

(2013) 04 MAD CK 0342

In the Madras High Court

Case No : Comp. A. No"s. 351 to 377 of 2013 in C.P. No. 186 of 2004

V. Kalyani

APPELLANT

Vs

The Official Liquidator High Court, Madras

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 3 MLJ 812

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—In all these applications, the prayer is to condone the delay in filing claim application in Form-66 to claim the amount due to the workmen under Award passed by the learned Labour Court. In support of these applications, it is pleaded that industrial dispute challenging the suspension of operation of industrial concern by the management was referred for adjudication to the Industrial Tribunal, Chennai, wherein an ex parte Award was passed on 19.11.2004, holding the "Suspension of Operation" to be illegal and that the workmen working in the industry were entitled to wages for the entire period, when the operation was kept under suspension.

2. The applicants also filed claim petitions, which were adjudicated and an award was passed in favour of the applicants.

3. The case of applicants is that the employer, i.e. company has been ordered to be wound up by this Court, therefore, the applicant workmen want to file claim application with the Official Liquidator based on the award passed by the learned Industrial Tribunal / Labour Court in their favour.

4. It is pleaded, that sufficient cause is shown to condone the delay in filing claim petitions.

5. The applications are opposed by the learned Official Liquidator, on the ground, that there is no provision to condone the delay. The delay cannot be condoned, as the provisions of Section 5 of the Limitation Act will not be applicable, as petition for claim under the Companies Act is Original Petitions, where Section 5 of the Limitation Act has no application.

6. It is contended, that the applications are not maintainable in view of Rule 177 of Companies (Court) Rules, 1959, which reads as under:-

177. Procedure on failure to prove the debt within the time fixed.- If any creditor fails to file proof of his debt with the Liquidator within the time specified in the advertisement, referred to in rule 148, such creditor may apply to the Court for relief, and the Court may, thereupon, adjudicate upon the debt or direct the Liquidator to do so.

7. The learned counsel for the applicants vehemently contended, that this Court in number of cases condoned the delay in filing claim with the Official Liquidator, therefore, the applicants in these application cannot be discriminated.

8. That the claim filed before the Official Liquidator has been attached in the type set of papers, with these applications, therefore, the claim petitions can be treated to be company petitions, under Rule 177 of Companies (Court) Rules, 1959.

9. On consideration, I find that these applications are not competent, as Rule 177 of Companies (Court) Rules, 1959, which has statutory force of law bars any such application after expiry of limitation period.

10. The contention of learned counsel for the applicants, that this Court in number of applications, has already condoned the delay, cannot be the ground to accept these applications, as it is well settled law, that any judgment or order passed contrary to the statutory provisions of law, cannot be treated as a precedent to be followed.

11. Once Rule 177 of Companies (Court) Rules, 1959 does not permit condonation of delay, the earlier orders passed by this Court condoning the delay therefore cannot be said to be laying down a good law or a binding precedent.

12. The very object of Rule 177 of Companies (Court) Rules, 1959 was, that the legislature wanted to give chance to creditors / workmen to file claims even after expiry of limitation period.

13. The Rule making authority was aware of the fact, that Section 5 of the Limitation Act is not applicable to the original petition, therefore, the necessity arose to frame Rule 177 of Companies (Court) Rules, 1959, so that original claims are not defeated, because of the bar of limitation.

14. The applications as framed, therefore, are not competent, as the remedy with the applicants is to file company petitions in this Court, which can be adjudicated by the company Judge or it can be transmitted to the Official

Liquidator for decision.

15. The contention of learned counsel for the applicants, that the claim petition filed in the typeset of papers can be treated to be petitions also cannot be accepted.

16. It is well settled law, that no documentary or oral evidence can be looked into beyond pleadings. The applications filed in this Court are only to condone the delay, which cannot be treated to be company petitions to determine the claims of the parties.

17. The petitions attached with typeset of paper are also not addressed to this Court as envisaged under Rule 177 of Companies (Court) Rules, 1959, therefore, these applications cannot be treated to be company petitions.

18. For the reasons stated herein above, and taking note of Rule 177 of Companies (Court) Rules, 1959, these applications to condone the delay are ordered to be dismissed. However, this order shall not debar the applicants to file claim petitions in accordance with law, if so advised. No costs.