
(1965) 05 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 306 of 1961

Sardar Raghbir Singh Ahluwalia

APPELLANT

Vs

People's Insurance Co. Ltd. (In Liquidation)

RESPONDENT

Date of Decision : 27-05-1965

Acts Referred:

Companies Act, 1913 — Section 185
Limitation Act, 1963 — Section 10

Citation : (1966) 36 CompCas 219

Hon'ble Judges : S.S. Dulat, J; R.P. Khosla, J

Bench : Division Bench

Advocate : H.L. Sarin and D.C. Ahluwalia, for the Appellant; H.L. Sibal and Bakshi Kuldip Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dulat, J.—The appellant was employed as the manager of the branch, at Jubbulpur, of the People's Insurance Company Limited. That company was ordered to be wound up and in the course of the winding up the official liquidator applied u/s 185 of the Indian Companies Act for all order against the appellant. The liquidator alleged that the appellant had in his hands money amounting* to Rs. 9,226-6-5, which he had received on behalf of the company and which belonged to the company and should be ordered to be handed over to the liquidator. The appellant admitted that he was employed as the branch manager at Jubbulpur and that he had received certain moneys for the company but he claimed that the account had been settled on the 30th June, 1951, and a sum of Rs. 4,993-2-5 was found due from him in respect of which he had executed a pronote and that in satisfaction of that claim he had assigned to the company his two life policies worth Rs. 5,000 each and in this manner nothing was due from him. Apart from this, the appellant pleaded that Section 185 of the Indian Companies Act was not applicable to his case nor to the facts of the case, and that the liquidator's application was in any case barred by time. He pointed out that he had left the service of the company some time in 1948 and was thus

neither an agent nor an officer of the company at the time the application was made but that he was an ordinary debtor at the most arid for recovering money from an ordinary debtor the period of limitation was three years which had expired long before the liquidator filed his application.

2. Tek Chand J., who heard this petition, framed a number of issues on the parties' pleadings and he found on the evidence that the appellant had received large sums of money on behalf of the company for which he had rendered some account but that in the end a sum of Rs. 9,226-6-5 had still remained in his hands. The learned judge held that the liquidator's application u/s 185 of the Companies Act was competent and was not barred by time, although the appellant had left the company's service in 1948, as the official liquidator was after the winding up order, which was made in April, 1955, entitled to seek the court's assistance to compel the appellant to hand over to the liquidator the money still in the appellant's hands which he had received as an officer of the company. The appellant's objections were thus overruled and an order for payment of Rs. 9,226-6-5 was made against him. Against that decision the present appeal under Clause 10 of the Letters Patent is brought.

3. As far as the accounts are concerned, Tek Chand J. has gone into every detail and found that in respect of the period between the 1st January, 1947, and the time the appellant left the service of the company a sum of Rs. 4,993-2-5 had remained in the hands of the appellant and for the period prior to the 1st January, 1947, the appellant had received and still had in his hands, when he left service, another sum of Rs. 5,391-1-8 and out of this total the appellant had made certain payments to the company but allowing for those a sum of Rs. 9,226-6-5 still remained in his hands.

4. The correctness of these findings has not been seriously disputed before, us. All that Mr. Ahluwalia says in this connection is that a pronote for Rs. 4,993-2-5 which was executed on the 30th June, 1951, by the appellant, represented or should be taken to represent the entire amount due from the appellant because otherwise, according to learned counsel, the pronote would not have been for that specific sum of money. This plea has been carefully considered by Tek Chand J. and rejected in view of the evidence which shows that this pronote amount was in respect of the second period, that is, subsequent to the 1st January, 1947, while regarding the first period he has found that the appellant had made a few double entries to his credit and once they were properly adjusted another sum of money was in his hands. No fault can be found with that conclusion and none has seriously been found. The circumstance, therefore, that the company had obtained a pronote for Rs. 4,993-2-5 from the appellant does not demolish the clear evidence that another sum of money was also in the appellant's hands in respect of an earlier period when proper accounts were taken. As far as the merit of this controversy is concerned, therefore, there is little doubt that the appellant had in his hands a total sum of Rs. 9,226-6-5 which belonged to the company.

5. The main contentions raised on behalf of the appellant before us are two--(1) that the present application u/s 185 of the Companies Act is not competent, and (2) that the application is in any case barred by time--and it is the second question which has been seriously argued before us. It is convenient, however, to dispose of the first objection first. Mr. Ahluwalia says that an application u/s 185 of the Companies Act lies only against a trustee, a receiver, a banker, an agent or an officer of the company, while the appellant was none, of these at the time of the application. This, however, ignores the fact that when the money was actually received by the appellant, he was an officer of the company and it is the status of the appellant at the time the money came into his hands that has to be considered and not his status at the time of the application. This view, expressed by Tek Chand J., is supported fully by the Madras High Court in a decision, P.S. Venkatarama Ayyar Vs. K.P. Sarvothama Rao, Official Liquidator of the South Indian Film Corporation, when Varadachariar J. said that the real test was whether the money claimed came into the hands of the managing agent as the managing agent and it was immaterial that he had, at the time of the actual application of the official liquidator, ceased to be the managing agent. With great respect, I find myself of the same view, as the obvious purpose of Section 185 is to set up a machinery by which an officer of the company receiving money for the company as such officer may be compelled to deliver it to the official liquidator. No decision to the contrary is cited before us and on principle it seems to me that the view adopted by Tek Chand J. in this connection must prevail.

6. Regarding the second matter touching limitation, Mr. Ahluwalia points out that the learned single judge wrongly formed the opinion that Section 10 of the Limitation Act applied to a claim of the kind made by the liquidator and that if Section 10 of the Limitation Act is out of the way, then the liquidator's application would be time-barred. Mr. Ahluwalia is, I think, right in saying that Section 10, Limitation Act, is inapplicable to the present case. That section provides for a suit "against a person in whom property has become vested in trust for any specific purpose ", This obviously means an express trust created for a particular purpose and a suit u/s 10 of the Limitation Act would thus be a suit against a trustee in whom the property has come to be vested, or, in other words, it applies to such cases where the ownership of the property has been transferred to the trustee for a specified purpose. A number of decisions mentioned by Mr. Ahluwalia support this view and Mr. Sibal, for the respondent, accepts it as correct. Section 10 of the Limitation Act must, therefore, be held inapplicable to the present case.

7. Mr. Ahluwalia is, however, not right in suggesting that if Section 10 is not applicable, then the liquidator's application must be held barred by time, as Tek Chand J. has not decided the question of limitation on the sole basis of Section 10 of the Limitation Act. He has otherwise held, apart from Section 10, that there is no period of limitation mentioned for an application u/s 185 of the Companies Act and there is no reason why the liquidator should not be competent to obtain an order u/s 185 once the company has been ordered to be wound up. The

finding, in other words, is that an application u/s 185 of the Companies Act lies after a winding up order has been made and it can, therefore, have no reference to any point of time prior to the winding up order or any cause of action against any person arising before the winding up order. The language of Section 185 is clear enough. It says:

" The court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the court directs, to the official liquidator any money, property or documents in his hands to which the company is prima facie entitled. " .

8. It is obvious that an application u/s 185 can only be made after a winding up order and the jurisdiction of the company judge is to direct any officer of the company, who may have received money on behalf of the company and still with that officer, to pay it to the official liquidator provided the company judge is satisfied prima facie that the company is entitled to that money. It seems immaterial, in view of the language of Section 185, as to when the money may have been received by such, officer provided it was received on behalf of the company and received by him as an officer of the company. The remedy is summary and the object apparently is to protect the company's property in the hands of certain persons including an officer of the company. No question of limitation would seem to arise in such circumstances. Mr. Ahluwalia referred to certain decisions u/s 186 of the Companies Act indicating that an order u/s 186 can be made only in cases where a regular suit to recover the money due would still be within limitation. The correctness of these decisions is not in dispute and it is admitted that u/s 186 the court can make a payment order only if a suit to recover the same amount would still be in time if filed in the ordinary court. The reason is that Section 186 employs language very different from Section 185. It says :

"186. (1) The court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money, due from him or from the estate of the person whom he represents . . . ".

9. It will be noticed that the legislature has here used the expression. " any money due from him " which evidently means money recoverable in law at the time of the application, and thus Section 186 contemplates the recovery of an ordinary debt due from a contributory of the company, and it is not surprising that the courts have held that it is only a debt which is, still recoverable in the ordinary courts that can be ordered to be recovered from the contributory by the company judge. Section 187 of the Companies Act, which immediately follows, provided another kind of remedy against a contributory but that is in respect of a call made in connection with the shares held by a contributory and in such cases the order for payment of call money can be made after the winding up order and

in this connection the decisions of the courts admittedly are that it is the winding up order which is the cause of action for a call to be made on a contributory. The circumstances, therefore, that the ordinary rule of limitation applies to an order to be made u/s 186 of the Companies Act does not assist the argument that the same rule should be applied to an order u/s 185, for Section 186 deals with ordinary debts while Section 185 provides for moneys coming into the hands of an officer of a company in that capacity. No decided case favouring Mr. Ahluwalia's argument has been mentioned before us and as a matter of first impression I see no reason whatever for differing from the opinion of Tek Chand J. I would, therefore, affirm his conclusion that the present application of the liquidator against the appellant was not barred by time and that it was otherwise competent in law.

10. Nothing else is seriously urged in support of the present appeal which must, in the circumstances, fail and I would dismiss it with costs.

R.P. Khosla, J.

11. I agree.