

(1969) 04 MAD CK 0043

In the Madras High Court

Case No : Company Application No. 357 of 1968 in Company Petition No. 3 of 1966

Official Liquidator, Stocking and Sons Private Ltd.

APPELLANT

Vs

Dr. S.R. Sarma

RESPONDENT

Date of Decision : 29-04-1969

Acts Referred:

Companies Act, 1956 — Section 468

Citation : (1969) 04 MAD CK 0043

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; T.S. Subramanian and K. Ramamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—In this application the official liquidator is seeking for direction in the nature of a decree against one Dr. S.R. Sarma in the sum of Rs. 2,902.77. The report discloses that Dr. Sarma was a director of the company and at the time when the official liquidator took charge of the affairs of the company, he discovered from the statement of affairs handed over to him that Dr. Sarma owed the company a sum of Rs. 2,902.77. When he demanded the said amount, Dr. Sarma denied liability.

2. The official liquidator bases his claim on the books of account of the company. Dr. Sarma was acting as a director-in-charge of the company from 1949 to 1957. He laid down his office as director on April 1, 1957. But on the date of such retirement it appears that Dr. Sarma was asked to account for certain sums of moneys to which he was answerable, Ultimately, under cash suspense account, an amount of Rs. 2,902.77 was struck as the amount due by Dr. Sarma to the company. The audited balance-sheet of the company for the year ending March 31, 1957, discloses that this sum was the compilation of various sums drawn in dribblets by Dr. Sarma towards entertainment expenses. In the ultimate analysis

the official liquidator is resting his claim on the basis of accounts of the company coupled with the disclosure of the said amount as a debt in the statement of affairs. Not having had satisfaction to his notices of demand, the present application has been filed u/s 468 of the Companies Act seeking for a decree against Dr. Sarma for the said amount. The official liquidator has no doubt complied with the relevant provisions before the filing of this application.

3. This is opposed by Mr. Sarma on the ground that the debt is barred by limitation and also on the ground that he is not an officer of the company within the meaning of the expression appearing in Section 468 of the Act. Section 468 enables the court at any time, after making a winding-up order, to call upon a person, who is either a contributory, trustee, receiver, banker, agent, an officer or other employee of the company, to pay within the time prescribed by the court, to the liquidator any money to which the company is prima facie entitled. The words " officer or other employee " have been added on by Act 65 of 1960 and in my view are comprehensive enough so as to include an ex-officer or ex-employee of the company according to the circumstances, of the case or needs of the case. This section is similar to the proceedings taken by the official liquidator for misfeasance or malfeasance against the delinquent officers including the directors of the company. While interpreting a similar section, this court has consistently taken the view that an " officer of a company " includes an ex-officer of the same. There is no reason why a departure should be made in the matter of interpreting the word " officer or employee " appearing in Section 468 of the Act. In this view, I am unable to accept the contention of learned counsel for the respondent that Dr. Sarma cannot be deemed to be an " officer or employee " within the meaning of Section 468 of the Act and hence not liable.

4. The second contention, however, is attractive and has to be sustained. It is not in dispute that the origin of the debt was during the period 1949 to 1957 and in fact it was crystallized on April 1, 1957, when Dr. Sarma resigned his directorship. Thereafter, this was not treated as the money of the company in his hands. But the board considered that this was to be kept in cash suspense account meaning thereby that Dr. Sarma was treated as a debtor to the company. It is not claimed that the money in the hands of Dr. Sarma is impressed with any fiduciary character nor is it contended that Dr. Sarma should be deemed to be a trustee for the said money in his hands and thus accountable to the company. If this much, therefore, is conceded, as it ought to be, then the relationship between the company and Dr. Sarma as on the date when he submitted his resignation and in so far as this amount is concerned is that of a creditor and a debtor. If, for a debt, the company can proceed against the concerned debtor, for realisation of the amount, then in the eye of law it is a recoverable debt. To be more clear, on the date when the company went into liquidation, namely, October 15, 1966, it has to be considered whether the company had a justiciable claim against Dr. Sarma and whether it was enforceable on that date. It is seen that nearly a decade and more after Dr. Sarma resigned, the company went into liquidation. Excepting that this amount

appeared in the books of account as a debt, there is no proof that the company took any steps for the recovery of the said amount or to keep alive the debt by calling upon Dr. Sarma to acknowledge liability from time to time. It, therefore, follows that on the date when the company went into liquidation the latter had no right to recover the same from Dr. Sarma, as it was by then barred by limitation.

5. If, therefore, the debt was barred on the date when the company was wound up, could it be said that by the mere fact of that item being included in the statutory statement of affairs, it is revived so as to enable the official liquidator to treat it as a debt which is alive for all purposes and ask this court to pass a decree on such an entry noted in the statement of affairs or in the books of accounts. The official liquidator is the successor-in-interest of the affairs of the company including its assets and liabilities, and he has the same rights and suffers the same obligations which were available to the company and with which the company was bound. On the date when the official liquidator took over charge of the affairs of the company, namely, October 15, 1966, it cannot be said that the debt payable by Dr. Sarma was enforceable by the official liquidator against him. The statutory garb of liquidation cannot affect the course of the law of limitation and it cannot be said that, irrespective of the rights which third parties might secure by reason of the course of the law of limitation, the official liquidator, being a statutory officer under the Companies Act, has a right to recover such amounts notwithstanding the bar of limitation and ignoring vested rights in third parties, which by then they obtained as a right under the statute, namely, the Limitation Act, to oppose any demand for the payment of such a sum which is barred. That this is so has been recognised by the Privy Council in *Hansraj Gupta v. Official Liquidators, Dehra Dun Mussourie Electric Tramway Co. Ltd.*, [1933] 3 Comp. Cas. 207 ; 64 M.L.J. 403 There they were considering the expression " money due" in Section 186 of the Companies Act (VII of 1913) and the learned law Lords were of the view that the words " money due" in Section 186 of the Companies Act refer to money due and recoverable in a suit instituted by the liquidator in the company's name at the date of the application under the section. The official liquidator rightly says that on the date when this application was filed, he cannot successfully file a civil suit for the recovery of the same.

6. Then he cannot successfully ask for a direction to pass a decree as prayed for. To the same effect is the decision of this court in *Malabar Petroleum Co. v. Continental Oil Co. Veeraswami J.*, interpreting a similar section under the Act, Section 469, expressed the view that the effect of the words "at any time" in Section 469(1) is not that the court can make an order under the section without reference to the limitation prescribed by the law.

7. The language employed by the legislature in Section 468 of the Act is in *pari materia* with that employed in Section 469. Interpreting, therefore, the expression " at any time " appearing in Section 468 in the light of the ratio in *Malabar Petroleum Co. by Partner K.V. Thomas Vs. Continental Oil Co. Ltd.*, . I

am of the view that the expression " at any time " can only mean at such time within the bounds of the law of limitation.

8. This application has been filed on November 30, 1968, and on that date the official liquidator cannot successfully prosecute a civil litigation for recovery of the amount and, if this is so, he cannot seek for directions as well, u/s 468 of the Act. I am not persuaded by the argument that Section 468 should be read independently of the Limitation Act. Both the Companies Act and the Limitation Act co-exist; excepting for such rights specifically provided and kept alive under the Companies Act to the exclusion of the Limitation Act, the general law has to prevail.

9. In these circumstances, I am unable to accede to the request of the official liquidator to pass a decree in the sum of Rs. 2,902.77 against Dr. S.R. Sarma, the respondent herein. The application is, therefore, dismissed. There will be no order as to costs.