(1984) 09 DEL CK 0015

In the Delhi High Court

Pushpa Wati Puri APPELLANT

Vs

Official Liquidator RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Citation : (1984) 56 CompCas 88

Hon'ble Judges : Rajinder Sachar, J;M.L. Jain, J

Bench : Division Bench

Judgement

M.L. Jain, J.—We accepted this appeal and st aside the impugned order on September 3, 1981, with the direction that reasons will follow later. There was no order as to costs. Here are our reasons.

2. M/s. Security & Fiance (P) LTd. was under liquidation. The official liquidator filed a claim on March 20, 1972, under s. 446(2)(b) of the Companies Act, 1956, that smt. Pushpa wati puri, wife to the former managing director to the company, had been taking advance from the company from 1957 to 1967 and, according to the accounts, a sum of Rs. 1,01,988.60 was due from her to the company. He prayed for recovery of the above amount together with interest from Mach 31, 1967, to March 23, 1972 the total amount being Rs. 1,62,588.60. The respondent contested the claim application and alleged that the account was fictitious and that the claim was barred by limitation. By an amendment, the official liquidator was allowed to allege that the suit was within limitation because the account wa mutual, open and current under art, 1 of Part I of the Schedule to the limitation Act, 1963. Under this article, in case of balance due on mutual, open and current account, where there have been reciprocal demands between the parties in period of three years begins to run from the close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account Excluding the time specified in s. 458A of the Companies Act, 1956, the claim falls within limitation.

3. The learned company judge by his order of May 23, 1979, accepted the contention that is is was a mutual , open and current account and held that the

claim was within limitation. He accepted the claim of the company as genuine and directed the respondents to pay to the official liquidator the aforesaid sum with past and future interest. Hence this, appeal.

4. There is no signature of writing of the appellant, Pushpa Wati, Puri, on any paper. The whole case, Therefore, of the official liquidator depends upon account books. The learned company judge held that the account in question was started on May 10, 1957, and judge held that the account is question was started on May 10, 1957, and was closed on March 31, 1967. The entire account has, Therefore, to be concerned. It opened with te two items of credit on May 10, 1957, and was closed on March 31, 1967. the entire account has, Therefore, to be considered. IT opened with the two items of credit on May 10, 1957, and August 27, 1957, on account of dividends for the year ending 1957. etc. These two were followed by tow entire of interest due na due paid in December, 1957. A sum of Rs. 2,000 was paid to Mrs. puri leaving a credit balance of Rs. 150 in her favor on December 23, 1957. After agape of two years, entire began to reappear on December 30, 1957. she is shown to have taken a loan for purchase of 560 equity shares of Delhi financiers P. Ltd. and 690 equity shares of Globe Motors P. Ltd. The total debit balance for the year 1959 was Rs. 1,50,638.75 which was carried forward to the next year. In 1960, there were two items of debit of Rs. 1,005 and Rs. 126 debited for purchase of stamps for share certificate and transfer deed. Thereafter, the entire for the year 1960 to 1963 are only debits towards interest. In the year 1964, there at two credit items - one on March 11, 1964, of Rs. 5,000 received by cheque, the other on March 19, 1964 of Rs. 10,000 received from the account of one R.S.khanna. The other items show debits towards interest. Thereafter, starting from May 14, 1964, there are periodical credits of Rs. 5,000 towards amount received by way of cheque. In 1965 also some more installments have been paid and there is also a debit of interest. One of these items of credits is by cheque received MBU. In the year 1966, there are credits to the extent of Rs. 45,000 and there is cash paid to the respondent of Rs. 5,000 on December 14, 1966. Inn the year 1967, on March 31, two items of credit by transfer from the account of B.K.Bedit have been shown. THe resultant debit balance on March 31, 1967, stood at RS. 1,01,988.60 There is no entry after March, 1967.

5. A bare book at the aforesaid account, without examining whether it is an account maintained in the regular course of business or not will show that it is not an account which falls within art. 1 o apart I of the Schedule to the Limitation Act, 1963. It does not fulfill the rest laid down in several judgments of Supreme Court, specially in Kesharichand Jaisukhal Vs. The Shillong Banking Corporation, . The balance should be in favor of the appellate on some occasions and on the other occasions in favor of the respondent. There should be reciprocal demands between the parties and accounts should be transactions giving rise to independent obligations. In the account in question, there are no shifting balances on any occasion at any rate after 1959. There are only payments against the loan and interest in this account. There are no independent

transactions which create independent obligations. The learned judge, Therefore, was not justified in holding that the account represented reciprocal ands independent transactions between that company on the one hand and smit. puri on the other. There is total absence of mutuality. Since we are certain that the suit is barred by limitations, we need not go into the question whether the amount was actually paid to the appellant and whether all these entire were made in the name of Smt. Puri Fictitiously or otherwise.

6. Appeal allowed.