

(1963) 02 MAD CK 0009
In the Madras High Court
Case No : O.P. No. 211 of 1952

Malabar Petroleum Co. by Partner K.V. Thomas

APPELLANT

Vs

Continental Oil Co. Ltd.

RESPONDENT

Date of Decision : 08-02-1963

Acts Referred:

Companies Act, 1956 — Section 469, 469(1)
Limitation Act, 1963 — Article 120

Citation : AIR 1963 Mad 307 : (1963) 33 CompCas 367 : (1963) 76 LW 258 :
(1963) 2 MLJ 116

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Sundararajan and Sivaswami, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—This is an application, filed by the Official Liquidator for directing the respondent to pay a sum of Rs. 1013-70 being the

amount equivalent to 1076 Frenchfrancs. This direction is sought on the basis of the order of this Court dated 23rd March, 1962 in Company

Appln. No. 394 of 1961. In that order, this Court found that the explanation of the respondent was not acceptable in respect of the specified items

of debits by the French company against the company in liquidation. In view of this order, there can be no question about the liability of the

respondent. But the application is resisted on the ground that it is barred by time. Though it is filed u/s 460(4) of the Companies Act, 1956, it is

contended for the respondent that if the claim is regarded as one arising out of misfeasance, Section 543(2) of the Companies Act prescribes a

period of five years, and that if the claim is regarded as one falling within the

purview of Section 469 of that Act, even so, since any suit by the company would have been barred, the same principle should govern this application too.

It seems to me that having regard to the circumstances in which the respondent's liability arises, Section 543 will have no application. But Section 469(1) will in my view be applicable to the application. That section states that the Court may at any time after making a winding-up order, make

an order on any contributory for the time being on the list of contributories to pay in the manner directed by the Court any money due to the

company. It is not in controversy that the respondent is a contributory. "Any time" in the section does not appear to be used with reference to

limitation. The effect of these words is not that the Court can make an order under the section without reference to the limitation prescribed by the

law. That was the view taken by a Division Bench of the Lahore High Court in *Sri Narain v. Union Bank of India*, ILR 4 Lan 109 : AIR 1924 Lah

53.

That, of course, is a decision u/s 186 of the Companies Act, 1913 which is in effect the same as Section 469 of the present Act. The learned

Judges were of the opinion that Section 186 of the Indian Companies Act did not create new liabilities or confer new rights, but that it merely

provided a summary procedure for enforcing existing legal liabilities. On that view, they held that a debt which was barred by time could not be

enforced by the liquidation Court by a summary order under that section. I find myself in respectful agreement with this view of Section 186 of the

old Act, which I think should govern Section 469 of the Indian Companies Act 1956.

2. It is true that the application u/s 469 is not a suit or an application within the purview of any of the articles in the Indian Limitation Act of 1908.

Referring to this aspect, the Privy Council in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63, observed that an application u/s 186 of

the old Act could not be regarded as a "suit instituted" or an "application made" u/s 3 of the Indian Limitation Act, 1908. Even so, the Privy

Council went on to observe :

There is, however, another aspect of the case in which the last mentioned Act (the Limitation Act) plays a most important part, and that is in

considering whether the three sums which the liquidator seeks by their application to recover from the appellants were at the dates of that

application "moneys due" within the meaning of Section 186. If they were not, that section had no application and the Court would have had no

power to make the order which it made.

3. Section 469 of the present Act also uses the same phraseology, namely "any money due". It follows, therefore, that the principle of *Abdullah*

Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63, is equally applicable to an interpretation of Section 469. This means that before an order for

payment can be made u/s 469, the applicant must show that the amount is due, and if under the law of limitation governing actions for recovery of

money, the claim would be barred, it cannot be said that the amount is a sum due within the meaning of Section 469. The test will be whether if the

company were to institute a suit as on the date of an application u/s 469, it would or would not be barred by time under the Indian Limitation Act,

1908. That appears to be the approach made by a Division Bench to the question in *V. Narasimha Aiyangar*, Official Liquidator of the City

Hygienic Milk Supply Co. Ltd. Vs. The Official Assignee of Madras and Others, . That no doubt was a case of an application taken out by an

Official liquidator to recover compensation from some of the directors of the company in liquidation, in respect of their acts of misfeasance.

The learned Judges of this Court held that the application was time barred, whether Article 36 or Article 120 of the Limitation Act applied to the

case. But what is important to note is that although the application was made u/s 235 of the Companies Act of 1913, the learned Judges

considered that the question of limitation for the claim to be allowed should be viewed from the stand-point of Article 36 or Article 120.

4. In my judgment, therefore, though the instant application itself may not fall, as I already indicated, under any one or the other of the Articles of

the Limitation Act, inasmuch as only an amount due can be ordered to be paid u/s 469 of the Indian Companies Act, 1956, if the claim for the

amount were barred so far as the company was concerned under Article 120 of the Limitation Act, this application will have to be dismissed on

the ground that it is barred by limitation.

5. It is, however, contended by the Official Liquidator that since this Court

rejected the explanation of the respondent and held in its order dated 23rd March 1962, that the respondent was liable to pay the amounts specified therein, the cause of action to recover the amount should be deemed to have arisen only as on the date of that order. I am not impressed by this contention. That order merely determined in consequence of rejecting the respondent's explanation that he was liable to make good to the company the specified sums. It does not follow from that the liability of the respondent was incurred as on the date of that order. The liability of the respondent was incurred on the date or dates when the debits by the French concern were made against the company, but the amounts covered by these debits went to the benefit not of the company but of the respondent. That being the case, the liability arose far beyond the period of six years, of the instant application. It follows therefore that the application is barred by time.

6. The application is dismissed, but with no costs.