

(2003) 07 DEL CK 0044

Delhi High Court

Case No: Company Petition No. 415 of 1997 and CA No's. 1631 of 2000 and 622 of 2001

State Black Sea
Shipping Company
and Mr. Joydeb Kundu

APPELLANT

Vs

Viraj Overseas Pvt.
Ltd.

RESPONDENT

Date of Decision: July 15, 2003

Acts Referred:

- Companies Act, 1913 - Section 151, 163(1), 433, 434, 434(1)

Citation: (2005) 125 CompCas 831 : (2004) 1 CompLJ 396 : (2003) 105 DLT 818 : (2003) 70
DRJ 6 : (2003) 135 PLR 10 : (2004) 49 SCL 627

Hon'ble Judges: Dr. M.K. Sharma, J

Bench: Single Bench

Advocate: Jaideep Gupta, Pranab Kumar Mullick and Pradeep Sancheti, for the Appellant;
Arjun Bhandari, for the Respondent

Final Decision: Dismissed

Judgement

Mukundakam Sharma, J.

The present petition is filed by the petitioners under sections 433, 434 and 439 of the Companies Act, 1956, praying for an order winding up the respondent company for its inability to pay the dues of the petitioners. The case of the petitioners is that petitioner No. 1 gave a loan of Rs. 70 lakhs on or about April 8, 1993 by cheque No. 678716 drawn on American Express Bank, Bombay, which was repayable by February 2, 1994. It is alleged that the said cheque amount was debited to the account of petitioner No. 1 on April 20, 1993. It is further alleged that the respondent failed to make any payment as against the aforesaid liability along with interest accrued thereon and Therefore a statutory notice was issued to the respondent under sections 433 and 434 of the Companies Act.

2. With the aforesaid allegations a petition was filed in this Court under sections 433, 434 and 439 of the Companies Act, which was registered as CP No. 176/1995, praying for winding up of the respondent company for its inability to pay its dues. The respondent on service of notice entered appearance and contested the petition by filing a reply. A preliminary objection was taken by the respondent regarding maintainability of the petition on the ground that the statutory notice was not served on the respondent company in accordance with the mandatory provisions of section 434 of the Companies Act. The aforesaid objection was considered by this Court. This court after considering the provisions of section 434 construed that the provision requiring service of statutory notice on the respondent company specifically provides that such notice is to be served on the registered office of the company and that the said provision is mandatory which view is supported by the provisions of section 151 of the Companies Act which provides that the documents may be served on a company or an officer thereof at the registered office of the company by post under a certificate of posting or by a registered post and/or by leaving at its registered office. Said statutory notice was issued by the petitioners to the respondent at its office at Sector 37, Noida, and not at the registered office of the respondent at Roop Nagar, Delhi, and in that view of the matter it was held that the aforesaid service of notice was not in accordance with and in terms of the aforesaid provision. It was also held that a statutory notice was addressed to the respondent company at C-41, Sector 37, NOIDA, U.P., whereas from the letterhead of the company which the petitioners annexed as Annexure A, the said address is mentioned as Sector 57, NOIDA, U.P. Having considered the entire facts it was held that the notice was not properly issued and served as required under the provisions of section 434(1)(a) of the Companies Act and Therefore, the petition was held to be not maintainable and was accordingly dismissed. The said order was passed by this Court on July 31, 1997.

3. It transpires from the records that thereafter the petitioners made out another notice u/s 433 and 434 of the Companies Act which is dated August 16, 1997 and issued the same to the respondent at 7/8, Roop Nagar, Delhi-110007. The said notice is annexed as Annexure "E" to the present petition and the same states as follows:-

"

SPEED POST A/D

Viraj Overseas (P) Ltd.
7/8 Roopnagar,
Delhi-110 007.

Our Clients : State Bank Sea Shipping Company, Ukraine.
Notice u/s 433/434 of the
Companies Act.

Dear Sir,

Take notice that a sum of Rs. 70,00,00/- (Seven million/seventy lakhs) was advanced to you on the 8th April, 1993 by our aforesaid clients by an account payee cheque being No. 678716 drawn on American Express Banking Corporation. The said cheque amount was debited out of the accounts of our aforesaid clients on 20.4.1993.

The aforesaid amount was payable by you on or by 2nd February, 1994. That you have failed to make the payment of the said liability and your debt/obligation to pay the said sum on the due date to our aforesaid client. You had further committed to pay interest @ 18% on the aforesaid sums even this has not been paid.

xx

xx

xx"

A reply to the aforesaid notice was sent by the respondent to the petitioners which is dated September 3, 1997 stating as follows:-

" A copy of your legal notice dated 16.8.1997 purporting to be on behalf of State Black Sea Shipping Company, Ukraine addressed to my client Viraj Overseas (P) Limited has been handed over to me by my client with instructions to reply thereto:

At the outset I have been instructed to state that the claim made by you in said notice claiming an amount of Rs. 70,00,000/- is totally frivolous and vexatious to the knowledge of your client and even otherwise the said amount is not legally recoverable from my client being barred by the law of limitation....."

4. The petitioners filed the present petition praying for an order of winding up of the respondent company on the ground of its inability to pay the dues of the petitioners. The said petition was filed on November 14, 1997. The respondent filed its reply contending inter alias that Annexure "G" which is letter dated May 9, 1995 and shown to have been issued by the respondent to the petitioners is a fabricated document. It is alleged that the said letter was never in existence and was fabricated solely with the motive to allege that the claim of the petitioners is within the period of limitation as it was stated in the reply to the statutory notice that the claim is barred by limitation. It is also stated that the petitioners did not comply with the mandatory provisions of section 434(a) of the Companies Act as the said notice was neither issued nor served at the registered office of the respondent company which is Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Delhi.

5. In the present petition itself the respondent has pleaded that the respondent had changed its registered office from 7/8, Roop Nagar, Delhi-7, to Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Delhi, with effect from December 4, 1996. It is also stated that the respondent submitted the aforesaid information regarding the change of its registered office from Roop Nagar, Delhi, to Paschim Vihar, New Delhi, with the Registrar of Companies in Form No. 18 on December 5, 1996 and a receipt

thereof obtained from the Registrar of Companies dated December 11, 1996 is also placed on record. It is the stand of the respondent that since the respondent had changed its registered office from Roop Nagar, Delhi, to Paschim Vihar, New Delhi, with effect from December 4, 1996, the statutory notice should have been issued by the petitioners at its registered office which is Paschim Vihar, New Delhi, and not Roop Nagar, Delhi. The objection of the respondent is that the issuance of the aforesaid statutory notice at the earlier registered office of the respondent and not at the appropriate registered office of the respondent on the date of the issuance of the same is invalid and not in conformity with the provisions of Section 434 of the Companies Act. In support of the aforesaid contention, the respondent has placed on record a letter written by the Assistant Registrar of Companies to the respondent on July 3, 2003 which establishes that as per the records maintained in the office of the Registrar of Companies the respondent company changed its registered office from 7/8 Roop Nagar, Delhi-7 to Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Delhi, with effect from December 4, 1996. In the said letter it is also indicated that the company filed Form No. 18 dated December 5, 1996 which was taken on record vide Document No. 77. The aforesaid information submitted by the respondent to the Registrar of Companies in Form No. 18 has also been placed on record. Counsel appearing for the respondent during the course of his submissions also submitted that the petitioners in the petition has annexed a copy of the letter dated May 9, 1995 which is not in existence and is a fabricated document and is being relied upon by the petitioners only to save the question of limitation. It is pointed out that the said letter was neither referred to nor relied upon nor annexed in the earlier petition and also in the statutory notice that is shown to have been issued by the petitioners to the respondent before filing the present petition. Counsel appearing for the petitioners, however, submitted that the aforesaid Form No. 18 although might have been submitted by the respondent to the Registrar of Companies on December 5, 1996, the same was taken on record only on May 23, 2002 and Therefore, the petitioners could not have any knowledge about the change of the registered office of the respondent company as the said change was not recorded by the Registrar of Companies till May 23, 2002. In support of their contention the petitioners referred to and sought to rely upon a certificate given by the Company Secretary which is annexed as Annexure "A" to the reply of the petitioners to the application being CA No. 1631/2001 filed by the respondent. It is stated in the said certificate that he had inspected the records of the respondent company at the office of the Registrar of Companies and that from the aforesaid inspection it transpires that the only available Form No. 18 filed by the respondent company is dated March 10, 1986 which indicates that the address of the registered office of the company is 8/7 Roop Nagar, Delhi-7, and that there was no other Form 18 on record. He has also stated that Form 18 dated December 5, 1996 and alleged to have been filed by the company on December 18, 1996 has not been registered as a public document. Counsel appearing for the petitioners also submitted that the contention that Annexure "G" is a fabricated document is baseless. He submitted

that the said document was issued by the respondent and is a genuine document. The counsel also referred to the provisions of section 434(1)(c) and relying on the same he submitted that the same is an independent provision and in order to prove a case under the said provision no statutory notice is required to be served on the respondent. In the light of the aforesaid submissions of the counsel appearing for the parties I have perused the relevant provisions of the Act and also the documents relied upon very carefully which I propose to discuss herein.

6. The earlier company petition which was filed by the petitioners was dismissed on July 31, 1997 on the ground that the statutory notice was neither properly sent nor served on the respondent company and Therefore, the petition was not maintainable. A similar objection has also been raised in the present petition. The letter written to the respondent by the office of the Registrar of Companies dated July 3, 2003 clearly proves and establishes that the respondent changed its registered office from 7/8 Roop Nagar, Delhi-7 to Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Dehi, with effect from December 4, 1996. Section 146 of the Companies Act provides that if there be a change of the registered office of a company, such intimation about the change of the registered office shall have to be given within thirty days after the date of the change to the Registrar who shall record the same. The aforesaid intimation about the change of the address of the registered office of the company is to be given in Form No. 18. According to the respondent it changed its registered office from 7/8 Roop Nagar, Delhi-7, to Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Dehi, w.e.f. December 4, 1996 and the aforesaid intimation about the change of the address was given by the respondent to the Registrar of Companies on December 5, 1996 which was filed on December 11, 1996 as is indicated from the receipt annexed. The aforesaid position is also supported by the letter of the Assistant Registrar of Companies dated July 3, 2003. The aforesaid form No. 18 dated December 5, 1996 and submitted by the respondent to the Registrar of Companies on December 11, 1996 was, however, taken on record by the Registrar under document No. 77. The petitioners in support of their contention that the aforesaid change of address of the registered office of the respondent company would be effective only from May 23, 2002, relied upon the endorsement annexed with the aforesaid letter dated July 3, 2003. As is indicated from the aforesaid endorsement, such date is entered as against the entry "Date of Registration". In my considered opinion the date of registration by the Registrar is immaterial and irrelevant while considering the date when the said change of the registered office of a company became effective. As and when there is a change in the registered office of a company, the company has to intimate about the aforesaid change within thirty days after the date of the change and the said intimation is to be given in Form No. 18. The respondent has complied with the aforesaid provision in letter and spirit for it had informed about the aforesaid change of the address to the Registrar of Companies as required under the provision of section 146 of the Companies Act and also submitted the said intimation in the prescribed form which

is Form No. 18 dated December 5, 1996 and filed it on December 11, 1996. Having intimated about the aforesaid change within thirty days as required under the law, the respondent has complied with the requirements of law, and nothing further was required to be done by the respondent in that regard. Recording of the change of the address of the registered office of the company by the Registrar was a ministerial act and the act of recording the change by the Registrar is immaterial while determining the effective date of the change of the registered office of the company.

7. Counsel for the petitioners sought to submit that the effective date for change of the address of the registered office of the company would be the date when the same was recorded by the Registrar of Companies. In my considered opinion, the same is a fallacious proposition and fraught with far reaching implications. If the said proposition is accepted, the same would lead to such consequences as though a company has changed its registered office to another place and is doing its business from the said changed address, yet for all practical purposes it would continue to operate from the earlier place where its registered office was located before the change till the date of registration of the aforesaid change by the Registrar of Companies. Therefore, all communications as required to be sent to such companies would continue to be sent to the earlier address where the registered office of the company was located and not at the address to which the registered office of the company was changed. The said proposition is on the face of it not only unacceptable but also unworkable and is against all legal principles. A company operates its business from its registered office in terms of the provisions of the Companies Act and Therefore such of the communications which are required to be sent to the registered office should be addressed and sent to the actual registered office wherefrom the company carries on its business. If there is a change in the registered office of the company, the company shifts its business and operates from the said changed address of the registered office of the company from the date of the change itself and Therefore even if recording of the change by the Registrar of Companies is of a subsequent date but the same shall be effective from the date the company actually changed its registered office. Therefore, the respondent company when it changed its registered office to the address at Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Delhi, w.e.f. December 4, 1996, any statutory notice u/s 434 was required to be sent to the changed address of the registered office of the respondent company. It cannot be disputed that the aforesaid intimation submitted by the respondent in Form No. 18 was available with the Registrar of Companies as the same was filed, and the same is proved from the receipt enclosed which is also an admitted position by the Registrar of Companies. Therefore, the certificate given by the Company Secretary of the petitioners company cannot be accepted as correct position and the said certificate is held to be made out only for the purpose of making out a defense which is raised in the present case by the petitioners. I hold that the certificate given by the Company

Secretary and annexed as Annexure "A" to the reply of the petitioners does not depict a true and correct position of the records in the office of the Registrar of Companies. The aforesaid conclusion reached and recorded by me is also conclusively proved by the letter of the Assistant Registrar of Companies dated July 3, 2003. As the respondent had changed its registered office from 7/8 Roop Nagar, Delhi-7, to Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Delhi, w.e.f. December 4, 1996, the petitioners should have made enquiries and collected the information from the office of the Registrar of Companies before issuing the statutory notice to the respondent which apparently was not done in the present case. No certificate is produced on record to indicate that any such enquiry was made by the petitioner from the office of the Registrar of Companies regarding location of the registered office of the respondent company at any time prior to the issuance of the statutory notice which is annexed in the present case as Annexure "E". The said notice clearly indicates that the same was sent on August 16, 1997 to the respondent at the address 7/8 Roop Nagar, Delhi-7. It is, thus, proved and established that the said notice was not addressed at the address where the registered office of the respondent company was located at the relevant time. No enquiry was made, nor any information was collected by the petitioners before issuance of the aforesaid statutory notice regarding the actual and exact location of the registered office of the respondent company and it mechanically issued the aforesaid statutory notice to the respondent at 7/8 Roop Nagar, Delhi-7, which was not the registered office of the respondent company on the relevant date.

8. It would be worthwhile to notice at this stage provisions of section 434(1)(a), (b) and (c) of the Companies Act which read as follows:-

"S. 434. Company when deemed unable to pay its debts. - (1) A company shall be deemed to be unable to pay its debts -

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

9. The aforesaid provision clearly lays down that a company would be deemed to be unable to pay its debts u/s 434(1)(a) of the Act under three conditions, namely, (1) the company is indebted in a sum exceeding five hundred rupees then due, (2) the company has been served with, by causing it to be delivered at its registered office, by registered post or otherwise, a demand demanding the required sum to be paid by the company to the creditor, and (3) the company has for three weeks thereafter neglected to pay the sum to the creditor. The requirements of section 434(1)(a) are that the notice has to be served at the registered office of the company, and if within three weeks from the delivery of such notice at the registered office the company neglects to pay the sum to the creditor, it would be deemed that the said company is unable to pay its debts. Therefore, the said provision of section 434(1)(a) creates a fiction as to when a company is deemed to be unable to pay its debts. It is settled position of law that full effect is to be given to a statutory fiction and that it should be carried to its logical conclusion as was held by the Supreme Court in the [The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others](#), . In the facts of the case in hand, it is an admitted position that the statutory notice was sent at the address of Roop Nagar, Delhi-7. The documents on record which are discussed herein above clearly indicate that the registered office of the company at the relevant date was located at Flat No. 203, Bhanot Trade Centre, Paschim Vihar, New Delhi. Therefore, the requirements of section 434(1)(a) that the notice has to be served at the registered office of the company was not complied with in the present case.

10. In view of the aforesaid conclusion reached by me, the next question that falls for my determination is what would be the effect and consequences thereof. Counsel appearing for the petitioners submitted that in view of the fact that a reply was sent by the respondent company to the aforesaid statutory notice of the petitioners indicating that the said notice was served on the respondent and the fact that no objection was taken in the said reply sent to the statutory notice about non-service of the notice at the registered office, the same would amount to a waiver of the aforesaid objection, if any, on the part of the respondent. The aforesaid contention cannot be accepted in view of the fact that a statutory fiction has to be strictly construed and if a statutory requirement based on a statutory fiction is to be strictly construed, the petition has to be dismissed as not maintainable. Similar conclusions were also reached by this Court in the decision in Kalra Iron Stores v. Faridabad Fabricators (P) Ltd, (1992) 1 Comp.L.J. 310, and by the Allahabad High Court in Alliance Creditor and Investments Ltd. v. Khaitan Hostombe Spinel Ltd, (1999) 95 Comp Cas 436, and also in the case of Bukhtiarpur Bihar Light Railway Co. Ltd. v. Union of India, (1954) 24 Comp. Cas 507. In the said decision, the Calcutta High Court while interpreting a similar provision in the Companies Act, 1913, has observed thus:-

" If a notice of demand is to operate as a valid statutory notice u/s 163(1)(i) it is to be delivered to the company at its registered office. A letter addressed to a place other

than the company's registered office cannot be relied upon by the creditor for the purposes of section 163(1)(i)."

11. In *N.L. Mehta Cinema Enterprises (P) Ltd. v. Pravinchandra P. Mehta*, (1991) 70 Comp. Cas 31, a Division Bench of the Bombay High Court has held that section 434 clearly requires the notice of demand to be sent to the company at its registered office and that service of the notice at the administrative office of the company was not sufficient to raise the presumption u/s 434 and, Therefore, the petition was liable to be dismissed. It was also held in the said decision that the requirement contained in section 434 has to be strictly complied with in order to raise a legal fiction.

12. The Madras High Court also in the decision in *B. Vishwanathan v. Sehsasayee Paper and Boards Ltd*, (1992) 73 Comp Cas 136, has held that when the notice does not conform to the mandatory requirements of the section and is not served at the registered office but on the Managing Director, in that event the presumption under the section as to the Company's inability to pay its debts cannot be raised.

13. The aforesaid view that I have taken is also fortified by the decision of this Court in *Kalra Iron Stores (supra)* where it was held that the aforesaid provision is required to be strictly construed and that a creditor for relying upon the deemed inability of the company to pay its debts has to strictly comply the requirements of service of notice of demand in terms of section 434(1)(a) of the Act. Therefore, the contention of the counsel appearing for the petitioners that there was substantial compliance of the provisions of section 434(1)(a) as the notice was served on the respondent at the address to which it was sent, which is proved by the fact that a reply was sent to the said notice by the respondent cannot be accepted. So far as the contention that the respondent has also waived its right to raise such an objection in view of sending a reply to the statutory notice and not raising such an objection in the said reply is concerned, the same is also held to be without any merit in view of the settled position of law that the statutory requirement provided u/s 434(1)(a) of the Act has to be strictly complied with, as it is a legal requirement to deliver the statutory notice at the registered office of the company to create a statutory fiction. The deemed inability of the company to pay its debts would arise only on compliance of the requirement laid down u/s 434 and there is no question of any waiver by the company. The said contention is also held to be without any merit.

14. It was next contended by the counsel appearing for the petitioners that even assuming that a notice was not served at the registered office of the company and Therefore was not valid, but since the petitioners have filed the present petition also u/s 433(a) as well as u/s 434(1)(c) of the Act, Therefore, the petitioners are entitled to say that the respondent company is unable to pay its debts without even serving a notice. In support of the said submission, counsel referred to the provision of section 434(1)(c) which according to him is an independent provision and submitted that in order to prove a case u/s 434(1)(c) of the Act no notice was required to be

served on the company. There cannot be a dispute with regard to the proposition that without even serving a notice as required u/s 434(1)(c) a creditor can seek for winding up of a company u/s 433(e) read with section 434(1)(c) of the Act on the ground that the company is unable to pay its debts. This Court in the case of Kalra Iron Stores (supra) has also held that even without invoking the deemed inability of the company to pay its debts, a creditor can seek winding up of a company u/s 433(e) read with section 434(1)(c) on the ground that the company is unable to pay its debts. In order to bring a case within the ambit of section 434(1)(c) of the Act, the creditor has to prove to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the court should take into account the contingent and prospective liability of the company. The purpose of section 434(1)(c) read with section 433(e) is to determine the basic question of commercial solvency of the company and in determining the aforesaid question the court has to examine the company's inability to pay its debt with reference to the date when it becomes absolutely due for payment along with contingent and prospective liability of the company. The expression "commercially insolvent" has been held to mean that the existing assets and liabilities of the company are such as to make it reasonably certain and the court is satisfied that the existing and probable assets would be insufficient to meet the existing liabilities. The aforesaid proposition was laid down by the Supreme Court in Pradeshiya Industrial and Investment Corporation of U.P. v. North India Petro Chemicals Ltd, (1994) 79 Comp. Cas 835.

15. In the backdrop of the aforesaid settled position of law when the pleadings of the present case are examined, it would be clear and apparent that there is no such pleading in the present case to the aforesaid extent. It is stated in paragraph 21 of the petition as a submission that it is just and equitable that the company be wound up by the court under the provisions of section 433(f) of the Companies Act in view of the malafide nature of operations by the company and its conduct in refusing to repay admitted debts. There is no pleading in the petition with reference to the provisions of section 433(e) of the Companies Act, or in respect of section 434(1)(c) of the Act. Since the petitioners have not pleaded the required facts in the present petition for making out a case under sections 433(e) and 434(1)(c) of the Act, the petitioners now cannot fall back upon the aforesaid provisions of section 433(e) read with section 434(1)(c) after failing to satisfy the court regarding the validity of the notice u/s 434(1)(a) of the Act. The petitioners have also not stated in the petition as to what are the contingent and prospective liabilities of the respondent company.

16. Besides, the loan was allegedly advanced by the petitioners to the respondent on April 8, 1993 through a account payee cheque and that the aforesaid cheque amount of Rs. 70,00,000/- was allegedly debited out of the accounts of the petitioners on April 20, 1993. It is the specific case of the petitioners in the pleadings as also in the statutory notice dated August 16, 1997 that the aforesaid amount was payable by the respondent on or before February 2, 1994. The present petition was

filed in this Court only on November 13, 1997 which is beyond the period of limitation for making such a claim as provided for under the provisions of the Limitation Act. In this petition, however, the petitioners have pleaded that there is an acknowledgment by the respondent on May 9, 1995, which protects the claim from being barred by limitation. The aforesaid letter is shown to have been issued to the petitioners by the respondent on May 9, 1995 which states that further to the telephonic conversation the respondent confirmed that subject to necessary approval from the Reserve Bank of India the respondent would refund the loan of Rs. 70,00,000/-. In the said letter a query is put as to whether it would be possible to waive the interest amount or whether it is possible to reduce the liability. The respondent has challenged the genuineness of the aforesaid document contending inter alia that the said letter never existed. In order to prove the genuineness of the said document the petitioners referred to the original of the said letter and showed the same to the court at the time of argument only which I perused. Incidentally the said document was neither pleaded nor referred to and relied upon at any stage prior to the filing of the present petition in this Court. In the earlier petition also the said document was not referred to nor a copy of the same was annexed or placed on record. No reference to the said letter is also found in the earlier statutory notice which was issued by the petitioners nor reference to the same is made in the subject statutory notice which is relied upon by the petitioners in the present case. The respondent has taken up a plea in the reply to the statutory notice that the claim of the petitioners is barred by limitation. Immediately thereafter, while filing the petition the petitioners have relied upon and annexed a copy thereof in the present petition. Validity and legality of the aforesaid document is challenged by the respondent. It is not mentioned in the petition nor it is indicated from the aforesaid letter as to who is the author of the said letter. The Signature is placed by the executor at the bottom and not at the relevant place where the signature should have been affixed. In my considered opinion a bonafide dispute has been raised by the respondent with regard to the genuineness and legality of the said document which could be determined only after evidence is led in support of the said document. Since the respondent has raised a bonafide dispute with regard to the claims made by the petitioners in this petition, the same is required to be considered in appropriate proceedings and not in this summary proceedings. The petition accordingly stands dismissed leaving the parties to bear their own costs.