
(1977) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : C.P. No. 105 of 1973

Official Liquidator, Punjab Finance Pvt. Ltd. (In Liquidation)	APPELLANT
Vs	
Mohan Lal and Another	RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Companies Act, 1956 — Section 446(2), 458A, 468
Limitation Act, 1963 — Article 37, 70

Citation : (1978) 48 CompCas 271

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : J.S. Narang and Deputy Official Liquidator, for the Appellant; Sarwan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Lal, J.—This is a claim petition u/s 446(2) read with Section 468 of the Companies Act, 1956 (hereinafter to be called " the Act"). for the recovery of Rs. 7,518 26.

2. Punjab Finance Pvt. Ltd., with its registered office at Jullunder city (hereinafter to be called " the petitioner "), was ordered to be wound up by the order of this court, dated January 7, 1971, and the present petition has been filed on its behalf by the official liquidator.

3. Mohan Lal, respondent No. 1, took a loan of Rs. 2,500 from the petitioner on September 11, 1965, and executed a pronote as well as an agreement of pledge whereby the motor vehicle (tempo) No. PNH 2239 was pledged with the petitioner on September 11, 1965, for Rs. 2,797.50 comprising of principal, interest and finance commission. The said amount was payable by respondent No. 1 in six instalments. The first instalment of Rs. 466 was payable on March 20, 1965, and the subsequent instalments were to be paid monthly on the 20th of each month commencing from November 20, 1965. The last and the sixth instalment comprising of Rs. 467.50 was payable on March 20, 1966. Darshan

Lal Bahri, respondent No. 2, executed the said agreement as guarantor. Respondent No. 1, however, did not pay any instalment. An amount of Rs. 5,569.11 was due from him on March 31, 1970. Interest amounting to Rs. 1,949.15 for the period from April 1, 1970, to February 28, 1973, at the rate of 12 per cent, per annum was also payable by him. According to the averments in the claim petition, the cause of action accrued to the petitioner on May 12, 1971, against respondent No. 1 and on January 22, 1973, against respondent No. 2, on which dates demand was made by the petitioner on the two respondents respectively. It was further pleaded that after excluding the period taken in the winding-up proceedings from September 5, 1968, to January 7, 1971, and a further period of one year as provided u/s 458A of the Act, the claim petition was within limitation. It was also averred that registered A.D. notices, dated May 12, 1971, and January 22, 1973, had been sent to respondent Nos. 1 and 2 respectively.

3. Both the respondents, after notice, filed a joint written statement in which the receipt of loan of Rs. 2,500 by respondent No. 1 was admitted, but the execution of the agreement of pledge was denied. It was, however, contended that after one month the motor vehicle in question had been taken into possession by the petitioner but the sale proceeds of the same had not been adjusted against the loan taken by the respondent. It was further alleged that the claim petition was barred by limitation.

4. On the pleadings of the parties the following issues were framed :

1. Whether the claim petition is within time?

2. Whether the agreement of pledge of motor vehicles was not executed by the respondents ? (Burden of proof of this issue has been put on Mohan Lal, respondent, as he has signed the written statement in Hindi, whereas the document in question is typed in English and it is not the case of this respondent that he does not know English. Counsel for this respondent admits that his client knows English and can sign in English).

3. Whether Tempo No. PNH 2239, Engine No. 117472, and Chassis No. 461203 was taken into possession by the company about one month after the payment of rupees two thousand five hundred had been made to the respondents ?

4. If the preceding issue is proved, did the petitioner return the vehicle in question to respondent No. 1 and adjust its price or sale proceeds in favour of the respondents ? To what amount, if any, is the petitioner entitled on account of principal and interest ?

5. Relief.

5. Subsequently, issue No. 2 was recast by the order of Sharma J. dated December 6, 1974, and the onus was placed on the official liquidator. Main arguments were addressed by both sides on the question of limitation regarding issue No. 1, which shall be dealt with a little later. In the first instance, issues No.

2, 3 and 4 may be disposed of. Issue No.2

6. Execution of the hire purchase agreement described as agreement of pledge of the motor vehicle (exhibit P-1) is proved by Kanwar Sain (P.W. 1). According to him it was signed by respondent No. 1 as hirer and by respondent No. 2 as guarantor, and that the loan of Rs. 2,500 was obtained by respondent No. 1 on its basis. Respondent No. 1 had agreed to pay a sum of Rs. 2,792.50 through five equal instalments of Rs. 466 and the last instalment of Rs. 467.50 was to be paid thereafter. Respondent No. 1 had pledged his vehicle as security, the details of which were entered in the said agreement. The account was opened in the account books of the petitioner and its copy is exhibit P-2. It was also stated that respondent No. 1 had not paid any instalment. Shri K.S. Mathra Das, managing director of the petitioner, also corroborated this statement as P.W. 1. He further stated that he had not signed this agreement himself. In his statement Mohan Lal, respondent No. 1, did not deny the execution of the agreement exhibit P-1. He admitted that he had not paid any instalment. Thus issue No. 2 is decided in favour of the petitioner and it is held that the agreement of pledge, exhibit P-1, was executed by respondent No. 1 as hirer and by respondent No. 2 as guarantor. Issues Nos. 3 & 4

7. These relate to the same matter and are dealt with together. Mohan Lal, respondent No. 1, stated as R.W. 1 that a month and a half after the taking of the loan from the petitioner, the tempo in question, pledged with the petitioner, had been taken into possession by the petitioner, and subsequently, he was not told as to for what amount the same had been sold. It was further stated that the tempo had been taken into possession by the son of Dewan Mathra Das and a driver but he was not in a position to tell the name of the said son. He admitted that he had not taken any receipt for the delivery of the tempo. He had gone to the office of the petitioner in February or March, 1966, to enquire about the sale proceeds of the said tempo, but he did not find anybody there. After that he did not keep track and, according to him, he could not do so on account of the circumstances beyond his control. Besides his bald statement there is no evidence to prove the capture of the tempo by anybody on behalf of the petitioner or its sale by the latter. The same is denied both by P.W. 1 and P.W. 2. In these circumstances, it is not possible to hold that the tempo or the motor vehicle which had been pledged by respondent No. 1 with the petitioner had been taken into possession by the latter at any time. As such the question of its sale by the petitioner does not arise. Issues Nos. 3 and 4 are thus decided against the respondents.

8. Issue No. 1

9. It is the admitted case of the parties that the loan of Rs. 2,500 was obtained by respondent No. 1 on September 11, 1965, against the security of a motor vehicle known as tempo and the agreement, exhibit P-1, was executed therefor. According to the terms of this agreement, the first instalment of loan was payable on October 20, 1965. Thereafter, each instalment was to be paid on the

20th of each month and the last instalment was payable on March 20, 1966. According to Clause (b) of this agreement, respondent No. 1, who was described as borrower, was entitled to retain the motor vehicle as a bailee on behalf of the company. According to Clause (i), in case of failure or default on the part of the borrower in the payment of any of the instalments, the petitioner was entitled to take possession of the motor vehicle as its pawner and could realise the amount by selling or auctioning the motor vehicle after giving one week notice to the borrower, respondent No. 1. It was also stipulated that the petitioner was entitled to waive his right in case of any default. According to the learned counsel for the petitioner, the petitioner could wait till the last default had been made. The last instalment was payable on March 20, 1966, As none of the instalments was paid, the petitioner was within his right to wait till March 20, 1966. The petition for winding up the company was admittedly filed on September 5, 1968, and the winding-up order was passed on January 7, 1971. u/s 458A of the Act, in cases of companies under liquidation, the period taken in the winding up proceedings and one year in addition, after the winding up order is passed, is to be excluded for the purpose of determination of the period of limitation. Thus, the petitioner was entitled to exclude the period between September 5, 1968, and January 7, 1972. If the cause of action accrued to the petitioner on March 20, 1966, when the last payment due was not made, up to the commencement of the winding-up proceedings a period of two years five months and fourteen days had elapsed. The present petition was filed on March 28, 1973. Thus, it is clear that up to the date of filing the present claim petition, more than three years had elapsed even if the period as envisaged u/s 458A of the Act is excluded. According to the learned counsel for the petitioner, Article 70 of the Limitation Act is applicable to the facts of the present case. Article 70 is to the following effect :

Description of suit

Period of limitation

Time from which period begins to run

70.

To recover movable property deposited or pawned from a depository or pawnee.

Three years.

The date of refusal after demand.

10. Perusal of the above Article shows that this provision is applicable only if the suit or the petition is for recovery of movable property or articles deposited or pawned. It is contended by the learned counsel for the petitioner that according to the agreement, exhibit P-1, though the motor vehicle pledged belonged to respondent No. 1, yet the same was transferred to the latter as a bailee or pawnee and the position of the petitioner was of bailor, pawner or depositor. Though the cumulative effect of the various terms and conditions incorporated in the agreement, exhibit P-1, does warrant this conclusion that respondent No. 1

was only a bailee regarding the vehicle, as the loan had not been paid, yet in the present case the petition is not for the return of the vehicle but it is only for recovery of the loan, Though it is mentioned in para. 5 of the petition that in terms of the agreement the petitioner is entitled to capture, seize or dispose of the vehicle entrusted to the respondent, yet the fact stands that the petition is only for recovery of the loan and interest, and the only other prayer towards the end is that orders of attachment of the vehicle may also be passed. In my considered opinion, the petition as it stands cannot be construed as for the return of the vehicle.

11. The learned counsel for the petitioner then contended that u/s 468 of the Act, a petition can be filed at any time without the bar of limitation against the trustee of a company. It is urged that according to the conditions in the agreement, exhibit P-1, the position of respondent No. 1 was that of a bailee or a pawnee and as such his status was that of a trustee. It has been further contended that as held in *Bharat Traders Ltd. (In liquidation) v. S. Sadhu Singh* [1968] 38 Comp Cas 537 (P&H) a claim petition against a trustee u/s 468 of the Act is not subject to the law of limitation. However, it is not necessary to go into this aspect of the matter in this case because the question of trustee would arise only if the petition had been for return of the motor vehicle, of which possession was given to respondent No. 1 as a bailee or a trustee.

12. Now the question for consideration is as to which Article of the Limitation Act is applicable in the circumstances of the present case. Undoubtedly, the claim petition is for the recovery of the loan against the motor vehicle in question which had been pledged as a security, and the loan could also be recovered by seizure and sale of the said vehicle. If the claim petition is to be treated as one for the recovery of the loan simpliciter advanced by the petitioner to respondent No. 1, then Article 19 of the Limitation Act will be applicable under which the period prescribed is three years and the time begins to run from the date of the loan. In the present case, the loan was payable by instalments and the petitioner was also entitled under the conditions of the agreement, exhibit P-1, to ignore one or more default in payment by the borrower and to wait till the last default had been committed. In such a case Article 37 of the Limitation Act will be applicable and the period of limitation is three years from the date of default, and if the claimant wants to ignore the default, then from the date when fresh default is made. According to the learned counsel for the respondents, as the loan had been advanced against the security of a vehicle which had been pledged with the petitioner, the residuary Article 113 of the Limitation Act will be applicable. Reliance in this respect has been placed on *Sangarmal Sowcar v. K. Murugesu Naicker* AIR 1964 Mad 17 *Mahalinga Nadar v. Ganapathi Subbien* ILR [1904] Mad 528 [FB] and *First National Bank Ltd. v. Mandi (State) Industries Ltd.* [1957] 59 PLR 588 (Punj). Even under this Article the period of limitation is three years and the time begins to run from the date of right to sue accrues. In the present case, the right to sue accrued on March 20, 1966, when the last instalment due from respondent No. 1 was not paid and the default was

committed. After excluding the period as provided u/s 459A of the Act, more than three years had elapsed on the date when the claim petition was filed. Thus, whichever Article of the Limitation Act is held to be applicable to the facts of the present case, the claim petition was filed beyond limitation. Consequently, this petition is dismissed as barred by time, with no order as to costs.