
(1961) 01 MAD CK 0014
In the Madras High Court
Case No : A.A.O. No. 200 of 1958

P.S. Thirumalai Iyengar

APPELLANT

Vs

Official Liquidator, Srinivasa Mills Ltd. and Others

RESPONDENT

Date of Decision : 25-01-1961

Acts Referred:

Companies Act, 1946 — Section 153(C)
Limitation (Amendment) Act, 1939 — Section 14, 19, 23, 24

Citation : AIR 1962 Mad 253 : (1961) 31 CompCas 561

Hon'ble Judges : Kailasam, J; Jagadisan, J

Bench : Division Bench

Judgement

Jagadisan, J.

(1) Srinivasa Mills Ltd. Madurai, was a public limited company, incorporated under the Indian Companies Act on 7-1-1946. A firm of partnership

called Srinivasan and Co., was the managing agent of this company. The terms of agreement between the managing agent and the company were

reduced to writing and were attached to the articles of association of the company as schedule A. The agreement provided that the managing

agents should receive an allowance of Rs. 500 per month from the date of the commencement of the work by the company, and an allowance of

Rs. 1000 per month thereafter, after the mill commenced work. At the inception the managing agent firm consisted only of three partners. Sri P. S.

Thirumalai Iyengar subsequently became a partner of the managing agency firm under a written agreement with the firm. One of the terms of that

agreement was that Thirumalai Iyengar should be the sole managing agent and should be the sole recipient of the remuneration provided for in the

managing agency agreement with the company. He took charge of the

management of mills on 10-6-1948. The Board of directors of the Srinivassa Mills Ltd., recognised the status of Tirumalai Iyengar as the sole managing agent, and in recognition thereof passed appropriate resolution at a duly convened meeting of the Board of directors. The original partners of the managing agency firm raised disputes calling in question the status of Tirumalai Iyengar as the sole managing agent. They instituted a suit, O. S. No. 228 of 1949 on the file of the Sub Court, Madurai impleading the company as the first defendant and Tirumalai Aiyangar as the second defendant challenging the right of Tirumalai Aiyangar to function as the sole managing agent. In that suit the company that he was entitled to function as the sole managing agent of the company. Substantially the contention of Tirumalai Iyengar was upheld in that suit which was ultimately dismissed.

(2) The company admittedly did not commence work. In O. P. No 97 of 1955 on the file of the Original side of this court the company was directed to be wound up and the Official Receiver of Madurai was appointed as the Official Receiver of Madurai was appointed as the Official Liquidator. Thirumalai Iyengar filed a claim affidavit before the Official Liquidator claiming that a sum of Rs. 47223-12-4 was due to him from the company as remuneration provided for under the managing agency agreement. He claimed remuneration at the rate of Rs. 500 Per month from 1-4-1949 to 26-9-1955. Two of the share-holders of the company resisted the claim. The Official Liquidator, Madurai, held that the claimant was entitled to the remuneration asked for but the claim was barred by limitation in respect of remuneration due beyond three years before the date of the winding up. On this footing the claimant was allowed only a sum of Rs. 18000 as and for remuneration. The claimant preferred C. M. P. No. 296 of 1957 before the District Court, Madurai, and contended that he was entitled to remuneration for the whole period as prayed for by him in the claim affidavit. The shareholders who opposed the claim affidavit before the Official liquidator preferred C. M. P. No. 338 of 1957 against the order of the Official liquidator allowing in part the claim of Thirumalai Iyengar. The learned District Judge dismissed both petitions and confirmed the order of the Official liquidator. This civil miscellaneous appeal has been preferred by the claimant, Tirumalai Iyengar. The share-holders who

contested the claim in the court below have not contested the claim in the court below have not preferred any appeal or cross objections.

(3) The only question that arises for decision in this appeal is whether the claim of the appellant to receive remuneration for the period beyond three years prior to the date of the winding up is barred by limitation or not.

(4) Mr. S. V. Rama Iyengar, the learned counsel for the appellant, first contended that the time occupied by the proceedings in the suit, O. S. No.

228 of 1949, Sub Court Madurai should be excluded in computing the period of limitation for the claim under S. 14 of the Indian Limitation Act. It

is common ground that viewed as a simple money claim the appellant will not be entitled to claim any remuneration for a period beyond three years

prior to the date of the winding up, unless an extended period of limitation is available under one or other provisions of the Indian Limitation Act.

Section 14 of the Indian Limitation Act obviously can have no application to the facts of the present case. It cannot be said that the proceedings in

O. S. No. 228 of 1949, Sub Court, Madurai, were founded on the same cause of action as the one on which the relief for the present claim is

founded. Nor can it be said that the Sub Court, Madurai, which, dismissed the suit, O. S. No. 228 of 1949, was unable to entertain it from defect

of jurisdiction or other cause of a like nature as required under S. 14. That suit was tried on the merits and was dismissed. The contention urged on

behalf of the appellant involving Sec. 14 of the Indian Limitation Act for exclusion of time in computing the period of limitation in the matter of

recovery of remuneration due to the appellant is totally devoid of substance and has the therefore to be rejected.

(5) It was next contended by Mr. S. V. Rama Aiyangar that the appellant is entitled to a charge on the assets of the company, and that therefore

the claim should not be held to be barred by limitation by taking the period of limitation as one of three years before the order of the winding up. In

this connection the learned counsel relied upon the following clause in the managing agency, agreement:

The firm shall, on the termination of the Managing agency of the company in accordance with the above clause, be entitled to a charge upon the

assets of the company by way of indemnity for all liabilities or obligations properly incurred by the firm on behalf of the company subject to the

then existing charges and encumbrances, if any. The termination of the office of Managing Agents of the company by virtue of the provisions of the

above said clause shall not be taken effect until all money payable to the firm for loans made to or remuneration due upto the date of such

termination from the company are paid.

There is no charge created under this clause over the assets of the company in regard to remuneration payable by the company to the managing

agents. The charge that is provided upon the assets of the company is only in respect of any claim by way of indemnity which the managing agents

may have for all liabilities or obligations incurred by the firm on behalf of the company. The appellant's claim can at best be only a simple money

claim without a charge or lien on the assets of the company. The plea of the appellant that the claim is not barred by the limitation as if the relief

asked for is one by way of enforcement of charge must therefore fail.

(6) The last contention urged on behalf of the appellant to get over the bar of limitation was rested upon an alleged acknowledgment of liability

contained in Ex. A4. Ex A4 is a list of creditors signed by the appellant himself. It appears that prior to the application in O. P. No. 97 of 1955

praying for an order for winding up of the company, O. P. No. 365 of 1953 was filed by one Srinivassa Iyer invoking the benefit of the provisions

of S. 153(C) of the Indian Companies Act, as it then stood. In the course of such proceedings the appellant who was a party to those proceedings

was directed by order of this court to file a list of the creditors of the company as per the books of the company. Item No. 16 in that list (Ex A 4)

is as follows:

Managing Agency allowance due to P. S. Tirumalai Iyengar, Virudhunagar not in the accounts as per clause 6 of the Managing Agency agreement

up to 28-2-1954; Rs. 29500.

This list of creditors, Ex A4 is dated March 1954. Learned counsel for the appellant contended that Ex. A4 constituted an acknowledgment of

liability on behalf of the company in respect of the managing agency remuneration and that therefore a fresh period of three years will have to be

computed from March 1954 and that on such computation the claim of the appellant will not be barred by limitation. The list was signed by the

appellant whose status as the sole managing agent was of course recognised in

O. S. No. 288 of 1949 Sub Court Madurai. There is nothing to show in Ex A4 that the appellant filed the statement of the list of the creditors of the company on behalf of company. The terms of the managing agency agreement show that the managing agents were not expressly authorised to acknowledge the liabilities of the company. Clause 2(m) of the agreement no doubt enables the managing agent to borrow money on behalf of the company. That clause is as follows:

To raise or borrow or secure from time to time the payment of any sum or sums of moneys for the purpose of the said company with or without

the security and upon such terms and conditions as the said firm shall think fit.

This clause has to be read along with Art. 129 of the Articles of Association, which is as follows:

The Managing Agents shall have with the previous sanction of the Board of Directors and within the limits fixed by them power and authority on

behalf of the Company to invest, lend or borrow money belonging to or on behalf of the company upon such security or without any security and

generally upon such term as they think fit.....

It does not appear that the managing agents had a free hand to borrow money on behalf of the company. An acknowledgment of liability under S.

19 of the Indian Limitation Act will be valid where it is signed by an agent duly authorised in this behalf by the debtor. It is not necessary that the

authorisation should be in writing. The authorisation need not also be in express terms, but can be implied from the course of conduct of the parties

or from the surrounding circumstances of the case. As observed by Pal J. In Sukumari Gupta and Others Vs. Dharendra Nath Roy Chowdhury

and Others, , such authority may be implied from the facts and circumstances of the loan. We are not satisfied that the evidence on record is

sufficient to establish that the appellant in signing the list, Ex. A. 4, was either acting on behalf of the company or was acting in his capacity as a

duly authorised agent of the company to make any acknowledgment. It must be noted that the appellant himself claimed to be the creditor and

signed the list, Ex. A. 4.

(7) In *In re, Coliseum (Barrow) Ltd.* 1930 2 Ch. 44 the question for consideration was whether statement made in the balance sheet of a company

regarding the payment of Directors fees signed by the Directors of the company

would amount to a promise to pay on behalf of the company so as to save the claim against the company from the bar of limitation. Maugham J. Expressed as follows:

The difficulty in the present case is that the promise if any is a promise by the directors, as a board acting on behalf of the company, to pay to

themselves the amount of the director's fees, and it seems to me that this is not, in the circumstances a promise to pay on behalf of the company.

Having regard to the position which a director, as agent of the company necessarily occupies in relation to the company, it would not have been

competent action to the board, acting as a board to authorise the giving of a definite promise to pay to themselves.

(8) When that case was decided the position in England was that the statute of limitation, 1623, was in force and that contained no provision for

keeping alive debts by mere acknowledgment of the debt.

(9) In *Ledingham v. Bermego Estancia Co. Ltd.*, 1947 1 All ER 749, Atkinson, J. Had to consider whether in the matter of the applicability of the

Law of Limitation there was a difference between and acknowledgment of liability and a promise to pay. The learned Judge observed as follows:

There is a difference now because all you want now is an acknowledgment, and you have not to consider whether the circumstances are such as

to amount to a promise to pay. You do not need the promise to pay. It is only an acknowledgment an acknowledgment made to the creditor and

upon that the principle of that decision ought not to apply. (The decision referred to is the one reported earlier). I have difficulty in seeing the

distinction there. I think that, if a trustee cannot rely on a promise to himself, it would be difficult to say he could rely on an acknowledgment which

he makes to himself. So I, am not disposed to draw that distinction.

(10) In *In re, Transplanters (Holding Company) Ltd.* 1958 1 W. L. R. 822 the Transplanters Holding Company was compulsorily wound up. On

of the two directors of the company sought to prove in the winding up for the sum of ₹1,36,392-11-10 for money lent to the company and interest

thereon. The liquidator rejected the proof on the ground that the debt was statute barred at the commencement of the winding up. The applicant

took out a summons before the court and asked for a reversal of the decision of the liquidator. He alleged that there was a sufficient

acknowledgment of the debt within the meaning of Sections 23 and 24 of the Limitation Act, 1939 as the debt appeared among the loans to the

company in two balance sheets of the company dated respectively 31st December 1951 and 31st December 1953. The balance sheets were

signed by the applicant and his co-directors and were certified by the company's auditors. Wynn Parry J. Applying the principle of the decision in

1947 1 All ER 749 held that the balance sheets would not constitute a valid acknowledgment in law. At page 824, the learned Judge observed as

follows:

I must apply that reasoning to the case before me, and it therefore comes to this, that the difficulty mentioned by Maugham, J. In the earlier case

remains a difficulty even if all that is relied upon is a mere acknowledgment. In those circumstances, it does not appear to me possible for the

applicant to rely upon these two documents as acknowledgments because two directors have signed them, having regard to the fact that over the

material period he himself was interested in the loan.

(11) In our judgment Ex.A. 4 signed by the appellant cannot operate as a valid acknowledgment of a debt due to himself by the company within

the meaning of S. 19 of the Indian Limitation Act.

(12) The appeal fails and is dismissed with costs.

(13) Appeal dismissed.