claim is not barred. u/s 19 of the Limitation Act it is not every part payment that would save limitation but only a payment the acknowledgment of which appears in the handwriting of, or in a writing signed by, the person making the payment. There is no case that any of the payments were of that nature. Therefore, Section 19 of the Limitation Act would not operate. We are not told of any other provision which would make the date of the last payment relevant. In these circumstances, there is no averment in the claim to save the claim from limitation. As we have noticed, the claim was filed on July 11, 1975. No doubt the claim could be filed within 3 years of the date of winding up. We need not consider whether further extension of time u/s 456A of the Companies Act would also be available in such a case, for, that does not arise in this case. The claim must be an Enforceable claim. If on the date of the petition for winding up the claim was not alive it is not enforceable at law and as held by the Full Bench of the High Court of Delhi in *Faridabad Cold Storage v. Ammonia Supplies* [1978] 48 Comp Cas 432, it will not be a claim falling within the scope of Section 446(2) of the Companies Act. In this case the only date mentioned other than the date of last payment which is relevant is the date of the pro-note. We have no pleading with reference to any other date. The date of the pro-note is March 30, 1970. The period for filing a suit on the pro-note would be 3 years. The winding-up petition is seen as filed only on October 1, 1973, after the expiry of 3 years. On that day, therefore, there is nothing to show that the claim was alive. On the pleadings or on the evidence it cannot be said that this has been shown. In the circumstances we have to accept the plea of limitation and dismiss the claim.

4. It may not be out of place for us to point out that more than casual attention

must be given to the preparation of claim statements by the official liquidator. The provision in Section 446(2) of the Companies Act enables a liquidator to avail of an easier and more expeditious remedy by resorting to the court which is concerned with the liquidation. But, all the same, material to determine issues that may arise in the case properly must be brought up and this can be done only by placing necessary facts and proving them in court. We say this because learned counsel, Sri Iyer, tried to salvage the case by reference to matters which are not on record such as the fact that the claim being that under a chitty, dates of default of payment of subscriptions would be relevant, and that investigation should be made to find the date of default so as to determine whether the claim would be barred. The relevant facts should have been mentioned in the claim and the court should have been placed in a position to appreciate the plea in that light. In the absence of any such material before us even now we feel that this argument is of no assistance in this case, but perhaps may be useful for the future as it may, perhaps, alert the official liquidator to plead and prove the claims properly. The appeal is allowed as above. The claim is dismissed as barred. Parties are directed to suffer costs in this appeal as well as in the claim petition.