

(1984) 01 KAR CK 0024

In the Karnataka High Court

Case No : Company Application No. 272 of 1983 in Company Petition No. 14 of 1979

Shakthi Beneficial Corporation (In Liquidation)

APPELLANT

Vs

C. Balasubramanyam

RESPONDENT

Date of Decision : 04-01-1984

Acts Referred:

Companies Act, 1956 — Section 446 (2) (b), 458 A

Citation : (1984) 56 CompCas 441(1)

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : S. Vijaya Shankar, for the Appellant; K.V. Narayanappa, for the Respondent

Judgement

Chandrakantaraj Urs, J.—This is an application under s. 446(2)(b) the Companies Act, 1956, made by the official liquidator praying for an order directing the respondent to pay to him a sum of Rs. 5,948, being the loan amount due by him together with interest and notice charges in respect of the loans advanced by M/s. Shakti Beneficial Corporation to the company in liquidation. The principal amount advanced consisted of two loans of Rs. 2,000 each against promissory notes excused on December 18, 1975, and February 26, 1976, did not meet with any success. Therefore, the application was filed.

2. Respondent has entered appearance through counsel. But, on November 10, 1983, none appeared for the respondent and in that petition respondent was placed ex parte. However, the court recorded that the claimant must prove that the loans were not barred by the law of limitation. In that circumstance, on November 23, 1983 evidence was recorded for the claimant and six documents were marked to which I will shortly advert to.

3. On November 23, 1983, respondent as well as his counsel were present in court. But no application was made for setting aside the order made on November 10, 1983, placing the respondent ex parte. However, counsel for the

respondent was permitted to cross-examination the claimant's witness. The case was then directed to be called on December 7, 1983. On December 7, 1983, the case was further adjourned, to be heard on January 4, 1984, i.e., today.

4. Mr. K. V. Narayanappa, learned counsel for the respondent, today made an attempt to present an application, purporting to be an application under O. 9, r. 7, CPC, to set aside the order made on November 10, 1983. But, respondent had knowledge of the order passed on November 10, 1983, as evidenced by the order of November 23, 1983, itself. The present application is not accompanied by any application for condonation of delay for presenting the application beyond 30 days from the date of knowledge of the order passed on November 10, 1983. In any event, no explanation is forthcoming from the counsel for presenting the application today when he could have presented the application in time between November 23, 1983, and December 7, 1983, or in case any application had been presented on December 7, 1983, and taken back on account of some error contained therein, there has been no re-presentation of that application after rectifying the error. No explanation is forthcoming as to why it was not presented soon thereafter. In these circumstances, I have declined to entertain the application filed in court today as not being in accordance with the procedure prescribed by law.

5. Exhibit P-1 is said to be the ledger maintained by the company in liquidation which came to the hands of the liquidator after the winding-up order was passed when he took possession of the books and records of the company in liquidation. Ex. P-1(a) is the folio relating to respondent, C. Balasubramanyam. In that, it is seen that on December 18, 1975, and on February 26, 1976, Rs. 2,000 on each occasion has been debited to his account. There are several entries of credit also, but they have been cancelled by corresponding debits subsequently. In the end, balance is struck at Rs. 4,000.

6. In the claim application a sum of Rs. 1,200 has been given deduction as amount paid towards interest before the winding-up order. That does not find a place in the ledger, Ex. P-1. Ex. P-2 is the loan application signed by the respondent for the second of the loans and Ex. P-3 is the second application for the loan in respect of the first of the loans. Ex. P-4 is the promissory note dated December 18, 1975, for Rs. 2,000 and Ex. P-4(a) is the consideration receipt relating to Ex. P-4. Similarly, Ex. P-5 and Ex. P-5(a) are the promissory note and consideration receipt for the second loan. Ex. P-6 is a typed letter addressed by the respondent to the company in liquidation explaining the circumstances in which he could not pay the balance due in respect of his loans. It further states, certain sums were paid by cheques and those cheques were dishonoured. It also states that another post-dated cheque has been enclosed to the letter. He further promised to pay the balance of the dues early in case the cheque was dishonoured.

7. I have compared the signatures on the pronotes, consideration receipts as well as Ex. P-6 purporting to be that of the respondent with the signature

admittedly to be that of the respondent in the vakalath. Even a naked eye comparison is adequate to hold that the signatures of the respondent are to be found in Ext. P-4, P-4(a), P-5(a) as well as Ext. P-2 and P-3, the loan applications. These clearly establish that the respondent had transaction with the company in liquidation and borrowed the said sums and has failed to pay the principal as well as the interest accrued except the amount given as deduction by the official liquidator.

8. At an earlier stage it was, however, argued by Sri Narayanappa, learned counsel for the respondent, that the claim was barred by limitation. Ex. P-6, which is written some time after April 11, 1978, the date on which the company in liquidation lodged a police complaint with the Yeshwanthpur Police Station, constitutes acknowledgment of the liability by the respondent in writing.

9. Having regard to the unfortunate position in which the respondent is placed by being placed ex parte at an earlier date of hearing, the question of any evidence of full discharge or partial discharge in excess of Rs. 1,200 has become inadmissible. In the absence of a written statement of objections, it even becomes more difficult to entertain any such plea at this late stage. In these circumstances, the court accepting the evidence produced by the official liquidator, is left with no choice but to hold that the claim is not barred by limitation having regard to Ex. P-6, the acknowledgment in writing.

10. The application was presented on June 1, 1983, and the debt was acknowledged after April 11, 1978, and the petition for winding-up the corporation was presented on May 2, 1979. The debt was a live debt on the date of the presentation of the application. The official liquidator gets the right to sue only after winding-up order is made and that order came to be made on November 2, 1979. The claim made under s. 446(2)(b), being not a suit claim but a special type of claim under the special provisions of the Companies Act, 1956, is not governed by that article which governs suits for recovery of money as held by this court in an earlier case, Unico Trading & Chit Funds (India) P. Ltd. v. S. H. Lohati [1982] 52 Comp Cas 340 (Kar). In these circumstances, the relevant article in the Limitation Act, 1963, is the residuary article - art. 137. Under that article, the period to be computed is from the date from which the right occurs. Further, from the date of the winding-up order, the official liquidator has got 3 years plus one year added to it in terms of s. 458A of the Companies Act.

11. Thus, the application presented in June, 1983, is within four years from the date of the winding-up order and, therefore, the application should be held to have been filed in time.

12. In these circumstances, this court is left with no choice but to allow the application as prayed for,

13. It is ordered accordingly.