

(2003) 10 KAR CK 0028

In the Karnataka High Court

Case No : Company Application No. 471 of 1987 and Company Petition No. 3 of 1975

Mysore Tools Ltd.

APPELLANT

Vs

Dominion Hardware Stores

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Companies Act, 1956 — Section 446 (2) (b), 458 A

Citation : (2005) 128 CompCas 376 : (2004) 3 KCCR 1793 : (2004) 55 SCL 535

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Deepak, for the Appellant; G.S. Visweshwara, for the Respondent

Judgement

N. Kumar, J.—The petitioner has filed this application u/s 446(2)(b) of the Companies Act, 1956, claiming a sum of Rs. 1,84,683.40 from the respondent with interest at 12% p.a. for the value of the goods supplied by the Company under liquidation to the respondent for which payments are not made.

2. The claim of the petitioner was opposed by the respondents by filing statement of objections. They deny the entries made in the statement of accounts. In fact, they admit the supplies. But they contend that the entire amount due to the petitioner has been paid. In the legal notice issued prior to initiation of the proceedings the interest claimed is only 6%, whereas in the application 12% interest has been claimed which is without any basis, it is also contended that the claim is barred by law of limitation. Subsequently, they have filed additional objection contending that the entire claim is barred by limitation.

3. Applicant has filed affidavit by way of examination-in-chief and he has produced the statement of accounts and invoices on the basis of which the said claim is made. They are marked. Ex. P-1 is the accounts extract and Exs. P-2 to P-92 are the invoices under which supplies were made by the company under liquidation to the respondent. The witness of the petitioner has been cross-examined at length. The respondent did not step into the box and adduced any

evidence.

4. The learned Counsel for the petitioner contends that the accounts extract produced which is also supported by the invoices shows that between the parties there was a mutual, open and current account. Therefore, Article 1 of the Limitation Act is attracted to the facts of the case. The latest of such supply was on 14-2-1976. The winding up proceedings was initiated on 16-6-1975 and the winding up order was passed on 2-7-1982. Therefore, this application filed on 19-1-1987 is well within time.

5. Per contra, the learned Counsel for the respondent contends that Article 1 has no application to the facts of the case as there has been no reciprocal demand between the parties as is clear from Ex. P-1 the statement of accounts. The said Article is not attracted, it is Article 14 which is attracted and in the alternative it is Article 137 of the Act. Therefore the cause of action for the claim arose from the date of delivery of the goods under each invoices, as such, barring the invoices which are marked as Exs. P-34, 44, 46, 47, 48, 49, 91 and 92, all other supply made under invoices are barred by time.

6. In support of his contention, the learned Counsel for the petitioner relied on the judgment of the Supreme Court in the case of Karnataka Steel & Wire Products v. Kohinoor Rolling Shutters & Engg. Works ILR 2003 Kar. 177 . The learned Counsel for the respondent in support of his contention that it is not a mutual, open and current account with reciprocal demands, relied on three judgments namely, the judgment of the Supreme Court in the case of The Hindustan Forest Company Vs. Lal Chand and Others, , the judgment of Madras High Court in the case of Raju v. L. Kumaramuthu AIR 1975 Mad. 1 and the judgment of the Calcutta High Court in the case of Raghunath Shaw Vs. Kanai Lal Das and Others, and contend that Article 1 has no application.

7. Therefore, the short question that arises for my consideration is which is the Article that is applicable to the facts of this case, whether, Article 1 or Article 14 or 137?

8. In order to decide which Article applies we have to see the nature of the transaction, nature of the accounts maintained by the parties. It is the contention of the petitioner that Article 1 is attracted as the application is filed for the balance due on a mutual, open and current account. As such, the starting point of limitation would be three years from the date of close of the year in which the last item admitted or proved is entered in the account. If it is a mutual, open or current account, where there has been reciprocal demands between the parties, the last supply was on 14-2-1976 and 31-3-1976 being the close of the year, that would be the starting point of limitation. In which event, the claim made by the applicant would be well within time. Therefore, the entire case revolves round the question whether the accounts extract Ex. P-1 produced by the applicant satisfy the requirement of mutual, open and current account with reciprocal demands between the parties.

9. The Supreme Court in the case of Hindustan Forest Co. (supra), dealing with the mutual account has approved the following statement of law made by Halloway, A.C.J. in the case of Hirada Basappa v. Gadigi Mudappa.

"The requirement of reciprocal demands involves, transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations." (p. 1949)

10. The Madras High Court in the case of Raju (supra), has held as under:

"The mere striking of the balance after the parties have had a continuous dealing as between themselves cannot prima facie make that account a mutual, open and current account. The account may be open, but unless it is mutual it ceases to be a mutual open and current account. Unless it is established that during the dealings one party has become a creditor to the other and at another time the other party who was a creditor has become a debtor to the other which brings out the essence of mutuality in the accounts, it ceases to be a mutual open and current account." (p. 1)

11. Similar to the effect is the judgment of the Calcutta High Court in the case of Raghunath Shaw (supra), where it has been held that, the money paid towards the unpaid price and that date of payment was within the period of three years from the date of institution of the suit, such a payment, however, does not make the account a mutual, open and current account. The account was one sided and that was the Khata account of the plaintiff, where the transactions were regularly entered.

12. Therefore, mutual account means, that there must be transactions on each side, creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. The essential characteristic is, firstly, that there must be a mutual account and secondly there must have been reciprocal demands between the parties. The expression "mutual account" means an account in which two parties have agreed to bring together their items of debits and credits relating to their mutual dealings with a view to set them off against each other and arrives at a balance. Thus, there must be mutual dealings between the parties before there can be a mutual account between them. There must be independent obligations on both sides.

13. A "demand" in relation to a matter of account means a claim for money accruing out of a contractual business relationship between the parties. Where the dealings between the parties disclose a single contractual relationship, there will be demands only in favour of one of the parties. Where the dealings between the parties disclose two contractual relationship between the parties, there may arise demands in favour of each side against the other. The real test, therefore, to see whether there have been reciprocal demands in any particular case is to see whether there is a dual contractual relationship between the parties.

14. "Dual contractual relationship" means firstly that there should be two sets of independent transactions between the parties in one of which one of the parties should hold the position of debtor and the other that of a creditor and in the other, the reverse position. Secondly, that the dealings should disclose independent obligations on both sides and not merely obligations on one side, the acts done by the other being merely discharges of such obligations. Thirdly, each party must be able to say to the other that he has an account against him.

15. An open account, means an account which has not been closed by settlement or otherwise, that is where the balance is not ascertained or though ascertained has not been admitted or acknowledged by the parties. Thus, even if the dealings between the parties may have stopped, an account may be open so long as there has been no adjustment or settlement between them.

16. A current account means an unclosed account where the parties contemplate the continuance in future of the dealings between them. An open and current account means, therefore, a running, unsettled or unclosed account.

17. In the instant case, the accounts extract shows the Company under liquidation was supplying goods under invoices to the respondent time to time. The respondent was making payment as against the said supplies. At no point of time, the Company under Liquidation was a debtor of the respondent. Throughout, it was the respondent who was a debtor of the Company under liquidation. Therefore, there was no reciprocal demands between the parties. Therefore, the accounts extract Ex.P-1 produced in this case do not constitute mutual, open and current account with reciprocal demands between the parties. In that view of the matter, Article 1 has no application and therefore 14-2-1976 or 31-2-1976 cannot be taken as the starting point of the limitation.

18. If Article 1 has no application which is the other Article which applies to the application is to be considered. Article 14 on which reliance was placed by the respondents provides for period of limitation for suits for recovery of the price of the goods sold and delivered where no fixed period of credit is agreed upon. In such suits the time begins to run from the date of delivery of the goods and three years is the period prescribed. As the present application cannot be considered as a suit for recovery of the price of the goods sold and delivered, the said Article also has no application. There is no specific provision provided under the third division applications providing the period of limitation. Therefore, it is the residuary Article 137 which applies to the facts of the case. It provides three years from the day when the right to apply accrues when no period of limitation is provided elsewhere in this division. Therefore, when goods are supplied to the respondent Company under liquidation, the date on which the goods were delivered to the respondents under each of the invoices is the starting point for limitation for the purpose of recovery of the amount due under such invoice.

19. If we look into these invoices which are marked, it is clear that except the amount covered under Exs. P-34, 36, 47, 48, 49, 91 and 92 in all amounting to

Rs. 15,719.76, only is within time and rest of the amount due under other invoices are clearly barred by time.

20. In fact, Supreme Court in the case of Karnataka Steel & Wire Products (supra) dealing with this point has held as under :

"On a plain reading of the provisions contained in Section 458A of the Companies Act, it is crystal clear that the aforesaid provision merely excludes the period, during which a company was being wound up by the Court from the date of the commencement of the winding up till the order of winding up is made and an additional period of one year immediately following the date of the winding up. In other words, in respect of a legally enforceable claim, which claim could have been made by the company on the date on which the application for winding up is made, could be filed by the official liquidator by taking the benefit of Section 458A of the Companies Act and getting the period of four years to be excluded from the period of three years, as provided under Article 137 of the Limitation Act. The Legislature, by way of an amendment brought into force the provisions of Section 458A, so that an official liquidator, who is supposed to be in custody of the assets and liability of the company, would be able to file a claim on behalf of the company, which was legally enforceable on the date of the winding up, after excluding the period, indicating under section 458A of the Companies Act, so that the company or its shareholders will not suffer any loss. But by no stretch of imagination, the said provisions contained in Section 458A can be construed to mean that even a barred debt or a claim which was not enforceable on the date of the winding up, would stand revived, once a winding up application is filed and order is made by virtue of Section 458A of the Companies Act. We, therefore, affirm the view then by the Karnataka High Court under the impugned judgment and dismiss these appeals."

21. So, in view of the aforesaid judgment three years plus one year namely four years from the date of starting point of the cause of action, the limitation is to be computed. Except, aforesaid invoices, all other invoices under which the amounts are due are clearly barred by time.

22. Though the interest claimed in the legal notice is 6%, the interest at 12% is claimed in the application based on the contract between the parties. In view of the fact the contract is not in dispute and the rate of interest mentioned is 12% on the outstanding amount from the date of delivery, though 6% is claimed in the notice, the applicant is entitled to 12% interest in law after the expiry of 30 days of the delivery under the aforesaid invoices. In that view of the matter, I pass the following order :

Application is partly allowed. The respondent is directed to pay a sum of Rs. 15,719.76 with interest at 12% p.a. after the expiry of 30 days from the date of delivery under the aforesaid invoices till the date of payment. No costs.