

(1977) 12 DEL CK 0005

In the Delhi High Court

Case No : Company Appeal No. 14 of 1972

R.C. Abrol and Co. (Pvt.) Ltd.

APPELLANT

Vs

A.R. Chadha and Co.

RESPONDENT

Date of Decision : 02-12-1977

Acts Referred:

Citation : AIR 1978 Delhi 167 : (1979) 49 CompCas 77 : (1978) 14 DLT 35 : (1978) RLR 163

Hon'ble Judges : T.V.R. Tatachari, C.J.;Yogeshwar Dayal, J;Prithvi Raj, J

Bench : Full Bench

Advocate : A.K. Jain, for the Appellant; S.L. Bhatia and P.K. Seth, for the Respondent

Judgement

Yogeshwar Dayal, J.—This appeal has been placed before the Full Bench in view of the orders of Shankar and T. P. S. Chawla, JJ. dated 17-10-1974 along with Company Appeal No. 2 of 1969.

2. However, during the hearing it was noticed that the point involved in the present appeal was somewhat different from the points urged during the hearing of the Company Appeal No. 2 of 1969, and Therefore, this appeal is being dealt with by a separate order.

3. The present appeal is directed against the order dated 25th August 1972 passed by P. N. Khanna, J. on the application of the Official Liquidator under S. 446(2)(b) and S. 543 of the Companies Act, 1956 against M/s A. R. Chadha & Co. and four others.

4. The learned Company Judge had taken the view that the claim petition against A. R. Chadha and Company (respondent No. 1 in the claim petition) was barred by time and unenforceable under clause (b) of S. 446(2) of the Companies Act and dismissed the application against the said respondent. The application of the Official Liquidator against respondents 2 to 5 in the said claim petition was, however, directed to come up for further consideration.

5. The present appeal has, Therefore, been filed only against M/s. A. R. Chadha & Company.

6. M/s. R. C. Abrol & Co. (P) Ltd. was ordered to be wound up by order dated August 19, 1966 passed by the Circuit Bench of the Punjab High Court at Delhi on a petition dated March 4, 1966 filed for this purpose.

7. On August 18, 1971 the Official Liquidator of the said Company filed a petition under clause (b) of sub-sec. (2) of S. 446 and S. 543 of the Companies Act, 1956 (hereinafter referred to as "the Act") against A. R. Chadha and Company and four others by way of Company Application. No. 428 of 1971.

8. The claim petition was filed, inter alia, against the respondent (respondent No. 1 in the Company Application) for the recovery of Rs. 1078.10 on the basis of open and current account in the books of the Company in liquidation on the basis that the last entry in the said account is of April 10, 1965.

9. Respondent No. 1 in his reply disputed the claim. A preliminary objection was raised that the claim of the company in liquidation at any rate was barred by limitation.

10. On behalf of the respondent Company it had been urged before the learned Company Judge that the claim of the company in liquidation was for the price of the goods alleged to have been sold to respondent No.1. It was, Therefore, governed by Art. 14 of the Schedule to the Limitation Act, 1963 under which the limitation was three years from the date of the delivery of the goods. Even if the period required to be excluded from computation under S. 458-A of the Companies Act is excluded, the claim for the recovery of the amount would be barred by time.

11. In reply thereto, Mr. A. K. Jain, learned counsel for the appellant submitted before the learned Company Judge that the application before him was not a suit. It was merely an application under the Companies Act for which no period of limitation was prescribed. The only Article in the Schedule of the Limitation Act which could be said to apply is Art. 137, but in a series of decisions the view had been expressed that this Article related only to applications under the Code of Civil Procedure. Article 14 relied upon by Mr. Vijay Kishan, according to Mr. Jain, "created a bar for a suit and not for an application". No other Article of the Limitation Act being applicable to an application under S. 446 Of the Companies Act, there was no bar of limitation at all.

12. The learned Company Judge took the view that the word "claim" in clause (b) of S. 446(2) means a claim enforceable at law. Unless, Therefore, the claim is legally enforceable, it cannot be entertained by or against the Company under clause (b) of sub-section (2) of S. 446 of the Act. The learned Company Judge further took the view that clause (b) of S. 446(2) of the Act has not reopened and made enforceable the claims which have been quietened by lapse of time and rendered unenforceable by the bar of limitation under the Limitation Act.

13. Since the decision of the learned Company Judge, the Supreme Court in the The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, overruled its earlier view expressed in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , and held that Art. 137 of the Limitation Act, 1963 is not confined only to applications contemplated by or under the Code of Civil Procedure. The Supreme Court took the view that Art. 137 of the Limitation Act, 1963 was applicable not merely to applications under the Civil P. C. but also applicable to applications made to court under special Acts.

14. In view of the aforesaid decision of the Supreme Court, Mr. A. K. Jain, appearing on behalf of the appellant, conceded that without going into the question of the meaning of the word "claim" as interpreted by the learned Company Judge in relation to S. 446(2) of the Act, the petition filed under S. 446(2) by the Official Liquidator against respondent No. 1 in the Company Application, would, in any case, be barred by time. We feel that the learned counsel makes the concession rightly for the simple reason that even after the Official Liquidator is given the benefit of S. 458-A of the Act by excluding the time contemplated by that section, the claim petition in the present case was filed on behalf Official Liquidator only on 18th August, 1971 whereas the order for winding up had been passed on 19th August, 1966.

15. Under Art. 137 of the Limitation Act, the period of limitation prescribed for an application is three years from the date when the right to apply accrues. Even after giving the benefit of S. 458-A of the Act and taking into account the period of limitation prescribed by Article 137 of the Limitation Act, 1963 the limitation would have expired, even according to the case of the Official Liquidator that the claim is based on open and current account, on 19-9-1969.

16. Thus, on the contentions of the Official Liquidator itself, the application was barred by time. For purposes of the present case, we need not decide the meaning of the word "claim" in S. 446(2)(b) of the Act.

17. With these observations, the appeal fails and is dismissed.

18. Parties are left to bear their own costs.

19. Appeal dismissed.