(1985) 07 RAJ CK 0029

In the Rajasthan High Court

Case No : Miscellaneous Co. Application No. 60 of 1981

Official Liquidator APPELLANT

Vs

Gulab Chand Khan Chand RESPONDENT

Date of Decision : 12-07-1985

Acts Referred:
COMPANIES ACT, 1956 — Section 446, 458A, 477

Citation : (1986) 1 WLN 778

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Judgement

Suresh Chandra Agrawal, J.—This application has been filed by the Official Liquidator under Sections 446 and 477 of the Companies Act, 1956 which relates to M/s Ganpathy Savings & Finance Co. (P) Limited in liquidation (here in after referred to as ''the Company in liquidation'').

2. The Company in liquidation carried on business of financing and in connection of the said business, it used to advance loans. In the application it has been stated that the Company in liquidation advanced a sum of Rs. 13,000/- to respondent No. 1 on various dates and the interest payable on the said loan was 18% per annum. Out of the said sum of Rs. 13,000/- respondent No. 2 had stood surety to the extent of Rs. 9,000/- in respect of three loans of Rs. 3,000/- each. Details of the loans advanced by the company in liquidation to the respondent are as under:

3. On 16th October, 1978 the petition for winding up of the Company was submitted in this Court and Official Liquidator was appointed as provisional liquidator by order dated 29th Jan., 1979. By order dated 19th December, 1980 an order was passed for the winding up of the company. On 2nd September, 1981, this application has been filed. In the application the Official Liquidator has claimed a sum of Rs. 15,575/- amount due on account of principal, and interest upto 29th Jan., 1979 and has claimed further interest at rate of 12% per annum on the aforesaid amount till the date of payment.

4. Notices were issued of this application to the respondents. Respondent No. 2 even though duly served, did not appear. Respondent No. 1 has, however, filed a reply. In the said reply it has been admitted that the total amount of Rs. 13,000/- on various dates was received by respondent No. I. It has, however, been asserted that against the aforesaid amount of Rs. 13,000/- respondent No. 1 has deposited a sum of Rs. 8,890/- details of which are set out in Schedule attached to the reply and it has been submitted that respondent No. 1 is entitled to set off the amount so deposited. An objection has also been raised in the said reply that the claim made by the Official Liquidator is barred by Limitation. A rejoinder has been filed by the Official Liquidator wherein it has been stated that respondent No. 1 has not paid anything against the loan and that respondent No. 1 is not entitled to claim any set off against the said loan. It has also been stated that the claim is not barred by limitation and in that connection reliance has been placed on the letter dated January 20, 1981 addressed by Shri Tarachand Shivnandi Advocate to Official Liquidator which is annexed as Annexure Rule 1 to the rejoinder.

5. I have heard Shri Pareek on behalf of Shri R.D Purohit in support of the application and Shri R.S. Mehta, learned Counsel for respondent No. 1.

6. The first question which needs to be determined is as to whether the claim or any part of it is barred by limitation. In so far as loans which are covered by receipts IA, IB, IC and ID are concerned, it may be mentioned that all those loans were advanced from 18th February, 1975 to 3rd October, 1975 and the period of limitation for filing the suit for the recovery of the said loans had expired before 16th October, 1978, the date on which the winding up petition was filed in this Court. In respect of these loans, provisions of Section 458A of the Companies Act cannot be invoked, provisions of Section 458A would, however, be applicable in respect of loans which were advanced vide receipts IE, IF, IG and IH. The said loans were advanced from 11th June, 1976 to 15th November, 1977 and the period of limitation for filing of the suit has not expired on the date of filing of the winding up petition. So far as these loans are concerned, the petition can not be said to be barred by limitation because this application was filed on 2nd September, 1981 within one year from 19th December 1980, the date on which the winding up order was made.

7. With regard to the loans covered by receipts IA, IB, IC and ID, Shri Pareekh has submitted that the application for recovery of said loans was also not barred by limitation in view of the letter dated 20th January, 1981 addressed by Shri Tarachand Shivnani to Official Liquidator, in as much as the said letter constitutes an acknowledgement on the part respondent No. 1 of his liability and the period of limitation is extended by the aforesaid letter. In my opinion the aforesaid letter does not render any assistance to Shri Pareekh in as much as on the date on which the said letter was addressed, the debt covered by receipts IA, IB, IC and ID had become time barred and there was subsisting liability in respect of the said debt. It is settled law that an acknowledgement can only be made of an

existing liability. More over, if the letter is perused, it will show that in the said letter, it has been clearly mentioned that the loan claimed by the Official Liquidator is time barred and thereafter it has been stated that respondent No. 1 is very poor and his financial position is not good and that he wanted to deposit after adjustment any remaining amount in instalments. In view of the definite statement that the amount claimed is time barred the present letter cannot be regarded as acknowledgement of the loan by respondent No. 1. It must therefore, be held that the loans covered by receipts IA, IB, IC and ID are barred by limitation and claims covered by IE, IF, IG and IH for Rs. 10,000/- are within limitation.

8. Shri Mehta has submitted that respondent No. 1 is entitled to claim set off in respect of a sum of Rs. 8,890/- deposited with the company in liquidation and in this connection he has invited my attention to Schedule I annexed with the reply. The said schedule shows that the said amount of Rs. 8,890/- has not been deposited by respondent No. 1, but it has been deposited by some other persons in their Khatas.In Company application No. 39 of 1981, Official Liquidator v. Pushamal, decided on 8th February, 1985 reported in 1958 RLR 1038, it has been laid down that a member of a Savings and Finance Scheme can claim a set off of amounts deposited by him under that scheme against the loans that have been advanced to him, but no set off can be claimed in respect of the deposits made by other persons. In the present case the deposits in respect of which the set off has been claimed, have not been made by respondent No. 1, but have been made by other persons. No set off can be allowed in respect of the said deposits.

9. In the circumstances, the application is partly allowed to the extent of Rs. 10,000/- and payment order for Rs. 10,000/- with interest at rate of 18% per annum upto 29th January, 1979 and further interest at rate of 12% per annum till date of payment is passed in favour of the applicant and against the respondents subject to the condition that respondent No. 2 would be liable to the extent of Rs. 9,000/-. No order as to costs.

