

(1982) 02 KAR CK 0008

In the Karnataka High Court

Case No : Company Application No's. 44 and 172 of 1980 in Company Petition No. 3 of 1977

Navjeevan Enterprises (Mysore) P. Ltd. (In Liquidation)

APPELLANT

Vs

T.N. Ramalingaiah and Another

RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:

Companies Act, 1956 — Section 446 (2) (b), 458 A
Limitation Act, 1963 — Section 137

Citation : (1985) 58 CompCas 217 : (1982) 2 KarLJ 88

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : S. Vijayashankar, for the Appellant; Sathyanarayana Shetty, for the Respondent

Judgement

Chandrakantaraj Urs, J.—These two applications are by the official liquidator under s. 446(2)(b) of the Companies Act, 1956, read with r. 9 of the Companies (Court) Rules, 1959, praying for orders of this court directing the respondents to pay to him certain sums of money due by them to the company in liquidation (M/s. Navjeevan Enterprises (Mysore) P. Ltd., since ordered to be wound up by an order of this court dated January 6, 1978).

2. The facts alleged by the official liquidator in C.A. No. 172 of 1980 may be taken, as the first respondent in both the applications are common and evidence led in that application is to be treated as common to both the applications by consent of the parties. The first respondent, T. N. Ramalingaiah, was a subscriber to two chits in the company in liquidation which was carrying on business in chit fund transaction. In group NSD II, he had subscribed to chit No. 24 having a value of Rs. 5,000. At the auction held on September 10, 1973, he was the successful bidder in that group and he was paid the prize amount of Rs. 3,400 on October 13, 1973. He executed a promissory note for Rs. 3,400 in favour of the company agreeing to pay interest at the rate of 18 per cent annum. T. N. Sathyanarayana Shetty, the second respondent, joined the first respondent in the

execution of the pronote as a surety. The first respondent has subscribed Rs. 4,001.50 up to May 20, 1975, including the dividends due to him in respect of the chit in question leaving a balance of subscription in the sum of Rs. 998.50.

3. The official liquidator has claimed other sums as follows :

Rs. Bank charges 1.50 M.D. visit expenses 27.50 Registered notice 3.30 Lawyer notice charges 25.00 M.D. visit expenses 17.50 Interest up to 31-1-1975 489.00 Interest up to 30-6-1977 281.15 Interest at 18 per cent per annum from 1-7-1977 to 5-1-1978 90.00 Interest at 6 per cent annum from 6-1-1978 to 5-4-1980 135.00

4. Thus, the total claim is for Rs. 2,068.45.

5. Similarly, in C.A. No. 44 of 1980, the first respondent, Ramalingaiah, was also a subscriber to the chit in group NSE II and at the auction held on March 6, 1974, he was the successful bidder and was paid the prize amount of Rs. 1,200 on April 18, 1974, on which date he executed a promissory note with the second respondent, T. N. Sathyanarayana Shetty, joining him in the execution of the pronote as a surety.

6. In the second claim petition, the chit value is Rs. 2,500 and subscription paid by the first respondent up to February 11, 1975, is Rs. 1,900 leaving the balance of subscription at Rs. 600.

7. Other claims made are :

Rs. (1) Managing director's visit 27.50 (2) Lawyer notice charges 25.00 (3) Interest at 18 per cent annum from 12-2-1975 to 5-1-1978 313.00 (4) interest at 6 per cent annum from 6-1-1978 to 11-2-1980 75.00

8. Thus, the total claim is Rs. 1,041.

9. The respondents have entered appearance and contested the claims. In the statement of objections filed, the first respondent has admitted both the transaction in substance. He, however, denies the liability to pay interest and other charges claimed. He has also pleaded that the claims are barred by time as the claims are filed beyond three years from the dates of the pronotes. He has further pleaded that he is entitled to the relief under the Karnataka Debt Relief Act, 1980 (hereinafter referred to as "the KDR Act") within the meaning of that term as defined in that Act. The second respondent is common in both the applications.

10. On the above pleadings, the points for determination are :

(1) Are the claim applications barred by time ?

(2) Is the first respondent entitled to the protection of the KDR Act ?

(3) If respondents are liable to pay the claim, in what sums are they due ?

11. As the transactions were admitted, the first respondent has examined himself in support of his defence.

12. The first respondent, R.W. 1, has stated that he is presently residing at Bangalore with his brother. He has deposed that before coming to Bangalore he was residing at Sidlaghatta, Kolar District, doing silk business. He has stated that he lost heavily in business and life became very difficult and, therefore, he is dependent on his brother with whom he is staying. He has stated that he has no income whatsoever and no properties either. He admits having taken two chits in the company in liquidation. He admits having executed a pronote for Rs. 3,400 as per Exh. P-1 and another pronote as per Exh. P-5 for Rs. 2,500 relating to C.A. No. 44 of 1980. He admits having executed the said pronotes along with the second respondent. He also admits having executed the payment slips and consideration receipts in respect of both the transactions. However, he asserts on oath that there was no agreement to pay any interest in respect of the chit transactions. He has also produced the two pass books in respect of the two chits which have been marked as Exhs. R-1 and R-2. Exhibit R-1 relates to chit group NSD-II while Exh. R-2 relates to chit group NSE-II. The last closing entry on April 18, 1974, shows a sum of Rs. 2,000 While in Exh. R-2, the last entry on April 18, 1974, shows a sum of Rs. 1,100.

13. In the light of the admission, it is not necessary to question the transactions themselves, but as already noticed, the respondents have complained that the claim applications are barred by time. Their plea is that the claim is filed beyond three years from the dates of the respective pronotes and, therefore, barred by time, as the claim is essentially a suit based on the pronotes. This argument advanced by Shri Sathyanarayana Shetty, learned counsel for the respondents, is liable to be rejected. In the case of Syed Patel and Others Vs. N.H. Doddabasappa and Others, I have already held that an application under s. 446(2)(b) of the Companies Act for recovering the amounts due to the company in liquidation is not a suit and, therefore, not covered by the relevant entry in the Limitation Act governing the filing of suits in civil courts. On the other hand, I have held in that circumstance, that the proper article to be applied in the case of an application by the official liquidator under s. 446(2)(b) of the companies Act, is the residuary article 137 of the Limitation Act. I have also held that under s. 458A of the Companies Act read with art. 137 of the Limitation Act, the official liquidator has four years" time from the date of the winding-up order to present an application under s. 446(2)(b) of the Companies Act for recovering debts and other monies due to the company in liquidation. In this view of the matter, this plea of the respondents is rejected.

14. Next point for determination is whether the first respondent is entitled to the relief under the KDR Act. In the said Act, by s. 3, it is provided that every debt incurred by a debtor as defined in that Act stands wiped out with effect on and from the date of the commencement of that Act and the civil courts are barred to entertain any suit or other proceedings against the debtor or his surety for the

recovery of any amount of such debt. Under sub-s. (5) of s. 2 of the KDR Act, "debt" means any liability in cash or in kind whether secured or unsecured and whether decreed or not and includes any interest due on such debt. Similarly, the term "debtor" is also defined under sub-s. (6) of s. 2 of the KDR Act. A "debtor" includes a landless agricultural labourer, a person belonging to the weaker sections of the people and a small farmer. Under sub-s. (11) of s. 2 of the KDR Act, "weaker section of the people" is defined to mean and include persons whose annual income from all sources does not exceed four thousand and eight-hundred rupees. By s. 6(2) of the KDR Act, it is provided that in a suit or other proceeding in court, the burden of proof as to whether a person is debtor or not shall lie on the creditor. In the instant case, the first respondent on oath has stated that he has no income whatsoever and no properties whatsoever since he has closed his business on account of losses sustained by him. The official liquidator has not led any evidence to discredit the statement of the first respondent in this behalf. In fact, the official liquidator has been content with cross-examination of the witness and no evidence whatsoever is led except to obtain admissions in respect of the suit pronotes, Exh. P-1 and Exh. P-5, and other documents connected therewith. Therefore, it is necessary to hold that the first respondent answers to the description and definition of a debtor in the KDR Act.

15. The question is whether on that account the first respondent is entitled to the benefit of s. 3 of the KDR Act. I see two difficulties in the way. First, in the aforementioned case, Syed Patel and Others Vs. N.H. Doddabasappa and Others, I have already held that a company court is not a civil court, in the sense, a civil court is normally understood and as defined in the CPC. The power exercised by this court under s. 446 of the Companies Act is a special power and the court functions as a company court. While it may enjoy all the powers of civil court or for that matter of criminal court in certain circumstances, it is yet not a civil court. The bar for entertaining any suit or other proceeding under s. 3(b) of the KDR Act is in regard to civil court and not to any other court.

16. Next, it is seen that in the KDR Act, by s. 10, it is provided that certain debts and liabilities shall not be affected and it is as follows :

"Certain debts and liabilities not to be affected. - Nothing in this Act shall apply to the following categories of debts and liabilities of a debtor, namely :- ...

(e) any liability incurred or arising under any chit the bye-laws of which have been registered."

17. Unfortunately, this section is not at all clear and the draftsman appears to have overlooked something and it is difficult for this court to supply what he has overlooked. The intention of the Legislature is clear that liability incurred in or arising out of any chit transaction should not be affected by the other provisions of the KDR Act, on the condition that the bye-laws of such institution carrying on chit transactions should have been registered. No indication is given as to what

the bye-laws are and with whom they should be registered. In the instant case, the chit transaction was organised by a private company registered and incorporated under the Indian Companies Act. Normally understood, a company is required to register its memorandum and articles of association which the company in liquidation had done. In some other States, the chit transactions are governed by a specific law regulating such chit fund transactions by individuals, companies or co-operative societies, etc. But, neither the counsel for official liquidator nor the respondents' counsel has brought to my notice any law in the State of Karnataka which regulates chit fund transactions under which any bye-laws in that behalf are required to be registered. Therefore, giving the widest possible meaning to the term "bye-laws" occurring in sub-s. (1) of s. 10 of the KDR Act, it is reasonable to construe that the registration required would be in respect of the institution organising the chits and bye-laws has only reference to the memorandum and articles of association of a company or cooperative society which may carry on that activity, as there is no prohibition either in the Karnataka Co-operative Societies Act or the Companies Act for carrying on chit fund activities. I must, at the cost of repetition, say that while the Legislature appears to have the clear intention to exclude the liability incurred on account of chit transactions to be outside the purview of the KDR Act, it is advisable to clearly state so by properly providing for the same instead of the manner in which it has been done. In the view I have taken, the KDR Act itself provides a clear answer to the defence set up by the respondents and, therefore, their plea that they are entitled to the benefit of the KDR Act is also liable to be rejected.

18. There is yet another reason which comes in the way of the respondents seeking the protection of the KDR Act. More than one High Court has taken the view that a liability of a subscriber to a chit is not a debt. In the case of *Margadarsi Chit Fund P. Ltd. v. Jogi Krishnamurthy*, the learned single judge of the Andhra Pradesh High Court held therein as follows (headnote) :

"The definition of "debt" in the Andhra Pradesh Agricultural Indebtedness (Relief) Act is an inclusive one. The object is to expand its meaning and field but the expression does not lose its original and natural meaning. There must be, broadly speaking, the relationship of creditor and debtor. In the case of a chit fund transaction, the relationship between the stake-holder, foreman and the subscriber is not that of a creditor and debtor. A chit fund is an organisation of a number of people who join together and subscribe amounts periodically so that that person or the subscriber who is in need of funds may draw the amount less discount. It is an organisation run on a co-operative basis for the benefit of the subscribers.

The Andhra Pradesh Chit Funds Act, 1971, only regulates the chit fund organisations in the State of Andhra Pradesh and it does not alter or modify the essential nature of a chit transaction. The function of the foreman or stakeholder, by whatever name he is called, under the chit fund scheme is only to organise the chit fund transaction. The money lent to the subscriber in the

course of the transaction is not the foreman's money. The relationship that exists between the foreman and the subscriber is not that of creditor and debtor; consequently, the provisions of the Andhra Pradesh Agricultural Indebtedness (Relief) Act (which provides for abatement of certain debts due from small farmers, agricultural labourers and rural artisans) do not apply to the amounts due from the subscribers to the chit fund organisation."

19. The definition of the term "debt" in the Andhra Act which fell for consideration by the learned judge is not very different from the definition of that term in the KDR Act and it is as follows :

"(i) "debt" includes any liability owing to a creditor in cash or in kind, whether secured or unsecured payable under a decree or order of a civil court or otherwise and subsisting at the commencement of this Act, but does not include - ..."

20. Similarly, in the case of Narayana Prabhu and Others Vs. Janardhana Mallan and Others, , a Division Bench of the Kerala High Court, when a similar question arose as to whether a chit transaction was a debt or not, held as follows (headnote) :

"The normal incidents of a kuri chit transaction are that the chitty foreman and the subscribers enter into a contract whereby the subscribers oblige themselves to pay subscriptions in stated instalments and the foreman obliges himself to pay the prized amount when once the chitty is prized by the subscriber at any instalment. Even when he is a prized subscriber, he has the same obligation to pay future subscriptions arising, not by reason of the fact that he has prized the kuri, but because of the contract entered into by him with the foreman to pay such subscriptions whether the kuri is prized or not. Subscription paid by the prized subscribers are not in discharge of the liability for the prized amount because the prize amount is received by the subscriber as of right and not as a loan. The liability to pay future subscriptions in terms of the kuri variyola is only reinforced by the execution of the security bond. Quite often the amount of the security bond may bear no relation to the prize amount. The security bond is only for securing future subscriptions. It is appropriate to treat the obligation to pay the future instalments as only an obligation arising under the contract of kuri. In this view, it cannot be said that there is a debt owing from the subscriber to the foreman because of the execution of the security bond. It cannot be said that the prize amount received by him is a debt due from him to the foreman. The debt would arise only as and when the instalment falls due and remains unpaid.

In the case of a prized subscriber, the payment of future subscriptions is not repayment of the prize amount and consequently there is no debt arising merely by reason of the obligation to pay future subscriptions.

A security bond executed for the payment of future instalments can not, therefore, be said to be for an antecedent debt."

21. This conclusion was reached by the Division Bench of the Kerala High Court after fully examining the decision of the Madras High Court which had taken a different view. Having regard to the object of organising chit funds, involvement of poor people with meagre income and great ambition and the nature of the transaction itself, I am inclined to agree with the view expressed by the learned judge of the Andhra Pradesh High Court and the learned judges of the Division Bench of the Kerala High Court. It cannot be said that participation in chit transactions creates on the part of the organisers and the prized subscribers, the relationship of debtors and creditors.

22. Holding on the two points discussed against the respondents, the third point for determination is what are the sums due by the respondents if they are not to get the protection under the KDR Act. As noticed earlier, the respondents have denied their liability of claims other than the balance of subscription due by them. It is noticed of claims other than the balance of subscription due by them. It is noticed that claims are made under various heads such as bank charges, managing director's visit expenses, registered notice, lawyer notice, interest up to January 31, 1975, and interest up to June 30, 1977, amounting in all to Rs. 844.95. On what basis this is claimed to be part of the dues in respect of these transactions is neither pleaded by the official liquidator nor proved. If there was any charge for issuing notices after the winding up order was made, the official liquidator would have been entitled to that. But, though notices have been sent, he has not claimed any charges for it. Therefore, the above charges amounting to Rs. 844.95 should be rejected for want of pleadings as well as proof. However, as is customary in chit transactions, the defaulting subscriber is bound to pay interest at the contracted rate which is indicated in the pro-note from the date of his last default till the date the court makes the winding-up order and thereafter from the date of the winding-up order at the statutory rate. This would be the same position in C.A. No. 44 of 1980. Therefore, the respondents will be liable to pay interest in both the claims from the date of last default at the rate of 18 percent per annum and at 6 per cent. per annum after the date of winding-up order till date of application and continue to pay interest at 6 per cent per annum till the date of realisation.

23. Therefore, the claim is disallowed to the extent indicated, i.e., in the case of C.A. 172 of 1980, a sum of Rs. 844.95 is disallowed and interest will be calculated afresh from May 21, 1975, till date of winding-up order at 18 per cent per annum and at 6 per cent per annum from January 6, 1978, to April 5, 1980. Similarly, in C.A. No. 44 of 1980, the claim of Rs. 450 is disallowed for want of pleadings and proof. However, interest in the same manner as in C.A. No. 172 of 1980 may be calculated from the date of default by the subscriber till date of the winding-up order at 18 per cent per annum and thereafter at 6 per cent per annum from date of winding-up order till date of application on the balance of subscriptions due.

24. In the light of my above conclusions, the respondents are jointly and

severally liable to pay the claim in these two applications in the manner I have indicated above. In the instant case, there will be no order as to costs, though the applications are allowed. Ordered accordingly.