
(1962) 02 MP CK 0012

Madhya Pradesh High Court (Indore Bench)

Case No: M.C.C. No. 1 of 1960

Prabhakar

APPELLANT

Vs

Vikram Sugar Mills Ltd. Alote

RESPONDENT

Date of Decision: Feb. 26, 1962

Acts Referred:

- Companies Act, 1913 - Section 235, 235(3)

Citation: (1963) J LJ 82

Hon'ble Judges: V.R. Newaskar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.R. Newaskar, J.

One of the creditors of the company namely Mrs. Raja Kakarlapudi Sudarsana Sundara Narasayamma submitted an application on 20-12-1954 u/s 235 of the Indian Companies Act, 1913, alleging certain acts of misfeasance, breach of trust and misapplication of the funds of the company by its Directors during the period of their management. This creditor after the submission of the application died on 21-9-1957. On 15-1-1962. her four daughters filed an application for their being brought on record as her legal representatives and sought permission to continue the proceedings.

2. The application was opposed by the Directors on the ground that the proceeding started on the petition of the creditor aforesaid had abated and since the period for setting aside the abatement had expired and no sufficient cause is made out for the delay, the application for their being brought on record was untenable.

3. On behalf of the legal representatives Mr. Waghmare contended that the provisions of Limitation Act are inapplicable to the proceedings u/s 235 of the Act.

The learned Counsel referred to the change introduced in Section 235 by the Companies (Amendment) Act of 1936 whereby Sub-section (3) of Section 235 as it stood prior to the passing of the aforesaid Amendment Act had been repealed. It was argued that since the provision as to the applicability of the Indian Limitation Act, 1908 to an application u/s 235 of the Companies Act is repealed, we cannot apply even Article 176.

4. Section 235 (3) of the Indian Companies Act, 1913 as it stood prior to amendment is as follows:

The Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.

5. This provision is intended to provide for a period of limitation in respect of the proceeding started on an application of the Liquidator or of any creditor or contributory of the company. It lays down that for an action against a delinquent director etc. u/s 235 the same period of limitation was applicable as is applicable had the application been a Civil Suit on the same cause of action before a Court having jurisdiction. The repeal of this provision and amendment introduced in Sub-section (1) of Section 235 by the Amending Act of 1936 by providing a special period of limitation different from that for a suit affected the initiation of the proceeding by means of an application u/s 235. It provides that an application under that section ought to be filed within three years from the date of the first appointment of a liquidator in the winding up or the mis-application, retainer, misfeasance or breach of trust, as the case may be which ever is longer. The repeal of Sub-section (3) does not in terms mean that the whole of the Limitation Act becomes inapplicable to the entire proceedings u/s 235 whether they be for the specific purpose mentioned in the section or for any incidental and procedural matter. It cannot be doubted that the proceedings u/s 235 are judicial in nature and pertain to the Civil liability of the delinquent directors etc.

6. In ILR 17 All 238 in re: Reference u/s 28 of Act No. VII of 1870. Burkitt J. no doubt had expressed an opinion that the proceedings u/s 235 of the Companies Act "are not in the strict and technical tense judicial proceedings at all" but this opinion of Burkitt J., was criticized by Monroe J in AIR 1938 658 (Lahore) , at page 662. The learned Judge referred to the Rules made by the Supreme Court in England in connection with these proceedings and those of the Lahore High Court on the same topic and held that these proceedings are judicial in nature. Reference was made to Rule 77 of the Rules which requires that the application should contain the particulars on which the claim is based and the copy of the application with the grounds thereof should be served on every person against whom an order is sought. Requirement to support the application by means of affidavits was also emphasised. Lastly reference was made to Rule 95 of the High Court rules which provides that the general practice of the Court shall in cases not provided for by the Companies Act and the Rules made thereunder and so far as the same is not

inconsistent with the said Act and the Rule apply to all the proceedings for the winding up of the Company in any Court. It was further held that by virtue of Section 141 C. P. Code the procedure provided in the Code in regard to suits shall be followed so far as it can be applicable, in all proceedings in any Court of civil jurisdiction. The conclusions to which the learned Judge reached were that the proceeding u/s 235 of the Companies Act was a judicial proceeding of a civil nature and that by reason of Section 141 of C. P. Code the procedural provisions of Code are applicable to those proceedings in so far as the same are not inconsistent either with the Companies Act or the Rules made thereunder. This view of the learned Judge was not challenged in the Letters Patent Appeal which was heard and disposed of by Young C. J. and Tek Chand J.

7. In 23 Comp Cases 474 Exchange Bank of India and Africa Ltd. v. Venkatesh B. Kulkarni, Tendolkar, J., was concerned with the applicability of Order 23 C. P. C. regarding compromise of a suit to the proceedings started on a petition u/s 235 of the Companies Act. The learned Judge approved of the view expressed in AIR 1948 Lah 658 Mulk Raj v. Official Liquidator, Peoples Bank. It was held that misfeasance proceedings u/s 235 of the Indian Companies Act, 1913, are legal proceedings in a Court of civil jurisdiction within the meaning of that expression in Section 141 of the Code of CPC and that Order 23 Rule 3 C P C which applies to the compromise of a suit applies to the compromise of a misfeasance summons. This view of Tendolkar, J. was held to be proper in the Letters Patent Appeal heard by Chagla, C. J. and Dixit, J. in [Vadilal Chatrabhuj Gandhi Vs. Thakorelal Chimanlal Munshaw and Others](#), .

8. In AIR 1928 376 (Lahore) , Tek Chand, J. considered the applicability of Order 38 Rule 5 C. P. C. regarding attachment before judgment to a proceeding under the Companies Act and held that the same is applicable.

9. In AIR 1955 78 (Nagpur) ., held that the provisions of Order 6 Rule 17 and Order 1 Rule 10 C. P. C. are applicable to the proceedings u/s 162 of the Companies Act for the winding up of a Company.

10. In A. I. R. 1960 P&H 3 Bhagwanti v. New Bank of India, it was held by the Full Bench of the East Punjab High Court that although by reason of Section 141C. P. C. the procedure provided in the CPC regarding suits is applicable to the proceedings under the Companies Act yet special provisions such as those contained in Section 90, Order 36 or Order 14 Rule 6 cannot be applied in view of their express terms nor the diverse powers and jurisdiction exercisable by the Company Court which a Civil Court does.

11. In A. I. R. 1949 Mad 675 Seethiah v. Venkatasubbiah, it was assumed to be correct that an ex-parte order passed in the course of a winding up petition can be set aside. The decision of Lahore High Court in A. I. R 1920 Lah 51 Hindustan Bank v. Maharaj Din, had been cited for the view. Although Section 141 C. P. C. was not specifically referred to, presumably it was that provision which the learned judges in

that case had in view.

12. It thus came to be fairly agreed on authorities that, except where specific rules framed under Indian Companies Act indicate a contrary procedure, the procedure provided under the CPC for the trial of a suit would apply to a proceeding u/s 235 of that Act. It is no doubt true that the petition does not actually become a plaint and the technical provisions pertaining to plaint may not be attracted as also the period of limitation provided under the Limitation Act for presenting a plaint yet that does not mean that when the proceeding is started on a petition a creditor or a liquidator the procedure of a suit as provided in the CPC is not to be followed. If then, as held in some of the above mentioned decisions the provisions, as to compromise, setting aside *ex parte* orders, attachment before judgment etc. are applicable to these proceedings, there is not justification for holding that where a creditor submits a petition u/s 235 and later dies, procedure prescribed under Order 22 Rule 3 ought not to be held applicable. In fact that is the only procedure open for prosecuting the petition by the legal representatives of the deceased creditor unless the petition is of a representative character in which case other appropriate provisions under the Code will be attracted. If then the procedure under Order 22 Rule 3 C. P. C. is attracted for a petition under section 235 of the Companies Act due to Section 141 C. P. C. then the provisions as to limitation under Article 176 of the Limitation Act which too are procedural in nature should be taken to be attracted. In fact this follows by the very terms of Order 22 Rule 3 (2) C. P. C. which provides:

Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and on the application of the Defendant the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased Plaintiff.

13. It would be too much to hold that when a Petitioner in respect of an application u/s 235 of the Companies Act dies, the petition is not affected by his death for any length of time and that his legal representative can come any time and claim to continue the same. In my opinion he ought to come before the Court within the period of limitation prescribed by Article 176 of the Limitation Act,. If he fails to do so the proceeding would abate.

14. In this view of the matter the present application by the daughters of the original Petitioner Mrs. Raja Kakarlapudi Sudarsana Sundara Narasayamma u/s 235 of the Companies Act, which was filed more than four years subsequent to her death is not maintainable.

15. The application is therefore rejected and the proceeding started on the petition of Mrs. Raja Kakarlapudi Sudaisana Sundara Narasayamma is held to have abated.