

(1896) 01 MAD CK 0004
In the Madras High Court

Ramasami

APPELLANT

Vs

Streeramulu Chetti and Others

RESPONDENT

Date of Decision : 06-01-1896

Acts Referred:

Companies Act, 1882 — Section 214
Limitation Act, 1963 — Article 36

Citation : (1896) ILR (Mad) 149

Hon'ble Judges : Arthur J.H. Collins, C.J;Parker, J

Bench : Division Bench

Judgement

1. The learned Judge has written no judgment in this case, but, as far as we can gather his reasons for the dismissal of the application, he held that it

was barred under Article 36 of the second schedule of the Limitation Act. The application was made u/s 214 of the Indian Companies Act, 1882,

by the liquidator appointed by the Court in 1891 praying that the directors and trustees of the company be ordered to pay over to the liquidator

the sum of Rs. 5,550 which had been distributed among the shareholders.

2. The application seems to have been before the learned Judge on several occasions, and on 27th February 1895 he had apparently decided to

make an order against the directors, reserving for consideration the form of the order. But on the 7th March 1895 the objection was first started

by Mr. R.F. Grant, the Counsel for the directors, that the application was barred under Article 36, inasmuch as the act complained of was a

misfeasance and not a breach of trust, and that the application was made more than two years after the liquidator became aware of the facts. The

learned Judge allowed the objection and dismissed the application, but without costs.

3. It appears to have escaped the notice of the learned Judge that Article 36 of the second schedule of the Limitation Act refers only to suits and

not to applications. A clear distinction is drawn under the Limitation Act between suits, appeals and applications. They are treated in three distinct

divisions of the second schedule. The present case is not a suit, but it is an application u/s 214, Act VI of 1882, to compel the directors to repay

money which has been misapplied. Article 36 has therefore no application.

4. On the question whether the act complained of was a breach of trust or not we may point out that in an application u/s 165 of the English

Companies Act, 1862 (which corresponds with Section 214 of the Indian Companies Act, 1882), it was held that the relationship of trustee and

cestui que trust subsists between the directors of joint stock companies and the shareholders; see *In re Exchange Banking Co.* L.R. 21 Ch. D. 519

; also *In re National Funds Assurance Co.* L.R. 10 Ch. D. 118 and *In re Oxford Benefit Building and Investment Society* L.R. 35 Ch. D. 502. In

the New Fleming, Spinning and Weaving Co. v. Kessowji Naik ILR 9 Bom. 373 it was held that the misfeasance of a director was a breach of

trust. The case referred to by the learned counsel--*Poole's case* L.R. 9 Ch. D. 322--is one of an entirely different character.

5. We must reverse the order of the learned Judge and remand the application to the original side in order that a fresh order may be passed. The

appellant is entitled to the costs of this appeal and the costs on the original side will follow the result.