
(1990) 08 DEL CK 0014
In the Delhi High Court
Case No : C.A. No. 223 of 1984

Smt. Mohan Pyari Sethi and others	APPELLANT
Vs	
Official Liquidator, M/s. Sahara Deposits and Investments (India) Ltd. (under Liquidation)	RESPONDENT

Date of Decision : 09-08-1990

Acts Referred:

Citation : AIR 1991 Delhi 125 : (1991) 71 CompCas 77 : (1990) 42 DLT 661

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : Vijay Kishan, for the Appellant; Ms. Indermeet Kaur, for the Respondent

Judgement

1. By this order, I propose to dispose of an application, filed by petitioners, under Rule 9 of the Companies (Court) Rules, 1959, read with Section 151 of Civil Procedure Code.
2. Briefly, the facts are that petitioners Nos. 2 and 3, are minors and they have filed the petition, through their next friend, Sheri S. P. An and. M/s. Sahara Deposits and Investments (India) Ltd., hereinafter referred to as the Company, was wound up, vide order dated January 13, 1984, in the Company Petition No. 78 of 1983.
3. The Company was tenant of petitioners, in respect of, M-116, third floor, Connaught Place, New Delhi, a room bearing private marks RJC/ 16-18 in undivided form and paying a rent of Rs. 5,0001 - per mensem, to petitioners in the following manner:

(i) Smt. Mohan Pyari Sethi 50% Rs. 2,500.00 p.m. (ii) Master Gaurav Kohli 25% Rs. 1,250.00 p.m. (iii) Master Vaibhav Kohli 25% Rs. 1,250.00 p.m.
4. The Company had paid rent up to March 31, 1983. Thereafter, no rent was paid, although it was to be paid every month in advance. The rent due up to

April, 1984, amounted to Rs. 65,000/-. According to the rent note, interest at the rate of 18% per annum was agreed to be paid on delayed payment of rent. It is further alleged that the liability of the Company, on account of rent was increasing by Rs. 5,000/ - each month and, Therefore, it was in nobody's interest to continue locking the premises.

5. In reply, the Official Liquidator has submitted that the premises, on the second floor of the building, was sealed on September 9, 1983

6. It is the case of Official Liquidator that the Company had admittedly, paid a sum of Rs. 60,000/-, as security, to petitioners.

7. It may be noticed that the notice of the petition was also served on the original owner of the premises in question and Shri Rajendra Jaina filed a reply, on behalf of the original owner. The original owner had no objection, if possession of the premises was handed over to petitioners.

8. On April 26, 1985, on the pleadings of the parties, following issues were framed:

1. Whether the applicant is not entitled to seek restoration of the premises?
2. What amount, if any, is Company entitled to by way of refund of security and/or advance and from whom?
3. What compensation, if any, is the Company entitled on account of, fittings and fixtures which are incapable of being removed from the premises without damaging the property?
4. Relief.

Evidence was directed to be led by means of affidavits.

9. Vide order dated February 17, 1986, the Court appointed Shri M. G. Verma, Registered Valuer, to evaluate the fixtures and fittings in the premises. The valuer, after inspection, fixed the value of the fixtures and fittings at Rs. 20,000/-. Vide order dated January 12, 1987 D. P. Wadhwa, J. directed the petitioners to pay a sum of Rs. 20,000/-, to the Official Liquidator, within a week, and thereafter, petitioners would be entitled to take possession of the premises and, within one month of the letting out of the premises, petitioners would pay Rs.60,000/- to the Official Liquidator. It may be noticed that vide order dated February 12, 1985, it was directed that the premises would be restored to petitioners, after making interim payment of Rs. 80,000/ - to the Official Liquidator, subject to the pleas of the parties and outcome of the present proceedings.

10. Admittedly, petitioners paid a sum of Rs. 20,000 / - to the Official Liquidator, before March 24, 1987, and also, possession of the premises was taken over by petitioners, between January 12, 1987 to March 24, 1987. It is also admitted that a sum of Rs. 60,000/ -was paid to Official Liquidator, as recorded in the

order dated October 8, 1987.

11. In view of the developments, subsequent to the framing of issues, and payment of Rs. 80,000/- by petitioners to the Official Liquidator, and delivery of vacant possession of premises by Official Liquidator to petitioners, the only issue, which survives for decision, is whether, petitioners were under a legal obligation, to refund a sum of Rs. 60,000 / - to the Official Liquidator, which had been paid by the Company, as security to petitioners, at the time of creation of tenancy, on the ground, that on the date of filing of the present application, admittedly, a sum of RS.65,000/- towards arrears of rent was due to petitioners, from the Company.

12 Miss. Indermeet Kaur, learned counsel for Official Liquidator, has urged that the arrears of rent, which petitioners were claiming from the Company, in liquidation, are ranked, as an ordinary debt. She has placed reliance upon the judgments in C.A. No. 154 of 198 3, M / s. S. S. Chawla and Company v. M/s. Globe Motors Limited (in liquidation) 1987 Tax LR 1687 and New Bank of India, decided by Mr. Justice S. S. Chawla, on July 11, 1986 and Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, .

In M / s. S. S. Chawla and Company (supra) it is held at page 1692 Tax LR 1987

"For these reasons, I hold that the rent accrued due for the godown after the order to wind up the company was made, cannot be treated as part of the "costs and expenses of the winding up". The landlord is not, Therefore, entitled to payment in full of the same. He must prove his debt in the winding up and be paid pari passu with the other creditors of the company."

13. The question, involved in the present case is, whether petitioners were not liable to refund the security amount of Rs. 60,000 / -, because, the Company/ Official Liquidator, owed to petitioners, at the time of filing of petition, a sum of Rs. 65,000/-, as arrears of rent, on the principles of set off and further, whether on the basis of the security, petitioners could be treated as secured creditors, to that extent.

14. Mr. Vijay Kishan, learned counsel for petitioners, has contended that, by virtue of Section 529(l)(a), which makes Section 46 of the Provincial Insolvency Act, 1920, applicable to these proceedings, principles of set off are clearly attracted in the present case. A sum of Rs. 60,000/- was deposited by the Company, at the time of creation of the tenancy and also, the arrears of rent, were admittedly due to petitioners, from the Company. Thus, there was a mutual credit and mutual debt, which entitle petitioners, to claim set off, to the extent of Rs. 60,000/ -. He has placed reliance upon the judgments in Official Liquidator of High Court of Karnataka Vs. Smt. V. Lakshmikutty, ; H. Naik, Official Liquidator, Puri Bank Vs. Panchanon Das, and Paras Nath Hira Lal Vs. Kishan Lal Chuni Lal and Others, .

15. On the other hand, Ms. Indermit Kaur has alleged, that in order to invoke the

principles of set off, mutual dealings between the parties, is the first essential ingredient. In the present case, these principles are not attracted because, the relationship between the petitioner and the company was, that of landlord and tenant. Such transactions do not amount to mutual dealings.

16. In *H. Naik, Official Liquidator, Purl Bank* (supra) it is held at pages 9 and 10 of AIR 1954 Ori

"The next question, however, remains as to whether or not in spite of the absence of any adjustment, the defendant is entitled to a set off against his dues, for the amount due to him under the fixed deposit receipts, Exts. B and B-1. The defendant's advocate relies on Section 229, Companies Act read with Sec- 46, Provincial Insolvency Act. Section 229, Companies Act is as follows:

"In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to the respective rights, of secured and unsecured creditors and to debts provable and to the Valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section."

Section 46, Provincial Insolvency Act is as follows:

"Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sum due from the other party and the balance of the account, and no more, shall be claimed or paid on either side respectively."

The argument on behalf of the defendant is that the debt due by the defendant to the Bank and the amount due by the Bank to the defendant in respect of the fixed deposits are mutual dealings between the insolvent Bank and the defendant in his capacity as debtor as well as creditor and that Therefore he is entitled to a set off in respect of the two inasmuch as Section 46, Provincial Insolvency Act is applicable to winding up proceedings by virtue of Section 229, Companies -Act above quoted It is contended on behalf of the plaintiff that there is here no question of any mutual dealings, but only the case of moneys advanced on the security of fixed deposits.

He also relies on the fact that while the plaint in terms was based on the allegation that there was a mutual open and current account between the bank and the defendant, the defendant in his written statement repudiated it. So far as this last argument is concerned, I do not think that in a matter like this, which depends on the legal view to be taken on certain undisputed facts, mere allegations and cross-allegations in the pleadings should be treated as sufficient to deprive the party to a right to relief if otherwise made out. In fact if the

plaintiff relies on the denial of the defendant in his statement, the defendant can equally rely upon the affirmance of the plaintiff in his plaint. It has also been attempted to be argued on behalf of plaintiff that there can be no question of mutual accounts, unless the transactions between the two are such as to result in shifting balances. It appears to me that it is unnecessary to go into the question whether or not the criterion of shifting balances is the test for an open mutual and current account, as that term is used under Article 85, Limitation Act. What is necessary for the present purpose is whether or not dealings between the plaintiff and the defendant in this case fall within the category of the phrase "mutual dealings" u/s 416, Provincial Insolvency Act. The leading case on the subject is- "Rose v. Hart", (1818) 129 ER 477 (A) to be found also in the 11 Volume of Smith's Leading Cases, p. 271, 12th Edition. It would appear from a consideration of that case and the case following the same, for instance- "Naoroji v. Chartered Bank of India", (1868) 3 CP 444 and "Palmer v. Day" (1895) 2 QB 618 the mutual credit or mutual dealings simply mean reciprocal demands which must be naturally terminated in a debt. There can be no doubt that with reference to that test the present case must be taken to be one of mutual dealings between the parties, since there are reciprocal demands, which must in the normal course be terminated in a debt. The question is, what was the object "of terminate in a debt owing by one party to the other.

The present is a simple case which is not in any way complicated by consideration whether the debt on one side is an individual debt and on the other side either a joint debt or a debt in the representative capacity or of some other different character. See for instance "Nur Husan v. Mt. Ghulam Zohra", AIR 1922 Lah 222 "Alliance Bank of Simla v. Mohan Lal", AIR 1927 Lah 228 A.R. Krishnaswami Aiyar and Another Vs. The Travancore National Bank, Ltd. and Another, and "Travancore N. & O. Bank Ltd. v. Cyril Gill and John Stanley Goodwin AIR 141 Mad 622 In fact, the above cases themselves clearly show that in a case where there are reciprocal demands available by one party against the other in the same capacity, it is a clear case of mutual dealings in which a "set off" is a matter of course. The case in D. Sundaravaradan Vs. R. Narasimhachari, Official Liquidator, is also a clear authority in favor of this position."

17. In Official Liquidator High Court of Karnataka (supra) it is held at page 1484:

"Where there is a mutual credit mutual debt, or other mutual dealings, the sums are to be set off and the balance of account and no more shall be claimed or paid on either side respectively."

18. Section 46 of the Provincial Insolvency Act, 1920, reads as under:

"46. Mutual dealings and set off- Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the

account, and no more, shall be claimed or paid on either side respectively."

19. This proposition, is to be considered in the background of the facts of the present case. The Company took the premises on rent, and at that time, deposited a sum of Rs. 60,000/-, as security with the landlord. The tenant will observe the terms and conditions of the agreement. One of such conditions is that the tenant will pay the rent to landlord in accordance with the agreement. When, the premises are vacated by a tenant, and there are arrears of rent at that time, certainly, the landlord has a right to adjust the arrears of rent and pay the balance, if any, of the security amount to the tenant. Moreover, the arrangement, between petitioners and Company was such, as to effect a set off, on the outstanding arrears of rent, at the time of petitioners getting the possession back.

20. In my view, as far as, the present case is concerned, petitioners have a right to claim set off.

21. Mr. Vijay Kishan has further contended, that petitioners, in the present case, are the secured creditors, up to the extent of Rs. 60,000/-. As such, they are outside the scope of winding up proceedings.

22. It is not necessary for me to go into this question, as petitioners have themselves approached this Court, for recovery of possession and arrears of rent.

23. For the reasons given above, I hold that petitioners were not under legal obligation to refund the sum of Rs. 60,000/-, to Official Liquidator as, they had a right to claim set off. As such, Official Liquidator I directed to refund a sum of Rs. 60,000/- to petitioners. However, with regard to the petitioners claim, above Rs. 60,000 / -, on account of alleged arrears of rent, petitioners have to prove these debts in winding up, and have to be paid pari passu, with other creditors of the Company. C. A. 223 / 84 stands disposed off.

24. Order accordingly.