

(1981) 03 KAR CK 0048

In the Karnataka High Court

Case No : Company Application No. 219 of 1980

Sudhakar Syndicate Pvt. Ltd.

APPELLANT

Vs

H.M. Chandrashakaraiah and Others

RESPONDENT

Date of Decision : 20-03-1981

Acts Referred:

Companies Act, 1956 — Section 446 (2) (b)
Negotiable Instruments Act, 1881 (NI) — Section 81

Citation : AIR 1981 Kar 245 : (1982) 52 CompCas 281(1)

Hon'ble Judges : M.P. Chandrakantraj Urs, J

Bench : Single Bench

Advocate : S. Vijayashankar, for the Appellant; Jagadeesh Mandargi, for the Respondent

Judgement

1. This is an application filed by the official Liquidator u/s 446(2)(b) of the Companies Act, 1956 to recover sum of Rs. 1709/- being the principal and interest due from respondents 1, 2 and 3 jointly and severally in respect of the chit fund transaction the 1st respondent had with the Company in liquidation while it was carrying on business. ,

2. The Chit value was Rs. 2500/-. Respondent I was the highest bidder at the auction held for chit Group DLN of the Company (in Liquidation). The auction was held on 23-6-1974. He received the prize amount on 22-7-1974 and on the latter date he executed a promissory note for Rs. 1675/promising to repay the said amount together with interest at the rate of 18 per cent per annum. Respondents 2 and 3 executed the promote as sureties.

3. After the Company came to be wound up, the Official Liquidator issued notice demand to respondents for the payment the balance due by the 1st respondent respect of the aforementioned transaction had with the Company, without success.

4. The Official Liquidator's claim is follows:

"chit Value Rs.2,500.00

Subscription paid inclusive of dividend.Rs.1,395.00

Balance; Rs.1,105.00

Interest at 18 percent per annum from 11.11.1974

To 8-7-1976. Rs. 330-00

Interest at 6 per cent per annum from 9-7-1976 to

2-7.1980. Rs. 264-00

Notice charges. Rs. 10.00

Amount payable: Rs. 1,709.00 "

As no payments were made, by the respondents, the application has been filed.

5. Respondents 1, 2 and 3 were served and remained absent and, unrepresented on 1-10-1980. On that day

they were placed *ex parte* and the application was ordered to be called on 1-10-1980. However, Shri

Jagadeesh Mundragi, Advocate entered appearance for respondents 1 and 2 and made an application for

recalling the order made on 1-10-1980. That application came to be allowed by me and the respondents were

permitted to file their objections and the same was filed on 4-11-1980.

6. In the statement of objections, respondents 1 and 2 have averred that they were not aware of the winding up order made by the Court on 9-7-1976 and that they came to know of it only on receipt of the notices dated 16-2-1977 issued by the applicant-Official Liquidator. They also claim that those notices were suitably replied to by the 1st and the 2nd respondents separately. They admit partially the fact of the transaction the respondent had with company but have, denied their liability jointly and -severally to pay the sum demanded. It is, however, asserted in the statement of objections that the respondents had settled the debt due under the chit transaction of the 1st respondent as far back as 2-12-1975. 2nd respondent had paid total Rs. 1,715/- in respect of three accounts he had in pass books Nos. 1, 2 and 3. The statement of account of the 2nd respondent has been produced at Annexure I to the objection statement. It is, however, asserted by the respondents that the Managing Director of the Company (in Liquidation) agreed with the 1st and 2nd respondents in adjusting the amount in the account of the 2nd respondent to the extent of Rs. 1078-80 which was due

by the 1st respondent on the date of the agreement and the Managing as Director issued receipt on 2-12-1975 for the said sum and in "that circumstance, it is stated that respondent I is not due to pay any amount whatsoever as claimed by the Official Liquidator as there was no cause of action subsisting on the date of the application. The respondents prayed that the application may be dismissed with costs.

7. An enquiry therefore became necessary and as the transaction was admitted and a plea of discharge entered, the respondent were allowed to lead evidence to prove the discharge.

8. On behalf of respondents one witness was examined and the stamped receipt for Rs. 107-80 was marked for, respondents as Exhibit R-1. R. W. I is no other than the son of the 1st respondent He has spoken to the following facts. His father retired from service as a bill collector in the Municipal Office of Davanagere and that since his retirement be. is not keeping good health. He was aware of the account. which his father had with the Company (in Liquidation) when it was carrying on its business, The account was opened in 1972. His father subscribed for about five months. In 1975 the Managing Director of the Company sent for his father and in response thereto both be and his father went to the Office of the Company at about 3 P. M. The 2nd respondents Rajendra Prasad was also present at the Office of the Company. The Company owed money to respondent 2 and his father as on that day owed Rs. 1078-80 to the Company his father account was on that. day closed after adjusting the amounts due to respondent 2 and respondent I agreed to pay Rs. 1078-80 to respondent 2. Exhibit R-I is the receipt issued by the Managing Director of the Company for Rs. 1078-80.

9. In cross examination he has stated that Rs. 1078-80 represented both the principal sum borrowed and the interest thereon. He did not remember how much his father owed to the Company in January, 1975. He did not know the name of the Managing Director of the Company. But the signature on Exhibit R-I is that of the Managing Director of the Company. He denied knowledge as to whether a complaint to the police had been given about the Company's failure to declare dividend regularly. He also denied the suggestion that Exhibit R-I was obtained by coercion in the police station without paying the dues. He has stated that the promissory note was not taken back together with the consideration receipt because he and his father did not remember about it.

10. In re-examination he has stated be did riot know the whereabouts of Managing Director of the Company.

11. On the pleadings set out above and on the oral and documentary evidence adduced in the case, the point for determination is whether respondents 1 and 2 prove discharge of the debt in the circumstances pleaded by them and supported by the evidence of Ex. R-1.

12. R. W. I is not a party to the transaction. Respondents 1 and 2 have not

chosen to examine themselves. R. W. 1's evidence cannot be accepted as the sole truth because he is an interested witness. It is very strange that he claims to know about the transaction his father had with the Company but conveniently does not remember the name of the Managing Director. No doubt Exhibit R-I is, the stamped receipt for Rs. 1078-80 in favour of the 1st respondent and signed by somebody as Managing Director for Sudhaka Syndicate (Private) Ltd. It bears the date 2-12-1975. It also contains the reference to the chit group and to the book No. 19. The Managing Director himself has not been examined to prove the signature. We have only the assertion of R. W. 1 that he signed at the Office of the Company in his presence as well as in the presence of respondents 1 and 2. But this statement is totally uncorroborated. Respondents 1 and 2 have not examined themselves and no reason has been offered as to why they could not step into the-witness box to speak to the events that occurred "on 2-12-1975. Though it is claimed that 2nd respondents account was adjusted against the account of the 1st respondent; that 2nd respondent had three accounts with the Company has not been proved by any documentary evidence such as the pass books mentioned in the objection statement. Nor have the respondents taken the precaution to summon the books of the Company now in the possession of the Official Liquidator to prove the same. In the absence of any corroboration of the oral evidence and the absence of formal proof of Exhibit R-1, I am unable to accept the plea of discharge pleaded by the respondents.

13. The suggestion by the Counsel for the claimant-Official Liquidator that Exhibit R-I was obtained by coercion at police station, is not conclusive evidence in itself. But it does point to the fact that the Managing Director was subjected to some police harassment in connection with the business of the Company. In this connection, the records of Company Petition No. 3/76 were perused and it is found therein that the Company was wound up on the application made thereby the Managing Director, and in that, he has stated that some of the contributories and subscribers lodged a false complaint against him, to the police at Devanagere and obtained his signature to several receipts by coercion. Whatever that may be, that cannot be held to be conclusive as no evidence in that behalf was recorded in the proceedings in Company Petition No. 3/1976.

14. However, the learned Counsel for the Official Liquidator has placed reliance on the fact that the promote and the consideration receipt remained with the Company and that fact itself was conclusive that there was no discharge of debt in terms of Section 81 of the Negotiable Instruments Act. He contends that the Official Liquidator has produced the promote and the consideration receipt with the application and that should satisfy this Court that the respondents defence is a self-serving, concocted story and has placed reliance on two decisions of the Madras and Kerala High Courts in support of his contention.

15. In the case of Alapati Venkata Krishniah Vs. Vemuri Manikyarau, Rajamannar. J., (as he then was) had occasion to consider the plea of discharge with reference to Section 81 of the Negotiable Instruments Act. In that case, the suit was filed

by the plaintiff on the basis of the promote. The promote was executed by defendant I therein in favour of defendant 2 and defendant 2 transferred the promote to the plaintiff on 27-3-1944 for consideration. The trial Court granted a decree in favour of the plaintiff against the transferor-defendant 2 and his son defendant 4 but dismissed the suit against defendant I and defendant 3 as they had died before the suit. That decree was sought to be revised in the High Court in so far as it dismissed the suit against defendant I the maker of the promissory note. " The case put forward by defendant I was that he had paid the entire amount due on the promote to defendant 2 and had obtained a receipt which had been marked as Exhibit D-1 and that promissory note was not duly endorsed of the discharge because it was not available at that time. In dealing with that defence the learned Judge held as follows:

"But there is certainly negligence on the part of defendant 1. When he made the payment, it is clear that the promise was "Unable to produce the promissory note and make an endorsement of payment and even deliver it up to him cancelled. u/s 81, Negotiable Instruments Act, defendant I was before payment entitled to have the promissory note shown to him and on payment entitled to have it delivered up to him, or, (as is now alleged by him), if the instrument cannot be found, to be indemnified against any further claim thereon against him. This is what he should have done and if he did not act as indicated in the section, he has to blame himself. In any event. his ultimate claim must be only against the promisee whom he, had paid and he cannot be allowed to plead any defence to an action by a holder in due course."

Thus, that revision petition came to be allowed holding that defendant I was liable to a holder in due course,

16. Similarly, is the, view taken by a learned single Judge of the Kerala High Court in the case of K.K. Koran Vs. T. Tara Bai, , the learned Judge has explained the scope and the application of Section 81 of the Negotiable Instruments Act in the following terms (at p, 124):

"The normal rule is that the document on which the suit is based should be produced along with the plaint. The production of the basic document is thus insisted on to afford protection to the person liable under it against a similar claim in a subsequent suit brought by a party whom might claim to have legally acquired the rights under the document and produce it in support of his claim. The possibility of such risk is greater in the case of negotiable instruments which may change hands frequently by successive endorsements. Against the claim preferred by a holder in due course of such an instrument, the person liable under it may not be entitled to set up a plea that the amount due under the instrument has already been paid. Possession of the instrument by the holder in due course will be prima facie evidence of the liability not having been discharged."

(Underlining is mine).

The above two decisions have correctly explained the legal position I have no doubt in my mind.

17. In the instant case, respondents 1 and 2 cannot be said to be ignorant people. They, both admittedly were members of the Company having transactions with it. Respondent 1 was a bill collector in the Municipality and therefore it must be presumed that he is a knowledgeable person in regard to financial transactions of the kind to which he had become a party. In the instant case, the Official Liquidator has produced the promote and the consideration receipt which does not bear any endorsement of discharge. The explanation from the witness though not specifically pleaded in the statement of objections is far from satisfactory. It does not even suggest that they made any enquiries in the matter of endorsing the promote with the discharge. 1. Therefore, must hold in favour of the Official Liquidator that he has proved the existence of debt and the respondents have failed to prove discharge pleaded by them.

18. The best evidence available to the respondent, has not been produced.

19. For the above reasons. I am compelled to allow the application with costs. An. order accordingly will issue directing, respondents 1, 2 and 3 (who remained ex parte) to jointly and severally pay to the Official Liquidator a sum of Rs. 1078-80 with costs and current interest at 6 per cent per annum. On the principal amount from the date of application till date of realisation.

20. Application allowed.