(2014) 09 DEL CK 0291

In the Delhi High Court

Case No : Co. App. 43/2013 and Cm No. 10292/2013

Madhubala Sharma APPELLANT

Vs

Anand Pratyabhoot Vitt Nigam Ltd. RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:
Companies Act, 1956 — Section 433, 529, 530

Citation : (2014) 09 DEL CK 0291

Hon'ble Judges : Sunil Gaur, J;Gita Mittal, J

Bench : Division Bench

Advocate : Vikas Sharma and Laxman, Advocate for the Appellant; Kanwal Chaudhary, official liquidator, Advocate for the Respondent

Judgement

Gita Mittal, J.—By way of the instant appeal, the appellant challenges the order dated 28th May, 2013 passed by the learned Single Judge in Co. Application No.01/2010 whereby the appellant has been directed to refund the official liquidator an amount of Rs.6,13,408/- with simple interest @ 9% per annum from 12th May, 2006 till the date of payment.

2. The appellant along with her husband had made a total of twenty investments in the sum of Rs.82,099/- between 23rd April, 1988 to 24th June 1989 in two schemes of the company, i.e., fixed deposit scheme and hire purchase scheme. It is stated that under both the schemes, the cumulative/compound rate of interest @ 14% (for fixed deposit) and 27% quarterly or 30% p.a. (for hire purchase scheme) was payable.

3. We may note the interest prescription on the fixed deposit and hire purchase instruments. We find that in the fixed deposit receipt the following interest is stipulated:-

"2. Annual yield is worked out assuming that the monthly interest is reinvested @ 14%."

4. The hire purchase agreement mentions the following:

"That the Company guarantees a return of 30% yearly % p.a. to the investor(s) under this Hire Purchase Business/Agreement."

5. It appears that a winding up petition under Section 433 of the Companies Act, 1956 came to be filed against M/s. Anand Pratyabhoot Vitt Nigam Limited in the year 1990. The official liquidator attached to the company court was appointed as provisional liquidator and on the 3rd of October, 1991, the Assistant Official Liquidator attached to the company wrote the following letter to the appellant:

"To,

Dated : 3.10.91

Smt. Madhu Bala

C/o N.K. Sharma

B-20/10, Lakhanagar,

Meerut Court, (U.P.)

Sub: In the matter of M/s. Anand Pratyabhoot Vitt Nigam Ltd. (In Provisional Liquidation)

Sir,

Please refer to your letter No. Nil dated 28.8.91 on the above subject I have to inform you that the above company has been provisionally wound up by the orders of the High Court of Delhi dated 7.3.1991 and the undersigned has been appointed as its provisional Liquidator.

This office has not invited the claims from the creditors of the company. You are advised to submit your claim as and when invited. In this connection your attention is also invited to the provisions of Section 529/ 530 of the Companies Act, 1956 and rules 147 and 149 of the Companies (Court) Rules, 1959.

Yours faithfully

Sd/-

(ARVIND SHUKLA)

ASSTT. OFFICIAL LIQUIDATOR,

DELHI"

(Emphasis supplied)

It is therefore, apparent that the office of the official liquidator was fully aware of the liability of the company to the appellant and had interdicted any claim for the amounts due and payable.

6. The above communication from the office of the official liquidator shows that the appellant had made a claim of which the official liquidator was aware. In fact

the official liquidator had directed the appellant to resubmit the same that claims were invited by him. Thus, the appellant had made the requirement of Rule 156 and in the given facts and circumstances, in fact the appellant was required to be paid interest on the contractual rate till the date of payment. This fact is completely escaped the attention of the learned Single Judge resulting in passing of the order dated 28th May, 2013.

7. The company court passed the order dated 16th February, 2005 directing the official liquidator to invite claims from the creditors and workmen of the company. The official liquidator took steps and claims were invited by advertisement issued on the 25th of March, 2005. It appears that 28 claims were received by the office of the official liquidator.

8. For the first time the office of the official liquidator issued a notice dated 24th October, 2005 under Rule 159 of the Companies (Court) Rules, 1959 to the appellant calling upon the appellant to state the amounts due to her as on 1st of October, 1997. After due scrutiny and examination of the relevant records, the official liquidator''s office admitted the appellant''s claim for the sum of Rs.7,42,509/-.

9. The official liquidator scrutinized the claim and submitted its report. After due consideration, by the order dated 18th of April, 2006, the company court directed the official liquidator to disburse the amount of Rs.14,18,693/- among the 28 claimants. So far as appellant is concerned, his claim for the sum of Rs.7,42,509/- was found due and payable. This amount was released in favour of the appellant on the 12th of May, 2006.

10. It is noteworthy that the amounts which were released in favour of the appellant in the year 2006 had actually become due and payable to her in the year upto 1992. In view of the letter dated 3rd of October, 1991 and pendency of the winding up proceedings, the payments to the appellant were interdicted. In fact the appellant deserved to be paid interest on the amount payable and due to her in terms of the fixed deposit scheme as well as the hire purchase agreement up to the date of actual payment. However, inasmuch as no grievance was made by the appellant and she unconditionally accepted the amount being disbursed by the official liquidator in terms of the order dated 18th of April, 2006, we are refraining from making any order in terms thereof.

11. So far as the 28 claimants are concerned, the matter attained finality.

12. Long thereafter, it appears that behind the back of the appellant, on 7th of September, 2009, the official liquidator informed the Company Judge that it was in the process of re- examining the claims.

13. It appears that some third person raised certain objections with regard to the payment of the amounts to the appellant. The order dated 1st of September, 2009 came to be passed by the Company Court noting the submission of the official liquidator.

14. It is submitted by Mr. Vikas Sharma, learned counsel for the appellant that the order dated 1st of September, 2009 was also passed as well as the re-examination of her claim by the official liquidator''s office was without notice to the appellant and without giving her any opportunity of placing her side of the case.

15. In this relook, the official liquidator arrived at a conclusion that excess amount of Rs.4,81,169/- had been paid to the appellant. It is only thereafter that the official liquidator addressed the letter dated 5th of October, 2009 calling upon the appellant to attend the office.

16. It appears that the appellant''s husband visited the office of the official liquidator and informed him about the interest liability and claimed that the amount had been rightly calculated and paid to her. Despite these submissions, letter dated 24th of November and 24th of December, 2009 were issued by the office of the official liquidator calling upon the appellant to return the amount of Rs.4,81,169/-.

17. On the 21st of January, 2010, the Company Court passed an order with a direction to the official liquidator to file a status report and to seek the assistance of a Chartered Accountant if necessary in the matter.

18. It is claimed before us on behalf of the official liquidator that in terms of these directions of the court M/s. Rai and company''s Chartered Accountant was appointed for scrutiny of claims by letter dated 15th of February, 2010 and the claims filed were handed over to this Chartered Accountant.

19. The appellant makes grievance that no notice was served upon him with regard to examination of her claim by this Chartered Accountant and she was not joined in any consideration. No opportunity whatsoever was given to her to make any submission or to answer any objections which may have been arisen in the mind of the Chartered Accountant.

This submission is made without prejudice to the main contentions of Mr. Vikas Sharma, learned counsel for the appellant that the matter stood finally considered upon finalization of claims by the official liquidator and submission of the report which had resulted in passing of the order dated 18th of April, 2006 by the Company Court directing disbursement.

20. In the report submitted by the Chartered Accountant of the office of the official liquidator, it was stated that amount of Rs.6,13,408/- due from the appellant as returnable by her on account of the same having been paid in excess. Based on this report, the official liquidator filed C.A.No.01/2010 on the 12th of July, 2010 before the Company Judge seeking the orders for recovery of the said amount with interest at the rate of 18% per annum from June, 2006 till realization.

21. The respondent contested this application on several grounds including the limitation. It was also stated that the amount was disbursed in favour of the

appellant after the same had been scrutinized pursuant to her claims and stood approved by the Company Court. The appellant also urged that as per the fixed deposit receipt claim, the appellant was entitled to 14% cumulative, that is compound rate of interest on the fixed deposit while as per hire purchase claim the appellant was entitled to compound interest, that is interest @ 30% per annum.

22. It was also urged that the contractual rate of interest was liable to be paid till the amount was received by the appellant in terms of Rule 156 of the Company Rules 1956. The appellant vehemently challenged the jurisdiction of the Company Court as well as the official liquidator to conduct the re-verification and re- examination of the creditor''s claim behind his or her back which stood finalized and disbursed to her after due process and with her participation. The appellant assailed the report of the Chartered Accountant and the official liquidator on the ground that the same was contrary to the agreement between company and the creditors as well as their proceedings having been conducted behind her back in violation of principles of natural justice. These objections were considered and rejected by the learned Company Judge by the impugned order dated 28th of May, 2013.

23. The appellant challenges this order on the very grounds on which the application was contested. It is additionally urged that the learned Single Judge has erroneously calculated simple interest @ 4% per annum on the deposit as being payable beyond the date of maturity and has contradictorily directed refund to the amount of Rs.6,13,408/- with simple interest @ 9% per annum

24. The above narration of facts would show that the claim of the appellant based on the agreements with the company stood carefully considered by the official liquidator and found admissible to the extent of Rs.7,42,509/-. This amount includes claimed interest which had been carefully scrutinized by the official liquidator. There is no dispute with regard to deposits made by the appellant.

25. The report of the official liquidator with regard to the 28 claims, including the claims that of the appellant, had been scrutinized by the learned Company Judge and by the order dated 18th of April, 2006 disbursement thereof was directed by the learned Company Judge. It is also not disputed that these proceedings of the Company Judge as well as the official liquidator were conducted after scrutiny of all documents and claims of the appellant. The matter stood finally concluded after the amount was disbursed.

26. We find substance in the contention of the learned counsel for the appellant that re-examination thereof behind the back of the appellant by the Chartered Accountant and the filing of the application being C.A.No.01/2010 by the official liquidator behind the back of the appellant was contrary to the binding principles of natural justice as well as law.

27. It is pointed out by Mr. Vikas Sharma, learned counsel that in terms of the

order dated 18th of April, 2006 the appellant has been granted interest up to 1st of October, 1997 only and nothing beyond that. The computation of the interest is based on the hire purchase agreement as well as fixed deposit receipt of the company. The rates of interest and the computation stood verified by the official liquidator and the court in 2006.

28. The appellant accepted the payment of interest till 1997 and did not make any issue with regard to her entitlement of interest up to the date of payment even though the appellant was kept waiting for almost 15 years after the amount became due and payable by the company.

29. For the view we have taken here fore, we are not discussing the other contentions which have been raised by the appellant in the appeal, some of which have been noted hereinabove.

30. We are informed that there is an amount of Rs.15,00,000/- lying credited with the office of the official liquidator. No further claims are pending.

31. We are informed that Smt. Madhu Bala is a senior citizen who is residing in Meerut. Her husband is stated to be a pensioner who has been compelled to contest the case in Delhi since 2010 when notice in Co. Application No.01/2010 was issued. We are of the view that they have been unreasonably harassed.

32. For all these reasons, the order dated 28th May, 2013 directing the appellant to refund the amount to the official liquidator with interest is hereby set aside and quashed. The appellant shall be entitled to costs which are quantified at Rs.20,000/- which shall be sent by demand draft to the appellant at her address on the memo of parties within a period of four weeks from today.

This appeal is allowed in the above terms.

CM No.10292/2013

In view of the order on appeal, this application is dismissed.

