

(1968) 11 KL CK 0015

In the High Court Of Kerala

Case No : Application No's. 166 and 167 of 1968 in B.C.P. No. 4 of 1962

Official Liquidator, Central Banking Corporation of Travancore
Ltd.

APPELLANT

Vs

Dr. K. Ramakrishna Pillai and Others

RESPONDENT

Date of Decision : 19-11-1968

Acts Referred:

Banking Regulation Act, 1949 — Section 45H
Companies Act, 1956 — Section 543(1), 543(2)
Limitation Act, 1963 — Article 137, 29(2), 5

Citation : (1968) 11 KL CK 0015

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : Mani J. Meenattoor, for the Appellant; S. Easwara Iyer, L.G. Potti, C.S. Rajan, E. Subramaniam, C.M. Devan, K.N. Parameswaran Pillai, K. Velayudhan Nair, V.S. Moothath, N.R.K. Nair, K.J. Joseph, T.K.M. Unnithan, N. Raghava Kurup, M.S. Narayana Pillai, P.K. Kesavan Nair, K.N. Narayana Pillai, V. Rama Shenoi, R. Raya Shenoi, C.K. Sivasankara Panicker, P.G.P. Panicker, T.A. Narayanan Nair, V. Bhaskara Menon, D. Narayanan Potti, V.K.K. Menon, M. Ramachandran, C.J. Balakrishnan, C.S. Venkiteswara Iyer, T.L. Viswanatha Iyer, K.N. Narayanan Nair and C.R. Panicker, for the Respondent

Final Decision : Dismissed

Judgement

P.T. Raman Nayar, J.—I have little doubt that Section 5 of the Limitation Act, 1963, applies in a case like this ; and, were I satisfied that there was sufficient cause within the meaning of that section, I would have allowed this application made thereunder. But, I am not so satisfied and must, therefore, dismiss the application.

2. The proceeding instituted out of time is an application u/s 543 of the Companies Act, 1956, read with Section 45H of the Banking Regulation Act, 1949, against the directors and other officers of a banking company that is being wound up. The application is by the liquidator of the company. So far as the

directors are concerned, the period of limitation is prescribed by Sub-section (2) of Section 450 of the Banking Regulation Act, and, so far as the others are concerned, by Sub-section (2) of Section 543 of the Companies Act. Sub-section (2) of Section 450 of the Banking Regulation Act reads thus :

"(2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908), or Section 543 of the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied ; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer. "

3. And Sub-section (2) of Section 543 of the Companies Act reads thus :

"(2) An application under Sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer. "

4. The first appointment of the liquidator in the winding up in this case was on May 28, 1962, and the present application is made on the basis that this is the starting point for limitation both against the directors and the other officers, providing, as it does, the longer of the periods (strictly speaking, the period that expires latest) mentioned in the statutes. Therefore, the misfeasance application ought to have been instituted on or before May 28, 1967, both against the directors and the others, but it was instituted only on July 29, 1968.

5. Unlike the Indian Limitation Act, 1908, which contained no residuary provision (like Article 120 in respect of suits) in so far as applications were concerned--Article 181, it may be recalled, was authoritatively construed as confined to applications under the Code of Civil Procedure--the Limitation Act, 1963, in deliberate departure from the earlier statute, has placed Article 137 in a separate part, Part II of the Third Division, making it abundantly clear that its operation is not to be limited, by an application of the ejusdem generis or the noscitur a sodis rule, to applications of the nature specified in Part I of the Division--see in this connection P.K. Porwal (By Manager) Vs. Labour Court, Nagpur, which deals with this question very exhaustively, and, with great respect, gives very good reasons for holding that Article 137 of the Limitation Act, 1963, applies to all applications, under whatever law made, for which the preceding articles in the Third Division make no provision. Therefore, it follows that the period of limitation prescribed by the schedule to the Limitation Act, 1963, for a misfeasance application is three years from the date when the right to apply accrues. The period prescribed both by Sub-section (2) of Section 543 of the Companies Act and by Sub-section

(2) of Section 45-O of the Banking Regulation Act is different, being five years under the former or 12 years or five years from different starting points, whichever expires later, under the latter. There can be no doubt that the provisions for limitation in the Companies Act and the Banking Regulation Act are, so far* as limitation is concerned, special laws, the Limitation Act being the general law--see *Kaushalya Rani Vs. Gopal Singh*, ; and, that being so, every condition required for attracting Sub-section (2) of Section 29 of the Limitation Act, 1963, is satisfied. I am assuming, what I do not think is the case, that the condition mentioned in the first part of Sub-section (2) of Section 29 of the Limitation Act, 1963, governs the applicability of the second part of the sub-section. I think the two parts are independent provisions, notwithstanding the conjunction, " and ", and that, to attract the second part, the special or local law need not prescribe a different period of limitation. Else, the words, " for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law " occurring in the second part would be mere surplusage). Section 5 of the Limitation Act, 1963, is thus attracted along with the remaining Sections mentioned in Sub-section (2) of Section 29, and since, unlike the Act of 1908, this Act does not require that the section should, so far as applications other than those specified therein are concerned, be made applicable by or under any enactment, the result is that Section 5 is applicable in this case.

6. I am not impressed with the contention that the non-obstante Clause with which Sub-section (2) of Section 45O of the Banking Regulation Act opens, " Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 " (which must now be read as the Limitation Act, 1963) excludes the application of Section 5 of the Limitation Act, 1963, and is an express exclusion within the meaning of Sub-section (2) of Section 29 thereof so as to attract the words, "shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law" in that sub-section. For, all that Sub-section (2) of Section 45-O says is that the period of limitation in a case like the present " shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer ". And Section 5 of the Limitation Act does not say anything to the contrary so as to make the non-obstante clause, " Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 " operate to exclude the application of that section. For, the expression, " period of limitation ", is ordinarily understood as meaning the period of so many years or months or days prescribed by the law imposing limitation--see the definition in Clause (j) of Section 2 of the Limitation Act--not as meaning the period (computed in accordance with the provisions of the Limitation Act taking note of Sections 4 - 24 thereof, the " prescribed period " of Section 2(j) of that Act) after the expiry of which no proceeding may be brought.

7. I might add that if I were to accept this contention, it would lead to the absurd result that Section 5 of the Limitation Act would not be available as against the

directors, the persons primarily responsible, but would be available as against the others.

8. The argument founded, it is said, on *Thambu Devi Ram and Others Vs. Additional Director Consolidation of Holdings, Hissar and Others*, and the decision of the Supreme Court in Civil Appeal No. 1864 of 1967 *K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others*, , that the Companies Act and the Banking Regulation Act are, by themselves, complete and self-contained codes and, therefore, by necessary implication, exclude the application of the Limitation Act, so that there can be no question of Section 29 thereof, and through Section 29, Section 5 being attracted, impresses me even less. For, I do not for a moment think that these statutes are complete and exhaustive codes so far as limitation is concerned. Indeed, the non-obstante Clause already referred with which Sub-section (2) of Section 450 of the Banking Regulation Act, and the like clause, " Notwithstanding anything contained in the Indian Limitation Act, 1908" with which Section 458A of the Companies Act open, indicate that the provisions of the Limitation Act do apply except to the extent that they are ruled out by those provisions. All that Sub-section (2) of Section 450 of the Banking Regulation Act and Sub-section (2) of Section 543 of the Companies Act do, so far as limitation is concerned, is to prescribe a period of limitation different from that prescribed by the Limitation Act. If that were enough to make these statutes complete and exhaustive codes excluding the operation of the Limitation Act, Sub-section (2) of Section 29 of the Limitation Act would be an altogether meaningless and ineffectual provision.

9. Now for my reasons for holding that there was no sufficient cause within the meaning of Section 5 of the Limitation Act. The only cause pleaded by the liquidator is that he thought that, by reason of Section 458A of the Companies Act, " the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order " could be excluded, and it is claimed that it was the decisions in *Sailendra Nath Sinha v. Jasoda Dulal Adhikari* [1963] 33 Comp. Cas. 1181 and in *Shiam Lal J. Diwan v. U.P. Oil Mills Co. Ltd.*, [1933] 3 Comp. Cas. 365 that led him to think so. The commencement of the winding up in this case was on March 26, 1962, and the winding up order was made on May 28, 1962, and it is said that, if both the periods referred in Section 458A are excluded, the last date for bringing the application for misfeasance would be July 30, 1968. Now, it will be noticed that the first of the two periods, namely, the period from the date of the commencement of the winding up to the date of the winding up of the company, is a period anterior to the starting point for limitation, namely, May 28, 1962, the date of the first appointment of the liquidator in the winding up. How anybody could have thought that the exclusion of a period anterior to the starting point for limitation and which could, therefore, never be included, could have the effect of postponing the date within which a proceeding has to be instituted, I am quite unable to understand. And, whether or not the decisions referred to by the

liquidator could have possibly misled him into thinking that an application for misfeasance brought by a liquidator was an application in the name and on behalf of the company so as to attract Section 458A of the Companies Act, there was a clear decision of this court in *Official Liquidator v. Joseph Augusti* [1966] K.L.J. 246 to the effect that it was not.

10. The affidavit filed in support of the application does not disclose when the liquidator first adverted to the question of misfeasance (whether he adverted to it before the period specified by Sub-section (2) of Section 543 of the Companies Act and Sub-section (2) of Section 45O of the Banking Regulation Act had expired and, if so, why he was unable to make the application within that period) or when he found comfort in Section 458A of the Companies Act. It does not appear that his reliance on Section 458A was the real reason for his not bringing the misfeasance application in time.

11. The mistake pleaded by the liquidator was a mistake of law. It is true that the law is not that a mistake of law (as distinguished from an ignorance of one's rights which was the case considered in *Roles v. Pascall & Sons* [1911] 1 K.B. 982 is under no circumstances a sufficient cause within the meaning of Section 5 of the Limitation Act and that the true test is whether, under the special circumstances of the case, the party concerned acted under an honest though mistaken belief formed with due care and attention--see *Krishna v. Chathappan*, [1889] ILR Mad. 269 (cited with approval in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , *Brij Indar Singh v. Kanshi Ram*, [1917] 42 I.C. 43; [1918] ILR Cal. 94. and *Brij Mohan Das v. Mannu Bibi*[1897] I.L.R All 348 .(F.B.). overruling *Ramjiwan Mal v. Chand Mal* [1888] I.L.R. All. 587 Now, it is the admitted case that the liquidator did not take any legal advice before, on a mistaken construction of Section 458A of the Companies Act, he came to the conclusion that he had time up to July 30, 1968, to make the misfeasance application. He relied solely upon his own legal knowledge--he is a law-graduate, he has for some time practised as an advocate, and has for a number of years been concerned with the administration of company law--for the misconstruction. As a general rule--and no exceptional circumstances are here pleaded--I would say that a party, however learned he might be (indeed, the more learned the worse for him, for it might lead to the inference that he must at least have been negligent in coming to the wrong conclusion), who takes upon himself the responsibility of construing a statute and coming to the conclusion that it gives him an extended period of limitation whereas, in fact, it does not, does not act with due care and attention, however honest might be his mistaken belief. If the statute is clear, then the inference would be that he must at least have been negligent in reaching the wrong conclusion. And, as we have seen, it is here at least in one respect quite clear, namely, that the period from the commencement of the winding up to the date of the winding up order cannot be excluded so as to extend time. If, on the other hand, the statute is not clear, the party does not act with due care and attention in construing the statute for himself without the assistance of legal advice. That he thought it clear, whereas it was not, can be no

excuse.

12. Lest I should be misunderstood, I must hasten to add that the converse of the proposition set out in the preceding paragraph is not necessarily true. For, even if the party acted on legal advice, that would be no excuse if, in the language of Brett L.J. in *Highton v. Treherne*, [1879] 48 L.J. Exch. 167 that advice betrays negligence, or ignorance, or gross want of legal skill. In such cases, the party has his remedy against his legal adviser but meantime must suffer--see in this connection *Surendra Mohan Rai Choudhury Vs. Mohendra Nath Banerjee and Others*, .

13. I might add that it would be strange if a statute which, in so far as it is founded on justice, is founded on the injustice of the inexpedient, were to regard it as expedient that its operation should be arrested merely on the assertion of an interested party that he had made a mistake.

14. I dismiss this application, but make no order as to costs.