
(2003) 04 AP CK 0053

In the Andhra Pradesh High Court

Case No : CA No. 653 of 2001 in CP No. 131 of 1999

Pennar Paterson Ltd.

APPELLANT

Vs

L.P. Ploymers Limited and Others

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Companies Act, 1956 — Section 446(2), 458A

Citation : (2003) 4 ALD 595 : (2005) 128 CompCas 852 : (2003) 46 SCL 178

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : M. Subbarayulu, Official Liquidator, for the Appellant; M. Anil Kumar, Official Liquidator and Ch. Ramesh Babu, for the Respondent

Final Decision : Allowed

Judgement

T.Ch. Surya Rao, J.—The Official Liquidator representing M/s. Pennar Paterson Limited, the Company in provisional liquidation, filed this application u/s 446(2) (b) of the Companies Act, 1956 for a direction to the respondents to pay a sum of Rs. 20,88,841/- with interest at 18% p.a. from 24.11.1999 till the date of payment.

2. The facts briefly narrated are as follows:

3. By an order dated 24.11.1999 in C.P. No. 131 of 1999, the Official Liquidator attached to the Court was appointed as a Provisional Liquidator of M/s. Pennar Paterson Limited and the Court further directed the Official Liquidator to recover the amounts from various parties to whom M/s. Pennar Paterson Limited had lent the moneys.

4. On verification of books of account, the Official Liquidator found that the first respondent herein under HPC No. 3350 entered into between him and the company in provisional liquidation had obtained loan for a sum of Rs. 16,59,960/- for the purpose of purchasing plant and machinery, and agreed to repay the loan amount inclusive of interest in 36 monthly instalments of Rs.

67,975/- each aggregating to Rs. 24,47,100/-. The first respondent also agreed to pay the applicant, a management fee equivalent to 1% of the lease transaction value i.e., Rs. 16,599-60 ps. for a transaction valued at Rs. 16,59,960/-. Respondents 2 and 3 stood as guarantors to the first respondent. By 24.11.1999, the first respondent as per the books of account of the company was due in a sum of Rs. 20,88,841/-.

5. The Official Liquidator issued a notice to all the respondents demanding payment of the amount, but notices were returned unserved. Again he issued notices to respondents 1 and 2 on 3.7.2001 and they too returned unserved.

6. The claim is not barred by limitation in view of the provisions u/s 458A of the Companies Act, read with Section 137 of the Limitation Act.

7. The first respondent filed the counter resisting the claim.

8. The second and third respondents have not chosen to appear before the Court.

9. The case of the first respondent, inter alia, in the counter is that the period of repayment of the loan under H.P. agreement is for 36 months commencing from November, 1995 to October, 1998 and he paid 18 instalments ending with 2.9.1997 in an aggregate of Rs. 12,23,550/-. Thereafter, the respondent neither admitted the balance amount payable nor paid the same and therefore the present company application filed on 31.7.2001 is barred by limitation.

10. 9. Heard both the learned Counsel.

11. In essence, the plea of the 1st respondent being, the claim of the applicant is barred by limitation, it is obvious that there has been no gainsaying about obtaining of the loan and execution of hire purchase agreement, the promissory note and other collateral documents. As can be seen from the statement of affairs, the last date of payment of 7 instalments was on 7.7.1997. However, as per the case of the 1st petitioner, it was on 10.6.1997. Pausing here for a moment, it may be mentioned that the effect of the payment, undoubtedly, is that gives a fresh cause of action and the period of limitation shall have to be reckoned from the date of the last payment, be it 7.7.1997 as contended by the applicant or 10.6.1997 as contended by the respondent. Even assuming for a moment that the last payment was made on 10.6.1997 as contended by the respondent, the three years period of limitation has not been elapsed by the date of filing of the winding up petition in C.P.No. 131 of 1999. Admittedly, C.P.No. 131 of 1999 was filed on 24.11.1999, on which date the provisional liquidator was appointed by this Court. One has to fall back upon the provisions of the Indian Limitation Act to see as to what is the period prescribed under the Act for recovery of the loan amount. But, once the company petition for winding up is filed, the Companies Act clearly envisages the procedure to reckon the period of limitation as provided under the Indian Limitation Act.

12. 11. Section 458A of the Companies Act is germane in the context for consideration. The Section reads as under:

"Exclusion of certain time in computing periods of limitation :--Notwithstanding anything in the Indian Limitation Act, 1908 or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, 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 shall be excluded."

13. A mere glance at the above excerpted provision shows that the period from the date of filing of the company petition till the date of winding up order passed in the said application and a period of one year immediately following the date of winding up order shall have to be excluded while reckoning the period of limitation as provided under the Indian Limitation Act. It is, no doubt, true the period of limitation which begins to run on and from 10.6.1997 would continue to run, but for the purpose of reckoning the period of limitation as prescribed under the Indian Limitation Act, the period occupied by the company petition from the date of its filing till the date of its disposal and one year immediately following that date shall have to be excluded. The present application for recovery was filed on 31.7.2001. Therefore, from 10.6.1997 to 31.7.2001, the period is to be counted excluding the period occupied by the company petition from the date of its filing till after one year is elapsed immediately following the date of winding up order.

14. In fact, that is the essence of Section 458A of the Companies Act. The legal position is thus obvious. I am also reinforced in my above conclusion by the latest pronouncement of the Apex Court in *Karnataka Steel and Wire Products and Others Vs. Kohinoor Rolling Shutters and Eng. Works and Others*, . The Apex Court held thus:

"Section 458A of the Companies Act merely excludes the period during which a company was being wound up by the Court from the date of the commencement of the winding up till the order of winding up is made and an additional period of one year immediately following the date of the winding up. In other words, in respect of a legally enforceable claim, which claim could have been made by the company on the date on which the application for winding up is made, could be filed by the Official Liquidator by taking the benefit of Section 458A and getting the period of four years to be excluded from the period of three years, as provided under Article 137 of the Limitation Act. The Legislature, by way of an amendment, brought into force the provisions of Section 458A, so that an Official Liquidator, who is supposed to be in custody of the assets and liabilities of the company, would be able to file a claim on behalf of the company, which was legally enforceable on the date of the winding up, after excluding the period, indicated u/s 458A, so that the company or its shareholders will not suffer any loss."

15. For the above reasons, it is obvious that the whole of the period from the

date of filing of the company petition till the date of winding up order passed therein, and in addition thereto a period of one year immediately following the date of winding up order shall have to be excluded from the period of limitation as prescribed under the provisions of the Indian Limitation Act.

16. The learned Counsel for the respondent seeks to contend that since no winding up order has yet been passed by this Court, the provisions u/s 458A cannot be taken into consideration. The learned Counsel would further contend that even if tomorrow the winding up order is passed, that order relates back to the date of filing of the company petition i.e., 27.9.1999 and, therefore, the company application in this case having been filed on 31.7.2001 is clearly barred by limitation.

17. I am afraid that I cannot concede the said contention of the learned Counsel. The fallacy of the contention can be seen clearly when it is contended that the date of winding up order relates back to the date of filing of the petition and, therefore, that date is the crucial date. For all practical purposes, it is no doubt true that the date of filing of the winding up petition is crucial. But for the purposes of reckoning the period of limitation, since Section 458A specifically provides for the procedure to reckon the period, the legal fiction sought to be raised by the learned Counsel merits no consideration. Therefore, by no stretch of the imagination, it can be said that the present company application filed on 31.7.2001 is barred by limitation. By the date of filing of the company petition i.e., 27.9.1999, the claim was well within the time, as afore discussed even taking the date of payment of the 7th instalment as 10.6.1997, but not 7.7.1997. Since no winding up order has yet been passed, all this period shall have to be excluded while reckoning the period of three years as prescribed under the provisions of the Indian Limitation Act. For the foregoing reasons, there are no merits in the contentions of the 1st respondent and the claim of the applicant shall have to be allowed.

18. In the result, the application is allowed. There shall be a decree in favour of the applicant with costs against the respondents, who are jointly and severally liable to pay the sum of Rs. 20,88,841/- with interest at 12% p.a. from 24-11-1999 till this date and from this date at 6% p.a. on the principal amount till the date of realisation.