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**(1993) 06 KL CK 0041**  
**In the High Court Of Kerala**  
**Case No : M.F.A. No. 205 of 1993**

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| Sudarsan Chits (India) Ltd. (In Liquidation) | APPELLANT  |
| Vs                                           |            |
| Madalam Narasimhulu Chetty and Another       | RESPONDENT |

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**Date of Decision :** 14-06-1993

**Acts Referred:**

Banking Regulation Act, 1949 — Section 12, 22, 450, 5, 7  
Companies Act, 1956 — Section 446 , 458A  
Limitation Act, 1963 — Article 137, 10 , 15(3)

**Citation :** (1997) 88 CompCas 72 : (1993) 3 ILR (Ker) 782

**Hon'ble Judges :** K. Narayana Kurup, J;K. John Mathew, J

**Bench :** Division Bench

**Advocate :** K.P. Dandapani, for the Appellant; G. Unnikrishnan, Amicus Curiae, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K. John Mathew, J.—The official liquidator, who is the provisional liquidator of the Sudarsan Chits (India) Ltd. (in liquidation), hereinafter referred to as "the company" is the appellant.

2. A petition to wind up the company was filed before this court on January 2, 1981. By order of the company court dated October 13, 1981, the company was ordered to be wound up. However, in appeal a Division Bench of this court modified the order of winding up and approved a scheme for its revival. The appellate judgment dated October 8, 1982, is reported in Sudarsan Chits (India) Ltd, v. G. Sukumaran Pillai [1985] 57 Comp Cas 85 Among other things, the appellate court authorised the provisional liquidator to file "suits" and to take all steps necessary for the conduct of the suits and for recovery of the amounts due to the company. Subsequently, the company filed C. M. P. No. 14913 of 1983 to permit the filing of "claims" u/s 446 of the Companies Act, hereinafter referred to as "the Act", before this court for realising the dues to the company. This court by order dated August 18, 1983, refused to grant permission to file claims in this

court and directed the liquidator to file suits in the respective courts having jurisdiction for realising the dues to the company. That order was set aside by the Supreme Court in *Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others*, holding that the winding up court has jurisdiction to have recourse to Section 446 of the Act since the order of winding up was neither cancelled nor recalled nor revoked nor set aside by the appellate judgment. Accordingly, the Supreme Court allowed the application filed by the official liquidator and directed the liquidator to file claim petitions u/s 446(2) of the Act in the company court itself, for realising the amounts due to the company. The claim from which the present M.F.A. arises is one such claim. The claim was filed on December 6, 1991. The learned company judge by the order under challenge dismissed the claim as barred by limitation.

3. Urgent notice by special messenger was ordered to the respondents in the M.F.A. Although the notice was duly served, the respondents did not enter appearance. Therefore, as required by us, Shri G. Unnikrishnan, advocate, appeared before us as *amicus curiae* and argued the appeal. Shri K. P. Dandapani, advocate, appeared for the liquidator.

4. The only point to be considered is whether the claim is barred by limitation. By the judgment in *Sudarsan Chits (India) Ltd. v. Smt. Uma Sharma* [1992] 73 Comp Cas 381 (Kerj, one of us (John Mathew J.) held that in computing the period of limitation in a similar claim the liquidator is entitled to exclude the period from the date of winding up order to the date of the Supreme Court judgment, viz., October 13, 1981, to August 16, 1984, as well as the period from the date of winding up petition to the date of the order of winding up, viz., January 2, 1981, to October 13, 1981, as well as a further period of one year u/s 458A of the Act. Learned counsel for the liquidator contended that over and above the periods allowed to be excluded in *Sudarsan Chits (India) Ltd. v. Smt. Uma Sharma* [1992] 73 Comp Cas 381 (Ker), the liquidator is entitled to exclude some more periods. He has also a further contention that there is no limitation for such claims. We will consider those contentions one by one.

5. The first contention is that only by the judgment of the Supreme Court dated August 16, 1984, the official liquidator could file claims u/s 446 and, therefore, that date should be taken as the effective date of appointment of the liquidator referred to in Section 15(3) of the Limitation Act. The further contention is that the liquidator will, therefore, be entitled to an additional three months from August 16, 1984, for filing claims u/s 446.

6. The article of limitation applicable to claims u/s 446 of the Companies Act is Article 137 of the Limitation Act, under which the period of limitation is three years from the time when the right to apply accrues. Here the right to apply accrued on August 16, 1984, when the Supreme Court directed the liquidator to file claims u/s 446. Even so, the claimant will be entitled to the full benefit of Section 458A of the Companies Act. (See *K. P. Ulahannan v. Wandoor Jupiter Chits (P.) Ltd.* [1988] 2 KLJ 434 ; [1989] 65 Comp Cas 178). The contention

against the exclusion of the period of three months from the date of appointment of the liquidator provided u/s 15(3) of the Limitation Act is that the period of one year provided u/s 458A of the Companies Act covers this period of three months and, therefore, the liquidator is entitled to only a longer period of one year provided u/s 458A of the Companies Act. The three-month period u/s 15(3) of the Limitation Act commences from the date of appointment of the liquidator. The one-year period u/s 458A of the Companies Act commences from the date of winding up order. The contention against exclusion of the three-month period cannot be accepted since this is a different period of exclusion which has to be added with other available periods of exclusion in computing the total period to be excluded. (See AIR 1935 85 (Privy Council) and Bhagwan Swarup Vs. Municipal Board, Ujhani and Others, ). In this case, even though the winding up order was passed as early as on October 13, 1981, the liquidator was able to function only from the date of the Supreme Court judgment, viz., August 16, 1984. Thus, the three-month period from the effective date of appointment of the liquidator in this case will not cover the one-year period u/s 458A of the Companies Act.

7. The principle that a special law will prevail over the general law, and, therefore, the three-month period of exclusion u/s 15(3) of the Limitation Act is not available to the liquidator, may not apply in this case. The period of limitation applicable in this case is prescribed by the Limitation Act and, therefore, all the exclusions provided under the Limitation Act will also be available to the liquidator. So also it has to be noticed that Section 458A does not specifically provide that the exclusions provided in the Limitation Act will not be available to the official liquidator. In support of this view we may also rely on the well settled principle that where the language is dubious the construction should be that which favours the right to sue rather than that which bars the right. (See Raghuraj Singh Vs. Sobhaman, and Jethmal v. Amb-singh, AIR 1955 Raj 97 [FB]. Therefore, we hold that in this case the liquidator is entitled to exclude an additional period of three months from August 16, 1984, in computing the period of limitation.

8. The second contention is that the SLP filed against the judgment reported in Sudarsan Chits (India) Ltd. v. G. Sukumaran Pillai [1985] 57 Comp Cas 85 (Ker) was dismissed as not pressed only on September 14, 1992, and, therefore, time will run only from that date. The Supreme Court directed the liquidator to file claims by its judgment dated August 16, 1984. Therefore, on that date the right to file the claims accrued to the liquidator. Under Article 137 of the Limitation Act, the starting point of limitation was, therefore, August 16, 1984. It cannot be said that the right to apply did not accrue due to the pendency of the special leave petition. Therefore, this contention is without merit.

9. Learned counsel for the liquidator contended that the chit fund business carried on by the company in liquidation comes within the definition of "banking". The word "banking" is defined in Section 5(b) of the Banking Regulation Act,

1949, which is as follows :

"(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

10. In order that the business may come within the definition of "banking", the deposit of money should be withdrawable by cheque, draft, order or otherwise. Admittedly, the amount with the company in liquidation was not withdrawable by cheque, draft or order. Reference may also be made to Section 7 of the Banking Regulation Act, which provides that no company shall carry on the business of banking unless it uses as part of its name at least one of these words, viz., "bank", "banker" or "banking". The company in liquidation was not using any of these words as part of its name. The company did not satisfy the conditions u/s 12 of the Banking Regulation Act. So also the company had no licence u/s 22 of the Act, from the Reserve Bank of India. So much so, the contention that the company was doing a banking business and, therefore, Section 450 of the Banking Regulation Act which provides, for a special period of limitation is applicable in this case, is without merit. *C. Varamain David Vs. The Bank of Madurai Ltd. and Another*, does not support the contention on behalf of the liquidator. In that case, the Madras High Court only held that a chit fund transaction conducted by a separate department of a bank is a banking transaction governed by the Banking Regulation Act and the liability of a person incurred in such a transaction is saved from the provisions of the Tamil Nadu Indebted Persons (Temporary Relief) Act, 1976.

11. The further contention that the relationship between the company and its creditors is in the nature of a trust and, therefore, Section 10 of the Limitation Act is applicable also cannot be accepted. Considerable reliance was placed on the following sentence in paragraph 8 of the ruling of the Calcutta High Court in *In Re: Chanbali Steamer Service Co., Ltd. (In Liquidation)*, :

"By sections 228 and 229 of the old Indian Companies Act which govern this application corresponding to sections 528 and 529 of the new Companies Act, 1956, the liquidator must be regarded as a person in whom the property of the company has become "vested in trust for the specific purpose" within the meaning of Section 10 of the Limitation Act."

12. That order was passed on an application against a liquidator for a direction to admit the claim of the petitioner therein and for necessary amendment of the list of creditors already settled by the court. The liquidator contended that the claim was already barred by limitation. The claim arose out of the money advanced to the company on overdraft account which continued till October-November, 1954. The company went into liquidation in March, 1955. The claimant did not put forward its claim before the liquidator at any stage until November 5, 1958, which was about four years subsequent to the last transaction in the overdraft account and about more than three years after the date of liquidation. The list of

creditors was settled by the court in September, 1958. The claim was filed only on November 8, 1958. The liquidator rejected the claim on the ground of limitation. In paragraph 13 of the order the court held as follows (at page 648) :

"The true principle that I enunciate and deduce from these authorities is then this that a claim already barred by limitation at the date of winding-up order will not be entertained by the liquidator and the court but a claim not so barred at that date but barred by limitation after the date of winding-up order can nevertheless be entertained and admitted by the liquidator and the court even after the settlement of the list of creditors has been made by the court without disturbing previous dividends and commitments of the liquidator and unless there are special reasons in a particular case for excluding such claim. In doing so the court which supervises the liquidation may impose any terms and conditions that it thinks proper in the best interests of a fair liquidation including such conditions that previous dividends should not be disturbed or even in a proper case postponing such delayed or barred claim after these claims proved within time."

13. Reference was made to the Indian Trusts Act by N. Suryanarayana Iyer, by Sri. G. Unnikrishnan, appearing as amicus curiae, wherein the learned author relying on Knowles v. Scott [1891] 1 Ch 717, Smith and Sons Ltd. v. Goodman [1936] Ch 216 and Pulsford v. Devenish [1903] 2 Ch 625, observed as follows (second edition, page 346, para 7) :

"But the liquidator of a company is not a trustee for the creditors or the contributories."

14. Even in case it is taken that the Companies Act imposes on the liquidator liability in the nature of trust and, therefore, a claimant is not precluded from claiming amounts due to him, it will not automatically follow that the same reasoning applies to the amount due from a debtor to the company. In order that Section 10 of the Limitation Act may apply, the property must become vested in trust for any specific purpose. A chit fund is a mutual recurring deposit scheme under which every member is entitled to receive the prized amount as loan from the chit fund. The number of subscribers in a chit will be equal to the number of instalments, so that every member is assured of an opportunity of getting the pooled money. The prized subscriber is required to furnish security or execute bonds for prompt payment of the remaining instalments till the last man gets his chance of getting the pooled money. The relationship between the subscriber and the foreman is controlled by an agreement between the parties called thalavariyola. The transaction is purely one of debtor and creditor. Therefore, the liquidator cannot contend that the prized subscriber is a trustee and so there is no period of limitation for filing a claim against him. (See Janardhana Mallan and Others Vs. Gangadharan and Others, Therefore, we reject the contention that Section 10 of the Limitation Act is applicable in this case.

15. We are of the view that the liquidator is entitled to get only an additional

period of three months u/s 15(3) of the Limitation Act. Even granting this period of three months the present claim which was filed only on December 6, 1991, is barred by limitation. Therefore, there is no illegality in the order dismissing the claim.

16. We delete the following sentence in page 27, paragraph 24 of the judgment of the learned company judge, as not required for the disposal of this claim :

"This will be the position generally in respect of all claims filed by the liquidator after May 27, 1989, in the absence of special circumstances justifying a finding that the claim is not barred by limitation on grounds like valid acknowledgment of the liability or renewal of the liability, etc."

17. In this connection, we may refer to an order dated August 8, 1989, in Application No. 1311 of 1989 in C. C. Nos. 5001-5050 of 1989, in C. P. Nos. 8, 9 and 49 of 1981 (another batch of claims filed by the liquidator) whereby the company court gave a general direction to the office to entertain the claims filed by the liquidator and if any of the respondents in any of the claims raises any contention of limitation, that will be considered and decided on the merits of each case. This direction will safeguard the interests of the respondents in other claims..

18. The appeal is dismissed with the above directions. We express our appreciation of the able assistance rendered by Sri G. Unnikrishnan, who appeared as amicus curiae in this appeal and by Sri K. P. Dandapani who appeared for the liquidator.