

(1997) 08 KL CK 0016

In the High Court Of Kerala

Case No : C.C. No's. 13, 108, 259, 364, 384, 410, 411, 413, 502 and 503/96 in
C.P. No's. 3 and 19/92

KTC, Tyres (India) Ltd.

APPELLANT

Vs

Kavitha Auto Parts

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Companies Act, 1956 — Section 446(2)
Revenue Recovery Act, 1890 — Section 3

Citation : AIR 1998 Ker 147 : (1998) 1 ILR (Ker) 585

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K. Moni, for the Appellant; Salil Narayanan and P.J. Ayyappachan, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—In these cases a common question arises as to whether the claims of the Company are barred by operation of the law of limitation. It is admitted that in all these cases the cause of action in enforcement of the claims on behalf of the Company arose three years before the proceedings started for winding up of the Company. Therefore, it was argued on behalf of the respondents that the Company is not entitled to enforce a claim which was already barred at the time of commencement of the winding up proceedings. The trend of decisions in this respect is that a barred claim cannot be revived by the commencement winding up proceedings and that the Official Liquidator is not acquiring any new right to enforce the claims of the Company. But Shri. Mony, the learned counsel for the Official Liquidator argued on the strength of a Full Bench decision of this Court reported in Kerala Fisheries Corporation v. P.S. John 1996 (1) KLT 814 that these claims are not barred. The question decided in the above Full Bench case was whether the Revenue Recovery Act confers a right on the creditor to recover the amounts due to it which are barred under the ordinary law of limitation. Dealing with the above question the Full Bench held that the

contention of the petitioners that the recovery under the Revenue Recovery Act is barred by limitation is not sustainable. The learned counsel therefore argues that in the present cases also the Official Liquidator is entitled to recover the amount decreed in the claims by resorting to revenue recovery proceedings and therefore the claims are not barred. But it has to be remembered that provisions contained in the Revenue Recovery Act only enable the Official Liquidator to execute the decreed claims and that before passing a decree in the claims the Official Liquidator is not getting any right to enforce the claims. Therefore, I do not think the Full Bench decision relied on by the learned counsel for the Official Liquidator helps him in getting over the plea of limitation.

2. Learned counsel for the Official Liquidator also relied on an authoritative pronouncement of Justice Raman Nair (as he then was) in *Official Liquidator, Palai Central Bank Ltd. (in liquidation), Ernakulam Vs. K. Joseph Augusti, Kayalackakam House, Palai and Others*, . In the above case this Court was considering the starting point of the period of limitation for filing a misfeasance application, According to the above judgment, u/s 543 of the Companies Act the Court has got power to assess damages against delinquent Directors.) That is a substantive right of the Company to recover any loss sustained by it from those responsible for the loss. Once a winding up proceedings, intervene, a new remedy is given u/s 543 to the liquidators and the creditors and contributors of the Company, a remedy they did not have before the winding up order, for the enforcement of the above substantive right. On that ground the learned Judge found that it is fallacious to argue that whenever the right to institute a suit is barred by limitation the right to make an application u/s 543 of the Companies Act is lost. But in these cases the right to recover the amounts due to a Company is not a new right given to the Company after the commencement of the liquidation proceedings. It is an existing right irrespective of the fact that the Company went into liquidation or not. Therefore, I do not think the *Official Liquidator, Palai Central Bank Ltd. (in liquidation), Ernakulam Vs. K. Joseph Augusti, Kayalackakam House, Palai and Others*, is applicable to the facts of these cases.

3. Shri. N.P. Samuel, learned counsel for the respondents submitted that the Courts have taken a consistent view that debts which are barred once cannot be legally enforceable by virtue of Section 446(2)(b) of the Companies Act. The above provision in the Companies Act gives the Court jurisdiction to entertain and dispose of any claim made by or against the Company. According to the learned counsel, "any claim" occurring in the above Section means a claim which is legally enforceable. The learned counsel relied on a ruling of the Delhi High Court reported in *Liberty Finance P. Ltd. (in Liquidation) In re Official Liquidator, Liberty, Finance P. Ltd. v. Pandit Radha Mohan* (1979) 49 CC 287 1979 TLR NOC 107 wherein it was held that a claim which had become time barred on the date of presentation of the winding up petition cannot be described as a legally enforceable claim and the provisions of Section 446(2)(b) do not enable the Official Liquidator to file or receive claims which had been quietened by the lapse

of time. A Division Bench of the Bombay High Court also taken the same view in the ruling reported in *M. Thankamani v. Official Liquidator* (1996) 85 CC 318 wherein it was held that no new cause of action arises in favour of the Official Liquidator and the cause of action accrued in favour of the Company enures for the benefit of the Official Liquidator.

4. The learned counsel also cited a Full Bench decision of the Madras High Court reported in *Best & Crompton Engg. Ltd. v. Official Liquidator*, Madras AIR 1995 Mad 20 wherein it was held that the right of the Official Liquidator is not a new right and it is only it is the right of the Company which went into liquidation that was being enforced.

5. The learned counsel also cited two decisions of this Court, one by a Full Bench and the other by a Division Bench. In the Full Bench case, *K.P. Ulahannan and Others Vs. The Wandoor Jupiter Chits (P) Ltd.*, the question was whether the starting point of limitation is the date on the which the winding up order is passed or the date on which the Official Liquidator was appointed as the Liquidator of the Company. In considering the above question the Full Bench observed that the starting point of limitation for claims is the date on which the winding up order is passed or the Provisional Liquidator is appointed. The Official Liquidator is entitled to file claims which do not get barred at that time. In the Division Bench decision reported in *Pungunni v. The Official Liquidator Wan door Jupiter (P) Ltd.* ILR 1981 (1) Ker 420 (1980 T LR 2151) the Court was more specific in holding that on the date of filing of the winding up petition the claim must be alive. Otherwise the claim is liable to be disallowed on the plea of limitation.

6. Therefore, a reference to these decisions will lead to an irresistible conclusion that those claims which the Official Liquidator wants to enforce by taking advantage of Section 446(2)(b) of the Companies Act must be those claims which are not barred at the time of commencement of the liquidation proceedings. If the Company is not able to enforce those claims on those dates, the Official Liquidator will not get any better right to enforce those claims. The Official Liquidator is only stcping into the shoes of the Company as a representative of the Company appointed by this Cpurt to supervise the liquidation proceedings, and his actions are also governed by the ordinary law of limitation. Therefore, I am of the view that the claims involved in these cases arc barred by limitation on the ground that on the date of commencement of the liquidation proceedings the claims are barred under the relevant articles of the Limitation Act. Therefore, these claims are dismissed.