
(1972) 11 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civil Original No. 66 of 1970 in Civil Original No. 9 of 1967

Punjab Commerce Bank Ltd. (In Liquidation)

APPELLANT

Vs

Ram Narain Virmani

RESPONDENT

Date of Decision : 14-11-1972

Acts Referred:

Banking Regulation Act, 1949 — Section 43A
Companies Act, 1913 — Section 235, 244B

Citation : (1973) 43 CompCas 323

Hon'ble Judges : S.S. Sandhawalia, J

Bench : Single Bench

Advocate : K.S. Keer, for the Appellant; Roop Chand, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, J.—The terminus a quo for the period of limitation prescribed for presenting an application u/s 235 of the Indian Companies Act, 1913, has been the primary subject of debate in this case. The issue arises in the following circumstances.

2. The official liquidator of the Punjab Commerce Bank Ltd. has moved this application u/s 235 read with Section 244B of the Indian Companies Act, 1913, praying that the conduct of the respondent, Shri Ram Narain Virmani, be examined and he be held liable to pay a sum of Rs. 19,054 with interest, etc., by way of compensation in respect of misapplication, retainer, misfeasance or breach of trust of the amount above-said.

3. On October 11, 1950, the respondent, Shri R.N. Virmani, was appointed the liquidator of the Punjab Commerce Bank Ltd. by the order of the High Court. He held that office for nearly 17 years and resigned the same on November 3, 1967, when the present applicant was appointed in his place. Earlier, the respondent, on February 2, 1957, had made an application in the High Court seeking its sanction for preferential payments to small depositors in the savings bank

account up to a sum of Rs. 100 in accordance with the provisions of Section 43A of the Banking Regulation Act, 1949. Chopra J., by an order dated February 8, 1957, accorded the requisite sanction and it is the applicant's case that these payments were made to the small depositors from the years 1957 to 1966.

4. Reliance has then been placed on the provisions of Section 244B of the Act for averring that the respondent was bound by its provisions to deposit the unclaimed dividends payable to any creditor within 6 months after the date on which they became payable or refundable into an account to be called the companies liquidation account in the Reserve Bank of India. It is averred that the respondent, instead of depositing the balance of the amount after the expiry of six months from the date of the sanctioning order of February 8, 1957, continued making the payments to the creditors till the year ending December, 1966. Further, the liquidator, with the sanction of the High Court, declared two more dividends, i.e., one on April 19, 1963, at 12 paise in a rupee and the second one on July 22, 1966, at 10 paise in a rupee. In paragraph 10 of the application, it is stated itself that in the annual statement submitted by the liquidator, he had shown a balance of Rs. 19,054 for the year ending 1966 under the head of liabilities covered by Section 43A of the Banking Companies Act. The applicant further states that the failure to comply with the provisions of Section 244B has resulted in loss to the creditors to the tune of Rs. 19,054 as on December 31, 1966. The liquidator when handing over charge to the present applicant, who is the official liquidator, delivered over an amount of Rs. 1,113.62 only and, thereafter, despite repeated requests by the applicant, the stand taken by the respondent is that the provisions of Section 244B were not attracted as regards the amount abovesaid.

5. Lastly, it is stated that the facts of the said misapplication of funds came to the notice of the present official liquidator after his appointment on November 3, 1967, and, therefore, the application filed on October 28, 1970, was within the limitation period prescribed by Section 235 of the Act.

6. In the written statement, three preliminary objections have been taken which subsequently have been pressed seriously on behalf of the respondent. It is pointed out that the application does not fall under the provisions of Section 235 or u/s 244B of the Act and is, therefore, incompetent. Secondly, the objection is that the official liquidator has no locus standi to make this application because every action sought to be impugned by him was taken after the sanction duly granted by the hon''ble liquidation judge of this court and also after approval by the Reserve Bank of India. Lastly, the application u/s 235 is claimed to be barred by time.

7. On merits, paragraphs 1 to 5 have been admitted to be correct. Paragraph 6 of the application, however, has been seriously controverted and the position taken is that Section 244B has no application because there was no amount representing unclaimed dividends payable to any creditor nor were there any undistributed assets refundable to any contributory in the hands of the

respondent. It is stated that payments to small depositors by virtue of Section 43A of the Banking Companies Act does not amount to any declaration of dividend and, therefore, no question of any unclaimed dividends in his hands arises. In reply to paragraph 8, it is stated that as the amount payable to small depositors were paid under the authority of the order of the High Court, dated February 8, 1957, the same cannot be questioned so long as the main order of the hon'ble liquidation judge stands and has not been assailed. It is further pointed out that the dividends declared by the respondent were with the sanction of the High Court after submitting all the figures necessary for the purpose and which included the amount of Rs. 19,054 in the respondent's hands. Paragraph 11 of the petition has been characterised as vague and incapable of an accurate reply because it has not been pointed out as to who are the creditors to whom the loss alleged has been caused or, further whether any applications or representations were received by the applicant in this respect. It is further stated that the amount of Rs. 19,054 was utilized for payment of dividends to the creditors under the express orders and sanction of the hon'ble liquidation judge. The said amount has been disbursed as dividends to the creditors with the sanction of the court, and, therefore, it could not be possibly claimed over again by the official liquidator. It is reiterated that, on the admitted facts, no question of misapplication of funds arises and further that the claim that the application being within time from the date of the appointment of the applicant on November 3, 1967, was neither tenable nor covered by the relevant provisions of Section 235 of the Act.

8. Replication has also been filed on behalf of the applicant in which the the position taken up in the present application has been reiterated.

9. By an order dated May 10, 1971, it had been directed by this court that the respondent, Shri R.N. Virmani, should secure the opinion of the Reserve Bank of India whether under the rules the amounts in dispute were required to be deposited with the said bank or not. The submission of the Reserve Bank of India in compliance with this direction has also been obtained and forms part of the present record.

10. On the pleadings abovesaid, the following issues were framed on on September 24, 1971:

1. Whether the application u/s 235 of the Indian Companies Act is barred by time ?
2. Whether the application abovesaid falls either under the provisions of Section 235 or u/s 244B of the Indian Companies Act, 1913, and whether the same is competent ?
3. Whether the official liquidator has locus standi to present the abovesaid application ?
4. Whether the respondent as liquidator was required u/s 224B of the Indian

Companies Act, 1913, to file statement of unclaimed dividends with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh, and also to deposit within six months from the order of payment dated 8th February, 1957, the unclaimed dividend payable to any creditor declared u/s 43A(2)(a) of the Banking Regulation Act, 1949 ?

5. If so, whether the respondent as liquidator deposited in the companies liquidation account Rs. 19,054, the amount of unclaimed dividends in his hands or under his control ?

6. If the respondent as liquidator did not deposit the above-mentioned amount of Rs. 19,054 in the companies liquidation account, whether he is liable for misapplication, retainer, misfeasance or breach of trust in respect of this amount u/s 235 of the Indian Companies Act, 1913 ?

11. No other issue was claimed by the learned counsel for the parties. It was also agreed that the first three issues would be tried as preliminary issues. Parties were allowed full opportunity for adducing evidence in support of their respective cases as regards the three preliminary issues. Documents were filed on behalf of the parties which were admitted by their learned counsel. The respondent, Shri R.N. Virmani, put himself in the witness box. Thereafter, the evidence on the preliminary issues was closed on his behalf on October 23, 1972.

12. Mr. Roop Chand on behalf of the respondent in support of his argument under issue No. 1 contends that the present application filed on the 28th of October, 1970, is clearly barred by time. It is contended that the same has been obviously presented far beyond the prescribed period of three years when the first liquidator of the bank was appointed by the order of the court. In the alternative it has been argued that on the applicant's own averments this application is being made beyond a period of three years of the alleged misapplication, retainer or misfeasance.

13. The contentions of the parties have naturally centred around the relevant portion of Section 235 of the Act which prescribes the limitation for presenting an application thereunder. The relevant part thereof need alone be quoted and is in the following terms :

" 235. Power of court to assess damages against delinquent directors, etc,--

* * * * * The court may, on the application of the liquidator, or of any creditor or contributory made within three years from the date of the first appointment of a liquidator in the winding-up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, examine into the conduct of the promoter, director, manager, liquidator or officer.

* * * * *

14. Now an examination of Part V of the Act, the context in which Section 235 is placed therein, and the language of this provision make manifest the intention

and the object of the legislature behind the same. The prescription of the period of limitation, related as it is, to the first appointment of the liquidator for the winding-up of the company has a clear rationale behind it. It is well known that the acts of misfeasance and misconduct, etc., often come to light when the first liquidator comes to probe into the matter in the course of the winding-up of the company. The statute has, therefore, prescribed a period of three years beyond the date of the first appointment of the liquidator for presenting applications by the liquidator himself or by a creditor on contributory for taking necessary action against the delinquent. Obviously, the period of three years from the first appointment was considered adequate within which the misapplication, retainer or misfeasance, etc., may come to light. However, it is evident that such an application, though it has to be made within three years of the first appointment of the liquidator, may well relate to a: remoter period of the earlier working of the company.

15. Adverting now specifically to the above-quoted language of Section 235 it is plain that the legislature whilst prescribing the period of three years as limitation has laid down two termini wherefrom the computation of this period should begin. The first one is the date of the first appointment of the liquidator in the winding-up. The second terminus a quo is the date of the misapplication, retainer, misfeasance or breach of trust by the delinquent, as the case may be. The statute has further provided that the period applicable would be one which is longer in relation to the two termini prescribed.

16. For clarity, it is desirable to examine the two limbs of the argument raised by Mr. Chaudhry separately. It has first been rightly contended that admittedly the first regular liquidator in the winding-up of the Punjab Commerce Bank Ltd. was the respondent himself who was appointed on the 11th of October, 1950. On this factual premises it has been meritoriously contended that a plain grammatical construction of Section 235 implies that the limitation in this context would begin from the first appointment of the regular liquidator for winding-up and is wholly unaffected or unconcerned by the appointment of the subsequent liquidators who may come to take his place.

17. Mr. Keer on behalf of the applicant has rather ingeniously suggested that the period of three years should run from the date of the appointment of a liquidator irrespective of the fact whether it is first, second or third appointment. He contends that unless such a strained construction was put upon the language of the provision it would leave a serious lacuna in its application in so far as a liquidator who holds office beyond a period of three years or more may secure the benefit of the bar of limitation for his misconduct.

18. The contention of Mr. Keer on behalf of the applicant is patently untenable and in fact would lead to anomalous results. Firstly, it is evident that the language of the statute is clear and categorical. It specifically fixes the terminus a quo " from the date of the first appointment of a liquidator in the winding-up ". It is impossible to read the appointment of the second, third or the fourth

liquidator into this clear language of the statute without doing patent violence to its plain provisions. It is well-settled that the primary canon of the construction of the statutes is that the language thereof must be given its plain grammatical meaning. In the present case such a construction does not lead to any absurdity or anomaly which may necessitate a deviation from the settled rule of construction. Secondly, the fear expressed by Mr. Keer that this construction would lead to a blanket protection to the first liquidator is also equally unfounded. The statute has provided that the application may be made not only by a liquidator but equally so by any creditor or contributory within the period of limitation. It is, therefore, evident that in case the first liquidator misconducts himself in office then an application against him can well be brought within the period of limitation by any creditor or contributory and his misconduct be exposed to examination by the court. Thirdly, it deserves notice that on the construction suggested by Mr. Keer rather wholly anomalous results would flow therefrom. If it were to be accepted that the appointment of the second, third or the fourth liquidator may start a fresh period of limitation the result would be that the protection afforded by the prescription of limitation would be nullified by the accident of a fresh appointment. This obviously would run counter to the basic principles underlying the prescription of a period of limitation by a statute.

19. Rejecting the argument on behalf of the applicant I would hold that the limitation for the application would run from the first appointment of the liquidator, that is, the 11th of October, 1950 (and not from the appointment of the present second official liquidator on the 3rd of November, 1967). Indeed, in a case of the present kind, where the alleged act of misfeasance is far beyond the period of three years from the first appointment of the liquidator, the invocation of this part of Section 235 on behalf of the applicant is not at all tenable. I take the view that the appointment of the second, third or the fourth regular liquidator is irrelevant to the issue and the present application, therefore, would be clearly incompetent in view of the bar of limitation.

20. The second limb of the argument of Mr. Chaudhry has not been seriously opposed or contested by Mr. Keer. As already noticed it has been argued on behalf of the respondent that on the applicant's own averment this application is being made beyond a period of three years from the specific date of the alleged misapplication, retainer or misfeasance. Now the sanction for the payment to small depositors by the High Court was admittedly given on 8th February, 1957. If Section 244B is attracted then after a period of six months therefrom the liability to deposit the same in the companies liquidation account would arise. The alleged act of misfeasance, retainer or misapplication would, therefore, be complete from the 8th of August, 1957, and thereafter beginning from the said date the present application would, therefore, be wholly barred. Placing the case of the applicant at the highest it appears in their own averments that by 31st December, 1966, the respondent had rendered the account therefore and the said amount had even earlier been appropriated for payment to the other creditors of the bank. It is the common case of the parties that the order of the

court in this regard was obtained on 22nd July, 1966, for the declaration of dividends to the creditors and for this purpose the amount of Rs. 19,054 was duly appropriated. Clearly, therefore, either in July, 1966, or at best on their own pleadings as existing in paragraph 10 of the application, by 31st December, 1966, the misfeasance or retainer had fully taken place and in fact was complete. Taken from the said date also the present application made on 28th October, 1970, is beyond the period of three years and is thus barred.

21. In view of the above findings issue No. 1 is decided against the applicant and it is held that the present application is clearly barred by time whilst computing the same from either of the termini provided by the statute.

22. The respondent also must succeed on issue No. 3. It is the common case of the parties that the respondent rendered account of the monies in his hands and placed the amount abovesaid at the disposal of the court for distribution to other creditors. He had clearly mentioned this fact on the applicant's own showing in the account he submitted under the heading of liabilities pending u/s 43 of the Banking Companies Act. By the order of the hon''ble company judge, sanction was accorded for the payment of dividends at the rate of 12 paise in a rupee to the creditors in which the said amount of Rs. 19,054 was also included. This order of the company judge has never been challenged and has thus achieved finality. The payment over of this amount is, therefore, authorised and sanctified by the order of this court. The present applicant, who is the official liquidator, having not challenged that order is wholly bound by the same. As long as that order stands the payments made by virtue thereof have a legal sanction and the official liquidator being himself the successor of respondent No. 1 cannot set up a case against the same. Issue No. 3, therefore, also must be decided in the applicant's favour and it is held that the present official liquidator has no locus standi to present this application.

23. In view of my decision on issues Nos. 1 and 3, it is unnecessary to advert to the preliminary issue No. 2 which becomes more or less academic in this context. In fairness, however, to Mr. Roop Chand Chaudhry, it only needs be noticed that he had sought to contend that the amount of Rs. 19,054 cannot even be deemed to be an unclaimed dividend as mentioned u/s 244B. As already said, I, however, deem it unnecessary to advert to this aspect of the case because the respondent succeeds on two of his preliminary issues.

24. Before parting with this judgment it deserves notice that the common case of the parties before me is that not a penny has been misappropriated or converted to his own use by the respondent. Admittedly, the whole of the amount of issue was tendered over in court and was thereafter disbursed amongst the creditors under the authority of the orders passed by the hon''ble the company judge. The issue was merely a technical one-- whether the amount should have been deposited in the companies liquidation account or should have been tendered over into the court for distribution to the other creditors as done by respondent No. 1.

25. In view of the success of the respondent on both the preliminary issues Nos. 1 and 3, this application must fail and is hereby dismissed. There will be no order as to costs.