

(1990) 11 KL CK 0035

In the High Court Of Kerala

Case No : C.C. No. 3828 of 1989-B in C.P. No's. 8, 9 and 49 of 1981

Sudarsan Chits (India) Ltd. (In Liquidation)

APPELLANT

Vs

Smt. Uma Sharma and Others

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

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

Citation : (1992) 73 CompCas 381 : (1991) 1 ILR (Ker) 412

Hon'ble Judges : K. John Mathew, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; T.K. Kurien, for the Respondent

Judgement

K. John Mathew, J.—This is a claim for realising Rs. 3,273 made up of the principal amount of Rs. 1,595,74 and, interest thereon. The official liquidator, who is the provisional liquidator of Sudarsan Chits (India) Ltd., is the claimant. The claim is for the respondents' liability in the kuris prized money drawn by the first respondent in kuri No. JG7/16. Respondents Nos. 2, 3 and 4 are impleaded as sureties for the debt.

2. On behalf of the first respondent a counter-statement was filed raising the contention that the claim is barred by limitation. It was also prayed that in case the plea of limitation cannot be accepted, this court may waive the interest and allow the respondent to pay the principal amount in three bimonthly instalments.

3. Admittedly the last instalment was paid by the respondent on January 29, 1980. Winding-up petition of the claimant company was filed on January. 2, 1981, and winding-up order was passed on October 13, 1981. Subsequently, the order of winding-up was modified and a scheme was approved in appeal. The appellate judgment was dated October 8, 1982. In the appellate judgment Sudarsan Chits (India) Ltd. v. G. Sukumaran Pillai ILR 1983 (1) Ker 700 para 23 ; [1985] 57 Comp Cas 85, the appellate court authorised the provisional liquidator to file "suits" and take all steps necessary for the conduct of the

"suits". Subsequently, the company filed C. M. P. No. 14913 of 1983 to permit the filing of "claims" u/s 446 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 filing of suits in the respective courts 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*, In that judgment, it was held that the order of winding up was neither cancelled nor recalled nor revoked nor set aside and it was effectively subsisting but inoperative for the time being. Accordingly it was held that the winding-up court would have jurisdiction to take recourse to Section 446(2) of the Companies Act. The application for permission to file claims before this court was allowed by the Supreme Court by order dated August 16, 1984. The present claim was filed on July 22, 1988.

4. The contention on behalf of the respondents is that the period of limitation began to run from September 19, 1980, namely, the date of last payment, and, therefore, even after excluding the period of pendency of winding-up petition and an additional period of one year u/s 458A of the Companies Act, the claim is barred by limitation. Such a contention cannot be accepted. A Full Bench of this court in *K.P. Ulahannan v. Wandoor Jupiter Chits (P.) Ltd.* [1988] 2 KLT 636 ; [1989] 65 Comp Cas 178 held that "since the right of the official liquidator to apply u/s 446(2)(b) arises only on the passing of a winding-up order or on the appointment of a provisional liquidator the starting point of limitation for claims under the said sub-section is the date on which the winding-up order is passed or a provisional liquidator is appointed". The right to file a claim u/s 446(2)(b) of the Companies Act is a special right conferred on the official liquidator and such a right will arise only on the date of the winding up order. Therefore, the contention that time begins to run from the date of last payment cannot be accepted. The only inference to the date of last payment is to verify whether the claim was barred on the date of winding-up order itself. In this case, the claim was not barred on the date of the winding-up order.

5. In *New Kerala Roadways Pvt. Ltd. v. K. K. Nanu* [1989] 66 Comp Cas 715. this court has held that the liquidator is entitled to add both the periods specified in Section 458A of the Companies Act to the three-year period prescribed in Article 137 of the Limitation Act.

6. In C. M. P. No. 14913 of 1982, this court refused to grant permission to file claims u/s 446(2)(b) of the Companies Act. Only when the Supreme Court set aside that order and permitted the liquidator to file claims u/s 446(2)(b) of the Companies Act, that the liquidator was authorised to file claims. That order was passed on August 16, 1984. The liquidator is, therefore, entitled to exclude the period from the date of winding-up order up to August 16, 1984, u/s 15(2) of the Limitation Act. It is well settled that the periods to be excluded have to be added to the prescribed period (see AIR 1935 85 (Privy Council) and *Bhagwan Swarup Vs. Municipal Board, Ujhani and Others*,). It is also a 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 *Jethmal v. Ambsingh* AIR 1955 Raj 97 and *Raghuraj Singh Vs. Sobhaman*,).

7. Thus, the claimant is entitled to exclude the period from the date of the winding-up order up to August 16, 1984, as well as 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, namely, 9 months and 11 days), and a further period of one year. Thus, the liquidator is entitled to 4 years, 9 months and 11 days from August 16, 1984. The present claim which was filed on July 22, 1988, is accordingly within time. The contention that it is barred by limitation is rejected.

8. The respondent has a further prayer to the set off of the dues from chit No. SCL/JG-5, Book No. 12, held by M. M. Sharma and SCL/JG-5, Book No. 11, held by Mrs. J. N. Devi. In case the respondent in this claim produces necessary consent letters from the persons entitled to receive those amounts, the claimant will set off those amounts from the principal amount due in this claim and accordingly recalculate the amount due under this decree. The respondent has a further prayer to waive the interest and to allow her to pay the balance amount in instalments.

9. The claim is proved by affidavit as well as the documents produced. The claim is decreed as prayed for with costs. However, the respondents are allowed to pay the principal amount together with one-half interest which is fixed as Rs. 2,700 in monthly instalments of Rs. 450. The first instalment is to be paid on or before November 30, 1990, and the subsequent instalments before the 30th of the succeeding months. If this amount is paid as directed, the balance decree amount will be waived. Failing such payment, the liquidator will be entitled to realise the entire decree amount without any concession. This decree is subject to any set off that may be allowed as directed above.