

(1976) 11 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 39 of 1974

Voluntary Liquidator, Bharat Traders Ltd.

APPELLANT

Vs

Rattan Singh

RESPONDENT

Date of Decision : 01-11-1976

Acts Referred:

Companies Act, 1956 — Section 468, 518, 543

Limitation Act, 1908 — Article 89

Limitation Act, 1963 — Section 3

Citation : (1978) 48 CompCas 427

Hon'ble Judges : Harbans Lal, J;Gurnam Singh, J

Bench : Division Bench

Advocate : Roop Chand, for the Appellant; Nemo, for the Respondent

Judgement

Harbans Lal, J.—This is a letters patent appeal against the judgment of a learned single judge, dated November 1, 1973, in Civil Original No. 91 of 1972, by which the application of the appellant u/s 518 read with Section 468 of the Companies Act, 1956 (hereinafter called " the Act "), was dismissed.

2. The appellant-company, namely, the Bharat Traders Ltd., Sirsa, was wound up by voluntary liquidation by means of a resolution dated March 26, 1959. The respondent was an agent of the appellant-company from October 1, 1950, to December 31, 1951, entrusted with the work of sale of shares and supply of articles to the customers. In the course of the performance of his duties, he collected some money, but failed to deposit the same in the bank account of the appellant-company or to remit the same to the latter's head office. The books of the appellant-company showed a debit balance of Rs. 1,114-15-6 against the respondent. According to the account, a copy of which is exhibit P-1, the amount due from the respondent up to December 31, 1951, was Rs. 2,582-11-6, while the amount to his credit was Rs. 1,217-12-0, Another amount of Rs. 250 was credited to the account of the respondent in 1952 and thus the amount due from the respondent was Rs. 1,114-15-6. The managing director of the appellant-

company had also made complaints to the Senior Superintendent of Police, Meerut, on October 13, 1951, and on November 7, 1951, but without any result. The whereabouts of the respondent were not known for a considerable time. Ultimately, after the respondent could be traced, a registered notice was sent in October, 1971, by the voluntary liquidator. The appellant-company produced Shri Amar Nath, the managing director of the company, as a witness and also the accounts regularly maintained by it in the regular course of business.

3. The learned single judge non-suited the appellant-company and dismissed the petition on the ground that the claim of the appellant-company was time-barred and that from the evidence on the record, the liability of the respondent was not established. It was held that under Article 89 of the, Indian Limitation Act, 1908 (hereinafter called the " old Act"), the claim against the respondent became barred by time on the expiry of three years from the refusal to pay after the demand had been made. The claim was also held to be time-barred u/s 543 of the Act, after the lapse of five years from the date of its winding up. On merits, it was held that the accounts produced by the appellant-company were not sufficient to make out the case against the respondent u/s 34 of the Indian Evidence Act. The present appeal is directed against that judgment of the learned single judge.

4. It has been strenuously urged by Shri Roop Chand, the learned counsel for the appellant-company, that the petition of the company is u/s 468, read with Section 518 of the Act, and, thus, it could not be thrown out on the ground of limitation. Section 468 of the Act is reproduced below :

" The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the court directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is prima facie entitled."

5. Its perusal shows that after the passing of the winding-up order, the court is competent to direct any trustee, receiver, banker, agent, officer or other employee of the company to make payment of any money or to deliver any property due from him " at any time " to the liquidator. This provision can be availed of u/s 518 of the Act, even by the companies which have been wound up voluntarily. The learned single judge held that an agent cannot be proceeded against regarding any claim after the expiry of three years from his refusal to pay after the demand had been made on him. Reliance in this behalf has been placed on Article 89 of the old Act which is equivalent to Article 3 of the Limitation Act, 1963, (hereinafter called the " new Act"). According to either of these provisions, in a case by a principal against his agent, period of three years has been prescribed, but the same begins to run when the account during the continuance of the agency is demanded and refused or where no such demand is made, when the agency terminates. In the present case, there is no evidence

whatsoever to show that the agency of the respondent had been brought to an end at any time, nor is there any evidence to show that demand had been made before the notice, exhibit C, which was given in October, 1971. Thus, in the present case, even if Article 89 of the old Act, or Article 3 of the new Act, is applicable, the claim of the appellant-company cannot be held to be time-barred. The claim of the appellant-company cannot also be thrown out on the ground of limitation u/s 543 of the Act, because this provision is not applicable to the case of the respondent. Sub-section (1) of Section 543 of the Act clearly shows that this provision is applicable only to those persons who take part in the promotion or formation of a company or directors, past or present, managing agents, secretaries and treasurers, managers, liquidators, or officers of the company. The respondent was working only as an agent to carry on the sales on behalf of the appellant-company. So, he is not covered by any of the categories, referred to in this provision. Besides, Section 468 is clearly applicable to the case of the respondent and under this provision, there is no restriction of limitation of time. A similar matter came up for consideration before Harbans Singh J. (as he then was), in *Bharat Traders Ltd. (In liquidation) v. Sadhu Singh* [1968] 38 Com Cas 537 wherein it was held :

" The main contention of the learned counsel for the respondent thus being negatived, the only other question that remains for consideration is whether there is any limitation period fixed for the court passing such an order and if so, what that provision is ? The contention of the learned counsel for the respondent was that these proceedings are in the nature of a suit, for which he has to take the permission as laid down in Section 512 and for a suit, limitation prescribed in the Limitation Act is three years and that this application was made more than three years after the date of winding-up proceedings and even if the terminus a quo is taken to be the date of winding up, this application was barred by time, being in the nature of a suit. I do not find myself in agreement with this contention. Once the provisions of Section 468 are found applicable, then that Section provides that the court can pass an order " at any time". No limitation is laid and the matter is entirely left to the discretion of the court."

6. The finding of the learned single judge that the claim of the appellant-company is barred by time is, thus, reversed.

7. Regarding merits of the claim, Shri Amar Nath, P.W. No. 1, appeared in the witness box. He was working as a managing director of the appellant-company before it was wound up. He has unequivocally stated that the respondent was entrusted with the duty of making sales of the products of the company on its behalf and that though he carried on this business from October 1, 1950, to December 31, 1951, and collected some amounts, yet did not deposit the same in the accounts of the company or remit the same to the company and that after giving adjustment of all amounts sent by the respondent, an amount of Rs. 1,114-1 5-6 was due from the respondent. The account relating to the respondent was also produced and its copy is exhibit P-1. The accounts were

maintained regularly in the regular course of business. With regard to this evidence, the learned single judge came to the following conclusion :

" In the instant case, the only evidence to fasten liability on the respondent consists of the entries in the books of account of the petitioner-company. There is no other evidence which is called primary. The entries in the books of account can only afford corroborative evidence and not primary evidence."

8. Regarding the scope of Section 34, Indian Evidence Act, the learned single judge came to the conclusion that the books of account are relevant, but such statements are not alone sufficient evidence to charge any person with liability. Section 34 of the Indian Evidence Act is reproduced below :

" Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. "

9. Its perusal shows that the entries in the books of account regularly kept in the course of business are relevant, but in order to fasten liability on the person concerned, some other evidence is also necessary along with the entries in the books of account. In the present case, the statement made by Shri Amar Nath, managing director, is on the record. His statement coupled with the entries in the books of account is, to our mind, sufficient to fasten the liability on the respondent. There is nothing on the record to show that the statement of the managing director cannot be given credence. It seems, the attention of the learned single judge was only confined to the entries in the books of account, and the statement made by Shri Amar Nath, managing director, was not brought to his notice. We are, therefore, constrained to reverse the finding of the learned single judge in this respect and hold that there is sufficient evidence to arrive at the conclusion that the respondent is liable to pay the amount of Rs. 1,114-15-6 to the appellant-company in lieu of the sales which he made as agent of the company.

10. For the reasons mentioned above, we accept the appeal, allow the petition and order the respondent to pay Rs. 1,114-15-6 along with the costs of the petition throughout.