

(1999) 02 KAR CK 0058

In the Karnataka High Court

Case No : Company Application No. 421 of 1994 in Company Petition No. 56 of 1987

M/s. Kabini Papers Limited (In Liquidation), Bangalore

APPELLANT

Vs

M.D. Shivananjappa and Others

RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Companies Act, 1956 — Section 448 A, 458 A, 543, 543 (2)

Citation : AIR 1999 Kar 296 : (1999) 98 CompCas 675 : (2008) 3 CompLJ 489 : (1999) 3 KarLJ 378

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri Thomas V. Peter, for the Appellant; Sri Tukaram S. Pai, M/s. Kaitan and Company, for the Respondent

Judgement

1. This is a misfeasance proceedings against the Directors of a limited Company that is in liquidation.

2. The case involves an interesting issues concerning the interpretation of two of the sections of the Companies Act, viz., Section 458A and Section 543(2); both of which revolve around the question as to what precisely is the period of limitation within which the official liquidator is permitted to institute proceedings before a judicial forum in such cases.

3. There is no dispute about the fact that the winding up petition was presented before the High Court on 26-5-1987 and that a winding up order came to be passed on 7-4-1988. Simultaneously the official liquidator was appointed as liquidator of the company on the same day. The present application u/s 543(2) has been filed before the High Court on 19-9-1994. The application is contested and, on behalf of some of the Directors a preliminary objection has been canvassed viz., that the application has been presented beyond the period prescribed by law and that consequently, it would have to be dismissed on the ground of limitation. For this purpose, the respondents have pointed out to the

Court that there is no ambiguity with regard to the time limit prescribed u/s 543(2) of the Act which is five years from the date on which the company was wound up, the official liquidator was appointed as liquidator or the dates on which the acts complained of have been committed, whichever is later. The section very clearly mandates that there is an outer limit of five years provided to the official liquidator for institution of these proceedings and the section uses the word "shall" which leaves no doubt about the fact that this period of time cannot be extended. To my mind, there is a very valid reason why the legislature has prescribed the ceiling, insofar as five years is a sufficiently long period of time within which the official liquidator can have the affairs of the Company examined threadbare and institute proceedings against the guilty persons. The legislature was also conscious of the fact that if hopelessly belated action is instituted, that it always turns out to be an infructuous exercise because either the parties are dead or not traceable; more importantly because of the practical difficulty of establishing the charges at that late point of time when either the witnesses are not available or documents are not traceable and the like.

4. The respondents contend that if five years are added to the date of winding up which is 7-4-1988, that the cut off date would be 7-4-1993 and that the petition filed on 19-9-1994 is hopelessly time-barred and must fail on this ground alone.

5. On behalf of the official liquidator, an entirely different argument has been presented. It is contended that there is a general provision in the Companies Act viz., Section 458A which prescribes that the whole of the period consumed in the winding up of proceedings, plus a period of one year shall be excluded while computing limitation. According to the learned Counsel who represents the official liquidator, Section 458A is a general provision applicable to all applications emanating from the official liquidator including petitions of the present type, and his submission is that while computing the period of limitation the aforesaid two periods which aggregates one year ten months will have to be excluded. He proceeds to contend that this period is de hors the five years provided u/s 543(2). If the official liquidator is given the benefit of the period of one year ten months by reading two sections in conjunction, then the present application would be within time and would still be maintainable.

6. In response to the further submission, the respondent's learned Counsel have relied on a Full Bench decision of this Court in Karnataka Steel and Wire Products Ltd. (In Liquidation) Vs. Kohinoor Rolling Shutters and Engineering Works (P.) Ltd., , wherein the High Court had occasion to lay down certain guidelines with regard to the manner in which limitation is required to be computed. The facts of that case and the situation bore no parallel to the present one, but the principles and guidelines laid down by the Full Bench which are well-settled law are required to be observed as I shall presently point out. The main contention raised in reply was that where there is a special provision that it overrides the general provision of law. The learned Counsel drew my attention to a somewhat similar situations that arose in a case under the Representation of People Act,

wherein the Supreme Court very clearly laid down that where the special Act prescribed certain provisions that these would override the general provisions of the Limitation Act. The decision in question is reported in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, . Learned Counsel submitted before me that Section 543 of the Companies Act is a complete provision in itself, that there is no ambiguity with regard to what it postulates and consequently, there is neither the need nor the sanction to draw from what is contained in any of the other provisions.

7. In deciding the correct legal position, one has to take into account the fact that the Companies Act does contain a general provision in Section 448-A which provides for certain exclusions. Construing the two sections harmoniously, I do not see any conflict whatsoever because the Legislature has taken into account the entire period of time spent during the winding up proceedings, and it is for this reason that the starting point as far as Section 543 is concerned is the culmination of these proceedings viz., the date when the winding up order was passed or the date when the official liquidator was appointed as liquidator. Having regard to the provisions of [Section 449] of the Companies Act, these two dates coincide. The only question is as to whether the one year exclusion period provided u/s 448-A is required to be added on to the five year period prescribed u/s 543(2). In my considered view, there is absolutely no warrant for this to be done as it is well-settled law as far as the interpretation of statutes are concerned that where the provision is clear and unambiguous that it is not permissible to seek to graft on anything from other provision as this would be doing violence to the section. In the instant case, as I have already observed, a more than sufficient period of time stretching as long as five years is provided to the official liquidator, and if there has been any intention on the part of the legislature to extend this period by even a single minute, then the section would say so and if contended on behalf of the official liquidator the intention was to give the official liquidator the benefit of one year prescribed u/s 458A of the Act then the section would have specifically mentioned, that this provision is notwithstanding whatever is provided for in Section 458A. That is not the wording of Section 543(2) and this being the position, I have no hesitation in holding that the only correct way in which the Section 543(2) can be applied is to construe it strictly. I have already indicated that there is a very good reason why proceedings which are not instituted within this period cannot be entertained by the Courts as the proof of the charges themselves would become almost impossible in hopelessly belated cases. This case is a classic example because it has already been demonstrated to me that out of the erstwhile Directors, some have died and the proceedings being a criminal proceeding naturally abates against them. As far as the remaining are concerned, had this case gone to evidence I consider it a remote possibility of the official liquidator being able to establish these charges not because they may be groundless or otherwise, but because of the mechanical hurdles in his way at that late period of time of getting oral evidence and proving the documentary evidence. Whichever way one

views the situation, there is absolutely no ground on which the contention can be upheld that the five year period can be extended. It was pointed out to me by the respondents' Counsel that even if the one year extension is granted, the present petition is still out of time. That consideration however, which is peculiar to the facts of this case does not make any difference.

Having regard to the aforesaid position in law, there is no ground on which the present application can be sustained. It is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.