(1992) 07 KL CK 0036

In the High Court Of Kerala

Case No : C.C. No. 27 of 1991-A in C.P. No''s. 8, 9 and 49 of 1981

Sudarsan Chits (India) Ltd. APPELLANT

Vs

R. Sambasiva Rao and Others RESPONDENT

Date of Decision : 31-07-1992

Acts Referred:
Companies Act, 1956 — Section 446(2) , 458A
Limitation Act, 1963 — Article 137, 15, 15(3)

Citation : (1995) 84 CompCas 962

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : K.P. Dandapani and Vijayalakshmi, for the Appellant; Abraham K. John, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—In this claim u/s 446(2) of the Companies Act, 1956, the official liquidator seeks to recover Rs. 5,062.50. The only question is whether the claim is barred by limitation.

2. The facts are as under :

Respondent No. 1, a subscriber to the chitty conducted by the company committed defaults in the payment of the monthly instalments. The last instalment was paid on June 30, 1984. The time started running on July 1, 1984. On this day the claimant acquired "the right to apply" for recovery of the amount due under the contract of chitty. The amount is Rs. 5,062.50 (Rs. 3,457.22 principal and Rs. 1,605.28 interest). In order that it is not barred by the period of three years prescribed by Article 137 of the Limitation Act, 1963, the claim ought to have been filed before July 30, 1987. It was filed on October 11, 1991.

3. Some more facts which are relevant are these :

The petition for winding up Sudarsan Chits (India) Ltd., the claimant herein, was filed on January 2, 1981, The winding up order was made on October 13, 1981.

Appeals against the winding up orders were filed. They were M.F.A. Nos. 518 of 1981, 519 of 1981 and 520 of 1981. The Division Bench of this court confirmed the winding up order but held it in abeyance (see Sudarsan Chits (India) Ltd. Vs. Sukumaran Pillai and Others, Special Leave Petitions Nos. 7634 of 1983, 7635 of 1983 and 7636 of 1983 were admitted by the Supreme Court. The appeals are pending in the Supreme Court. Meanwhile, the Division Bench of this court which had permitted the official liquidator to file "suits" u/s 446(2) of the Act rejected the liquidator''s application (C.M.P. No. 14913 of 1983) for leave to file "claims" u/s 446(2) of the Act. This order was set aside by the Supreme Court on August 16, 1984, and the liquidator was allowed to file "claims" also (see Sudarsan Chits (India) Ltd. v. G. Sukumaran Pillai [1985] 58 Comp Cas 633 (SC).

4. The claims by the liquidator of a company have special features. His right to prefer claims and the limitation therefore is the subject-matter of both the Limitation Act and the Companies Act. Firstly, his right to prefer a claim u/s 446(2) of the Act arises only on the date of the winding up order or the date of appointment of liquidator (see K.P. Ulahannan and Others Vs. The Wandoor Jupiter Chits (P) Ltd., If the claim is alive on this date, that is to say not beyond the period of prescribed limitation, the period of limitation starts on the date of winding up order.

5. Secondly, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made can be excluded in computing the period of limitation prescribed for the claim u/s 446(2) of the Act (see Section 458A of the Companies Act, 1956).

6. Thirdly, the liquidator is also entitled to the exclusion of one year immediately following the date of the winding up order (see Section 458A of the Companies Act, 1956).

7. On August 16, 1984, the Supreme Court (see Sudarsan Chits (India) Ltd. v. G. Sukumaran Pillai [1985] 58 Comp Cas 633 held that the liquidator could file claims u/s 446(2) of the Act It has been held that, in view of the Supreme Court''s judgment and Section 15(2) of the Limitation Act, the liquidator is entitled to the exclusion of the period from the date of the winding up order to the date of the Supreme Court''s judgment, viz., August 16, 1984 (see Sudarsan Chits (India) Ltd. (In Liquidation) Vs. Smt. Uma Sharma and Others, Thus, the claimant is entitled to exclude (a) the period from the date of the winding up order up to August 16, 1984, as well as, (b) the period from the date of commencement of the winding up of the company to the date on which the winding up order was passed (from January 2, 1981, to October 13, 1981), and (c) a further period of one year (see Sudarsan Chits (India) Ltd. (In Liquidation) Vs. Smt. Uma Sharma and Others,

8. The last default was committed on July 1, 1984. The Supreme Court permitted the filing of claims on August 16, 1984. On the authority of Uma Sharma (see Sudarsan Chits (India) Ltd. (In Liquidation) Vs. Smt. Uma Sharma and Others,

this claim ought to have been filed before October 2, 1989. This claim filed on October 11, 1991, is barred by limitation prescribed by Article 137 of the Limitation Act. But it is here that an interesting point urged by Mr. Dandapani arises for consideration. The point is stated in the next paragraph.

9. Section 15 of the Limitation Act enables litigants to exclude certain periods of time for the purpose of computing the period of limitation.

10. In computing the period of limitation for any suit by a liquidator appointed in proceedings for the winding up of a company, a special exclusion of time is provided in Sub-section (3) of Section 15 of the Limitation Act. The period beginning with the date of institution of proceedings for winding up and ending with the expiry of three months from the date of appointment of such liquidator, shall be excluded (see Section 15(3) of the Limitation Act). According to counsel, "date of appointment" of the liquidator is not the date of appointment by the company court. The winding up order and, therefore, the appointment of the liquidator is the subject-matter of the three appeals to the Supreme Court. Since the appeal is a continuation of the proceedings initiated in the trial court, "appointment" of liquidator means the appointment or its confirmation by the appellate court, which, in this case is the Supreme Court. The "date of appointment" of the liquidator means the date on which the Supreme Court "appoints" the liquidator. Until then the period of exclusion continues. According to learned counsel, until the Supreme Court disposes of the appeal, the period of exclusion continues to save the claim from the bar of limitation.

11. The argument summarised in the last paragraph is not valid for the reasons set out in the following paragraphs.

12. It is the "court" which appoints the liquidator (see Section 450 of the Companies Act, 1956) after notice to the company. The "court" in the context of appointment of liquidator, means the High Court (see Section 2(11) and Section 10 of the Companies Act). Therefore, the "appointment" of a liquidator or provisional liquidator is made by that court before whom the winding up petition is filed. It is undisputed that in this case the court "appointed" the liquidator on October 13, 1981.

13. Sub-section (3) of Section 15 of the Limitation Act permits exclusion of certain time to aid the liquidator "appointed" in "proceedings for the winding up" of a company. By their very nature "proceedings" are instituted in the lowest court which in this case is the High Court. "Appointment" of liquidator, whether in the court of the first instance or by the appellate court, is appointment in "proceedings for the winding up" of a company. The liquidator, a stranger to the assets and affairs of the company, needs time to acquaint himself with the assets and affairs of the company. If his legal actions to realise the assets of the company are subjected to the same rigor to which the actions by ordinary litigants are, it will cause grave injustice and frustrate his efforts to realise the property of the company. By the time, the liquidator gauges the situation, the

proposed suits and claims may be barred by the law of limitation. The object of Sub-section (3) of Section 15 of the Limitation Act is to reduce the rigor of the law of limitation applicable to suits, proceedings and claims instituted by the liquidator (see the Statement of Objects and Reasons). The exclusion of time is intended to aid the liquidator who performs his duty of realisation of the assets of the company by instituting legal proceedings. Thus, when Parliament used the word "appointment" in Sub-section (3) of Section 15 of the Limitation Act, it had in mind the institution of suits, proceedings and claims by the liquidator "appointed" by the court. It is clear from the object of Sub-section (3) of Section 15 of the Limitation Act that Parliament had in mind the "appointment" of that liquidator who is called upon to initiate suits or claims. Having regard to the scheme of the Companies Act, the liquidator who institutes suits, proceedings or claims is the liquidator or provisional liquidator "appointed" for the first time. The liquidator, whose appointment awaits confirmation or faces reversal in appeal, is not "appointed" by the appellate order.

14. It follows that a liquidator appointed for the first time is the liquidator who is entitled to the exclusion of time. The liquidator appointed by the court in the first instance needs time to acquaint himself with the estate. The liquidator does not institute any suits, proceedings or claims in the court which is hearing the appeal in which the winding up and liquidator''s appointment are being reagitated-unless, of course, the appellate court appoints the liquidator for the first time. A liquidator whose appointment is called in question in appeal, has already been "appointed" by the court of the first instance. There is only one "appointment" of liquidator. If he is appointed by the court of the first instance, Sub-section (3) of Section 15 governs proceedings instituted by him. If the liquidator is appointed for the first time in appeal, such liquidator is the liquidator "appointed in proceedings for the winding up of a company."

15. Now, if appeals which are a continuation of the winding up petition are pending, does it mean that the "appointment" of the liquidator is not made until the appeals are disposed of ? The appellate court has the same powers as the court of original jurisdiction. Where the court of the first instance appoints a liquidator, the appointment is final so far as that court is concerned. Merely because an appeal is pending, the appointment made on October 13, 1981, does not cease. Nor does the pendency of the appeals have the effect of postponing the date of appointment made by the court of the first instance.

16. The argument of counsel means that the "appointment" by the trial court does not take effect until the final court upholds it. The appellate court may set aside the order of appointment of liquidator made on October 13, 1981. But the acts of the liquidator performed during the interregnum are valid. If what was done by this court on October 13, 1981, is not "appointment", the consequences would be absurd and astounding.

17. For the reasons stated in the foregoing paragraphs, I hold that the liquidator of Surdarsan Chits (India) Ltd. was appointed on the date on which this court

appointed him, viz., October 13, 1981. The exclusion of time permitted by Sub-section (3) of Section 15 of the Limitation Act is three months from October 13, 1981. Even if this period of three months is added to the date calculated in paragraph 3 above, the claim is barred by the law of limitation prescribed by Article 137 of the Limitation Act.

18. The claim is dismissed.

