
(1990) 08 KAR CK 0086
In the Karnataka High Court

Unico Trading and Chit Funds (India) Pvt. Ltd.

APPELLANT

Vs

Zahoor Hassan

RESPONDENT

Date of Decision : 03-08-1990

Acts Referred:

Companies Act, 1956 — Section 458 A
Limitation Act, 1963 — Section 137

Citation : (1993) 76 CompCas 419

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : S. Vijayshanker, for the Appellant; T.S. Mohammed Ali, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—This is an application filed by the official liquidator claiming from respondent Zahoor Hassan a sum of Rs. 13,756 together with current interest, pendente lite. Objection have been filed today, though it has not yet formed part of the records. In the copy with counsel for the respondent, it is admitted that the respondent was a member of the Union Chit Funds, a unit of the Unico Trading and Chit Funds (India) P. Ltd., the company in liquidation. He has further admitted that he had chit transactions with the company in liquidation and that he had subscribed up to the seventh instalment in group NCI chait at Nagpur branch.

2. The official liquidator has examined on of the office assistants as PW-1 and got marked as many as six documents. They are : the pro forma plaint which was permitted to be filed by an order of this court in such form having regard to the large number of claim petitions which were required to be filed before they came to be barred by limitation ; exhibit P-2, the debit voucher debiting Rs. 10,000 to the account of the respondent ; exhibit P- 3, the chit amount payment slip which shows that the subscriber was due in the sum of Rs. 10,000 ; exhibit P-4, an on demand pronote executed for a sum of Rs. 8,600 only deducting the amounts he had subscribed ; exhibit P-5, the consideration receipt. It may be noticed that

exhibits P-4 and P-5 are not dated. Exhibit P-6 is the report of the manager of the branch, i.e., the Union Chit Funds, submitted to the head office of the company in liquidation. In the light of the admission that he was a member of the chit group and was a subscriber and was the successful bidder of one such chits, the documents produced lose some of their relevance.

3. On the other hand, the only point urged by the respondent is that the claim is barred by limitation. It is contended by Mr. T. S. Mohammed Ali, learned counsel, that the pronote transaction took place as far back as February 6, 1974, and, therefore, the claim application filed on January 30, 1981, was clearly barred by limitation. He says that the maximum period which the official liquidator may claim is the additional one year which is permissible u/s 458A of the Companies Act, 1956, and even then it would be beyond four years if one has regard to the date of the transaction, namely, January 31, 1974. Undoubtedly, the above argument is founded on the principal that the suit on a pronote or a suit for recovery of money is the mode adopted by the official liquidator. It is not really so, as held by me in the case of Syed Patel and Others Vs. N.H. Doddabasappa and Others, The claim petition by the official Liquidator is a special proceeding by which the official liquidator is empowered to sue all debtors of the company in liquidation. By operation of law, the moment of winding up petition is filed, which, in the instant case was on October 3, 1975, the period of limitation against the company in liquidation stops running and is revised only after the winding up order is made. In other words, if on the date of the presentation of the winding up petition, the debt was enforceable, then the official liquidator may enforce the payment of the debt by virtue of the winding up order and not by virtue of the cause of action the company in liquidation had against the subscriber. Therefore, this being a special proceeding and not being a suit for recovery of money, it is covered by the residuary article 137 of the Limitation Act. (See Syed Patel and Others Vs. N.H. Doddabasappa and Others, The right to sue accrues only after the winding up order is made. Therefore, he has three years' time plus one year u/s 458A of the Act to sue the debtors. Therefore, the petition filed on 30th January, 1981, is well within that four-year period as the debt was alive on the date of presentation of the winding up petition.

4. In the result, for the reasons given above, in the light of the admission, the claim application is allowed as prayed for.

5. Mr. T. S. Mohammed Ali, however, prayed that the respondent may be directed to pay the decretal amount in convenient and suitable instalments or 12 equal instalments. He also claimed waiver of interest on the ground that there was no knowledge until the respondent received the notice of the claim petition. This court may view leniently the first prayer for payment in instalments. The second prayer is not convincing as the winding up order was published in leading newspaper of India and therefore the liability to remit the entire amount to the official liquidator was entirely on the subscriber and knowledge of that must be presumed. Therefore, he cannot claim any waiver of interest. He is bound to pay

interest. He had the use of the money all these years and therefore he cannot make a grievance of not paying the interest. Therefore, the prayer must be rejected.

6. In the result, the claim application is allowed as prayed for with a direction that the decretal amount as drawn up by this court shall be paid in 12 equal instalments, the first instalment falling due on the 1st November, 1990, with a single default clause. In the event of default, the entire balance amount is liable to be executed and recovered.