Raghubar Narain Singh Vs Pacific Bank Ltd. (in Liquidation)

Court: Calcutta High Court

Date of Decision: July 14, 1972

Acts Referred: Banking Companies Act, 1949 â€" Section 43, 43A, 45B, 45F, 45O
Companies Act, 1913 â€" Section 235
Companies Act, 1956 â€" Section 543
Factories Act, 1937 â€" Section 26(1)
Highways Act, 1959 â€" Section 18, 67, 67(2), 85
Limitation Act, 1908 â€" Article 183
Limitation Act, 1963 â€" Section 12, 13, 14, 15, 16

Citation: (1975) 2 ILR (Cal) 312

Hon'ble Judges: Ghose, J; A.N. Sen, J

Bench: Division Bench

Advocate: S.B. Mukherjee and U.B. Mukherjee, for the Appellant; Anindya Mitra, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Sen, J.
This is an appeal preferred against the judgment and order passed by R.M. Datta J. on June 19, 1970.

2. The Appellant made an application for vacating and/or setting aside an order of attachment made ex parte on July 1, 1969 and also for an order

that the execution application made by the Bank on which the said order of attachment was made should be dismissed and/or be taken off the file

on the ground that the said application was barred by limitation. The learned Judge in his judgment held that no ground whatsoever had been made

out as to why the Appellant could not appear in time and contest the said application and the learned Judge further held that the application made

by the Bank was not barred by limitation. On the basis of his above findings the learned Judge dismissed the said application of the Appellant.

3. This appeal is directed against the said judgment and order of the learned Judge and the only ground that has been canvassed before us is that

the application for execution made by the Bank was barred by limitation.

4. The only question, therefore, that arises for consideration in this appeal is whether the application made by the Bank, on which the order for

attachment was made and which order the Appellant challenged and wanted in his application to be vacated, was barred by limitation.

5. For a proper consideration of this question involved in the appeal it is necessary to set out certain facts.

6. On March 13, 1947, a petition for winding up of the Bank was admitted and by an order made on March 31, 1947, the Bank was directed to

be wound up by this Hon''ble Court. On April 3, 1951, a misfeasance application u/s 235 of the Indian Companies Act, 1913, was made against

the Appellant and one Mr. A.K. Das as Directors of the said Bank. On the said application, u/s 235 of the Indian Companies Act of 1913, an

order was made on December 23, 1955 and by the said order the Appellant and the said Mr. A.K. Das were jointly and severally directed to

repay, restore or contribute to the assets of the said Bank a sum of Rs. 4,97,000 and they were further directed to repay or restore or contribute

to the assets of the said Bank another sum of Rs. 2,82,692. The Appellant preferred an appeal against the said order but there was no stay of

execution of the order dated December 23, 1955, during the pendency of the appeal. On December 21, 1960, the said appeal preferred by the

Appellant from the order dated December 23, 1955, was dismissed. The Appellant thereafter made an application for leave to appeal to the

Supreme Court but the said application of the Appellant was dismissed. The order dated December 23, 1955, directing the Appellant and the said

Mr. A.K. Das to repay, restore or contribute to the assets of the said Bank jointly or severally the said sums of Rs. 4,97,000 and Rs. 2,82,692,

therefore, stands finally confirmed and at no point of time there was any stay of execution of the said order. The Official Liquidator and thereafter

the Court Liquidator from time to time took various steps in execution of the said order. It, however, appears that none of the said proceedings

have yielded any result. Some of the steps taken in execution of the order before the order complained of may be noted. On August 27, 1957, an

order was made for attachment of certain properties in execution of the order dated December 23, 1955. On January 13, 1960, an application

was made and on January 14, 1960, on the said application an order was made for attachment of the properties mentioned in the said petition.

Another application was made on January 21, 1961, for execution of the order dated December 23, 1955 and on June 26, 1961, an interim order

of attachment was made on the said application. The said order was subsequently confirmed. On June 23, 1965, the Official Liquidator''s

application for an order of the sale of the properties attached pursuant to the order dated August 27, 1957, was dismissed. It appears that all

attempts so far made to realise the amount or any portion thereof in execution of the order have met with no success and the earlier proceedings in

execution have proved ineffective. The new Limitation Act (XXXVI of 1963) came into force on and from January 1, 1964. On June 25, 1969, an

application in execution made on a tabular statement returnable on July 1, 1969, was duly served on the Appellant. The Appellant, however, did

not appear on the said date and on July 1, 1969, it appears that the said application was disposed of by me and on the said application I made the

following order:

Amount lying in the hands of Mr. G. Basu, Official Liquidator of Universal Protector Insurance Company Ltd. (In liquidation) to the credit of the

judgment-debtor Raghubar Narain Singh is attached in terms of Clause 10 of the tabular statement. The Assistant Registrar to return the cheque to

Mr. C Basu without signing the same. Liberty to renew the prayer for payment order made in the petition three weeks hence. No fresh application

is necessary. The Petitioner''s Solicitor to communicate the order to the judgment-debtor. All parties to act on a signed copy of the minutes. On

July 18, 1969, the Appellant made an application for setting aside the order made by me on July 1, 1969 and prayed for dismissal of the said

application and/or for taking the said application off the file mainly on the ground that the said application was time-barred. The learned Judge for

reasons stated in his judgment dismissed the said application of the Appellant and the Appellant has preferred the present appeal against the said

order of the learned Judge.

7. As the application of the Appellant which was dismissed by the learned Judge and which forms the subject-matter of the appeal was for setting

aside an order made by me, I asked the Learned Counsel for the Appellant and also for the Respondent whether this Bench should take up this

matter. The Learned Counsel for the Appellant submitted that the order made by me is wholly immaterial and of no consequence for deciding the

present appeal which is directed against the order of R.M. Datta J. for refusing to set aside the said order made by me. The Learned Counsel

submitted that the only question to be considered in the present appeal is whether the application made by the Bank for execution was barred by

limitation and the Learned Counsel further submitted that the order made by me has no bearing on the merits of the present appeal. The Learned

Counsel for the Appellant and also the Learned Counsel for the Respondent have both requested us to take up this appeal, as according to them,

the order made by me is of no consequence in judging the merits of the appeal and should cause no embarrassment to anybody and they have both

agreed that the appeal should be heard by this Bench. As we are assured and we find that the order made by me is of no consequence in judging

the merits of this appeal, we decided to take up this appeal, as otherwise there would be unnecessary delay in disposal of the appeal affecting a

Bank in liquidation.

8. Mr. S.B. Mukherjee, Learned Counsel for the Appellant, has contended that special provision as to limitation for Banking Companies in

liquidation has been made by the Legislature and such provisions are contained in Section 45-O of the Banking Companies Act, 1949. The said

section reads as follows;

45-O(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being

in force, in computing the period of limitation prescribed for a suit or application by a Banking Company which is being wound up, the period of

commencement from the date of the presentation of the petition for the winding up of the Banking Company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or Section 543 of the Companies Act,

1956, or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any Director of a

Banking Company which is being wound up or for the enforcement by the Banking Company against any of its Directors of any claim based on a

contract, express or implied; and in respect of all other claims by the Company against its Directors, the period of limitation shall be 12 years from

the date of the accrual of such claims of 5 years from the date of the first appointment of the Liquidator whichever is longer.

(3) The provisions of this section, in so far as they relate to Banking Companies being wound up, shall also apply to a Banking Company in respect

of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953 (LII of

1953).

9. Mr. Mukherjee contends that Section 45-O(2) deals with questions of limitation in respect of claims against Directors and makes specific

provisions as to limitation with regard to claims against Directors. According to Mr. Mukherjee, the said Sub-section (2) of 45-O is in the nature

of a self-contained code providing for all kinds of claims against Directors and Mr. Mukherjee submits, that the said Sub-section (2) in clear terms

so provides. Mr. Mukherjee has argued that Sub-section (2) provides that for arrears of calls against Directors and for any claim against Directors

based on a contract, express or implied, there will be no period of limitation. In respect of all other claims the period of limitation is fixed at 12

years from the date of accrual of such claims or 5 years from the date of the first appointment of the Liquidator whichever is longer. It is the

argument of Mr. Mukherjee that Section 45-O(2) not only applies to cases of initiation of proceedings for establishment of claims but also to

proceedings in execution for realisation or recovery of all such claims, Mr. Mukherjee argues that the language used in the said Sub-section (2)

makes this position clear. It is the argument of Mr. Mukherjee that when Sub-section (2) speaks of, that there will be no period of limitation for

recovery of arrears of calls from any Director or for enforcement by the Banking Company against any of its Directors of any claim based on a

contract, express or implied, it necessarily implies that there is no period of limitation till all such claims are realised and thereby it undoubtedly lays

down that there is no period of limitation at any stage, including the stage of execution till such claims are realised. He argues that with regard to

other claims the period of limitation fixed also applies to execution proceedings as the expression ''claims'' also includes judgment claims. In

support of his contention that the expression ''claims'' includes judgment claims Mr. Mukherjee has referred to the meaning of the word ''claim'' in

Jowitt''s Law Dictionary (vol. I, p. 382) and also to the meaning of the said word in Oxford Dictionary. Mr. Mukherjee has also relied on the

following decisions: Shordiche Churchward v. Cordle (1959) 1 All. E.R. 599, West Wake Price and Company v. Ching (1956) 3 All. E.R. 821

and Aman v. Southern Railway Company (1926) 1 K.B. 59.

10. Mr. Mukherjee has further argued that the very word ''claim'' has been used in Section 45B of the same Act and it is quite clear that the word

''claim'' there includes judgment-debts and claims arising out of judgments. Mr. Mukherjee has submitted that, in the instant case, there is no

dispute that the order for payment was made against the Appellant as a Director in a misfeasance application u/s 235 of the Indian Companies Act,

1913. The order for payment, the Learned Counsel points out, was made on December 23, 1955 and he contends that by virtue of the provisions

contained in Section 45-O(2) the said claim becomes barred on the expiry of the period of 12 years from the date of the said order as the said

period of 12 years is the longer period in view of the fact that the Liquidator was appointed on March 31, 1947. The Learned Counsel, therefore,

argues that the claim became barred on December 23, 1967 and the present application which was made in June 1969 is, therefore, clearly barred

by limitation. The Learned Counsel contends that Section 45-O(1) has no application in the instant case as the said section has no application to

the case of a Director in view of the specific provisions made with regard to Directors in Sub-section (2). It is the contention of the Learned

Counsel that Sub-sections (1) and (2) of Section 45-O are independent of each other, Sub-section (1) making provisions with regard to all

persons other than Directors and Sub-section (2) making provisions specifically with regard to Directors. Mr. Mukherjee further argues that Sub-

section (1) of Section 45-O cannot in any event have any application as the claim in the instant case accrued after the Bank went into liquidation

and according to Mr. Mukherjee, Sub-section (1) of 45-O applies to cases where the cause of action for the suit or the application has arisen

before the order for winding up has been made and such cause of action was not barred at the date of the presentation of the petition for winding

up. In support of his contention that Section 45-O(1) applied only to cases where necessary cause of action for filing a suit or making an

application by a Banking Company which is in the process of being wound up has arisen before the presentation of the winding up petition, Mr.

Mukherjee relies on the language used in the said Sub-section (1) of Section 45-O. Relying on the language of the said sub-section Mr. Mukherjee

points out that Sub-section (1) of Section 45-O provides for exclusion of time in computing the period of limitation and he submits that there

cannot be any question of exclusion of any time in computing the period of limitation, unless the cause of action has arisen and limitation has begun

to run. In support of this contention Mr. Mukherjee has referred to the decision of the Madras High Court in the case of Brahmayya and Co.,

Official Liquidators of Hanuman Bank (In liqn.) Vs. Mohammedsa Rowther (died) and Others, . Mr. Mukherjee also places particular reliance on

the following observations of Wanchoo J. in the decision of the Supreme Court in the case of Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co., :

Even so the words of Section 45-O have to be interpreted as they stand whatever may have been the recommendation of the committee and on a

plain construction of those words it is quite clear that Sub-section (1) of Section 45-O provides in the case of a suit or application filed by a

Banking Company which is being wound up that the period commencing from the date of presentation of the petition for winding up of the Banking

Company to the date of suit or application shall be excluded. It will, however, be seen that though the committee recommended that limitation

should stop running against a Banking Company from the date of the winding up order, the Legislature made two changes when it proceeded to

enact Section 45-O(1) of the Act. In the first place, it did not provide for stopping of the running of limitation; it provided for exclusion of a certain

period. It further provided for exclusion of the period commencing from the presentation of a winding up petition and not from the winding up

order as recommended by the committee. Now, exclusion has been provided in Sections 12 to 16 of the Limitation Act also. It is well-settled that

exclusion of time cannot take place where time has not begun to run before the date from which the exclusion begins or the time limited has already

expired before such date. There can thus be no exclusion where the time has not begun to run and is not continuing to run. Therefore, though the

committee might have recommended that limitation should stop running from the date of the winding up order, the Legislature adopted the well-

known device of exclusion in order to help Banking Companies in realising their dues. I may add that in the earlier provision in Act XX of 1950

also, the Legislature had only provided for exclusion and the same device was continued when Section 45-O(1) was introduced by the

Amendment Act of 1953. It is, therefore, clear that when the Legislature enacted Section 45-O(1) it made two changes already indicated in the

recommendation of the committee and those changes are clear from the words of Section 45-O. Therefore, in order that Section 45-O(1) should

apply, it is necessary, firstly, that the Banking Company should be in the process of being wound up when the suit or application is being-filed and

secondly, that the period of limitation for the suit or application should have begun to run before the date of the winding up petition but should not

have run out before such date. Otherwise, there can be no question of excluding the period beginning from the date of presentation of the petition

for winding up of the Banking Company.

Mr. Mukherjee has commented that the observations of the other learned Judges, namely, Sarkar and Raghubar Dayal JJ., who delivered separate

judgments in the same case, are really not in conflict with the view expressed by Wanchoo J. though the said observations may not appear to be

strictly in accord with the view expressed by Wanchoo J. Mr. Mukherjee has submitted that the decision of the Supreme Court was unanimous

and all the three learned Judges agreed to allow the appeal holding that execution was not barred and it is the submission of Mr. Mukherjee that

the observations have to be considered in the light of the facts of the case and the basis of the decision was that there was a debt which had

accrued due before the presentation of the winding up petition of the Bank and was alive on that date.

11. Mr. Mukherjee has next contended that even if it be held that Section 45-O(2) applies only to the stage of initiation of proceeding for

enforcement of claim by suit or otherwise and does not apply to execution proceeding, the decree is still barred. Mr. Mukherjee argues that

Section 45-O(1) has no application to the order for payment made long after the Bank had been ordered to be wound up in enforcement of claims

in a misfeasance proceeding, the cause of action in respect of which accrued after the Bank had gone into liquidation. It is his argument that if

Section 45-O(2) does not apply to execution proceeding, the period of limitation prescribed by the Limitation Act must necessarily apply, as

Section 45-O(1) has no application in the instant case. Mr. Mukherjee contends that the order for payment is really in the nature of a decree

passed by the High Court and the period of limitation, therefore, is 12 years. Mr. Mukherjee submits that this order for payment, which was made

on December 23, 1955, was alive and capable of execution on January 1, 1964, when the new Limitation Act came into force and it is his

submission that as the order for payment was capable of execution on the date when the new Limitation Act came into force without taking into

consideration any question of steps in aid taken in execution of the decree or revivor of the decree as a result thereof, the period of limitation fixed

under the new Limitation Act applies and the Bank is not entitled to any benefit of any extended period which the Bank otherwise might have

enjoyed on the basis of such revivers of the decree. Mr. Mukherjee, therefore, submits that on the expiry of the period of 12 years, namely,

December 23, 1967, the decree became barred and the present application which was made in June 1969 is clearly barred by the laws of

limitation. In support of his submission that the Bank is not entitled to any benefit of any extended period, by virtue of any revivor of the decree, as

the decree was otherwise alive and executable on January 1, 1964, when the, new Limitation Act came into force, Mr. Mukherjee has referred to

the decision of the Division Bench of this Court in the case of Subodh Chandra Mitra Vs. Kanai Lal Mukherjee, . In support of his contention that

Section 45-O(1) does not apply to execution in respect of decrees passed in favour of the Bank after the Bank has gone into liquidation and the

ordinary period of limitation as prescribed under the Limitation Act runs, Mr. Mukherjee has referred to the decision of the Supreme Court in the

case of Amitava Das Gupta Vs. Nath Bank Ltd., .

12. Mr. Anindya Mitter, Learned Counsel appearing on behalf of the Respondent Bank, has submitted that the decree is not barred. It is his

submission that the decree in question has been obtained by a Banking Company in liquidation and in view of the provisions contained in Section

45-O(1) the entire period of limitation from the date of presentation of the winding-up petition is to be excluded and there is, therefore, no question

of any limitation. Mr. Mitter contends that Section 45-O(2) has no application to execution proceeding and Section 45-O(1) applies to

applications in execution by a Banking Company in liquidation. Mr. Mitter contends that Section 45-O(2) only applies to proceedings by way of

suits or otherwise for obtaining a decree or order and has no application to any proceeding in execution of any decree or order. Mr. Mitter

contends that the expression "all other claims" in Section 45-O(2) cannot include a judgment claim, as such a construction of the said expression

will manifestly lead to absurdities. It is his contention that if the said expression "all other claims" be construed to include judgment claims, the said

section will really have no meaning as there will, in that event, be two periods of limitation in respect of the very same claims from the accrual of

such claims, one period of limitation will be for obtaining a decree or order in respect of such claim from the date of accrual of the claim and

another period of limitation from the date of judgment obtained in respect of the very same claim. Mr. Mitter submits that such construction is not

permissible. Mr. Mitter has argued that in appropriate cases the word "claim" may include judgment claims and the cases relied on by Mr.

Mukherjee which go to indicate that in those cases claims included judgment claims are of no assistance. Mr. Mitter has submitted that the word

"claim" has to be given such meaning as will lead to a harmonious construction of Section 45-O in its entirety and will make the said Sub-section

(2) meaningful and consistent. Mr. Mitter contends that a particular expression may be used in different senses in different statutes and may even

be used in different senses in the same statute. The correct meaning has to be gathered on a proper interpretation of the statute and the meaning

which fits in with the scheme of the statute and promotes the object of the statute is the correct meaning which is to be applied. In support of his

contention, Mr. Mitter has referred to the following observations of the Supreme Court in the case of New India Sugar Mills Ltd. Vs.

Commissioner of Sales Tax, Bihar, :

It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best

harmonise with the object of the statute and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical

meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would

carry out its object and reject that which renders the exercise of its power invalid. If the narrow and technical concept of sale is discarded and it be

assumed that the Legislature sought to use the expression "sale" in a wider sense as including transaction in which property was transferred for

consideration from one person to another without any previous contract of sale, it would be attributing to the Legislature an intention to enact

legislation beyond its competence. In interpreting a statute the Court cannot ignore its aim and object.

Mr. Mitter has also relied on the following observations in Maxwell on the Interpretation of the Statute (12th ed., pp. 61-62)--

The use of other provisions for purposes of construction must not, however, be carried too far. Even where a word is repeated in the same

section, there is no more than a presumption that it bears the same meaning in both places. A fortiori, ""where a statute has used words which prima

facie have an unambiguous meaning it is not...legitimate to extract a forced and unnatural meaning from a consideration of other provisions in the

same statute, particularly where the result of such a construction is to lead to difficulties of the interpretation of the secondary meaning."" The word

''premises'', for example, in some parts of the Landlord and Tenant Act, 1954, has its strict legal meaning of the subject-matter of the agendum in a

lease, while in other parts it has its popular sense of buildings.

Section 26(1) of the Factories Act, 1937, provided that ""there shall, so far as is reasonably practicable, be provided and maintained safe means of

access to every place at which any person has at any time to work."" In Gardiner v. Admiralty Commissioners (1964) 1 W.L.R. 590, the Court of

Session held that the scope of Section 26(1) was restricted to the premises and plant of which the factory consists; they did not cover means of

access within a factory which passed over the article being manufactured or repaired, for the general tenor of the various safety provisions; in the

Act (Sections 12-40) was that they referred only to machinery which formed part of the equipment of the factory. This decision was reversed by

the House of Lords, Lord Guest saying (at pp. 594, 595): ""The provisions of Section 26 are perfectly general in their terms. There is no principle

which would compel a Court to restrict general words to be found in one section by a limitation to be found in other surrounding sections dealing

with different matters.

There may, furthermore, be an excellent reason for not reading one section in the light of another. In Ching Garage Ltd. v. Chingford Corporation

(1961) 1 W.L.R. 470, the House of Lords held that Section 67(2) of the Highways Act, 1959, entitled the Respondents to erect a pedestrian

refuge notwithstanding that it interfered with frontage''s'' rights of access to the highway. ""The Appellants"", said Lord Radcliffe (at pp. 479, 480),

placed some reliance on the fact that there are other sections of the same Act...which make much more scrupulous provision for the recognition of

private rights or access than the mere right of compensation given by Section 67. They point to Section 18 (stopping up of highways) and Section

85 (fences or posts to prevent access to a highway). In my opinion, however, this argument can lead to no conclusion as to the scope of Section

67 itself. The other two sections relate to operations that by their own nature involve serious obstruction, their purpose being denial of access. It is

only to be expected that in such sections more detailed attention would be paid to protecting private rights of access than in a section such as

Section 67, in which the words involved (walls, etc. "for the purpose of safeguarding persons using the highway") do not necessarily involve any

appreciable form of obstruction at all.

(iii) Lastly, the meaning of a section may be determined, not so much by reference to other individual provisions of the statute, as by the scheme of

the Act regarded in general.

Mr. Mitter points out that in the case of Sree Bank Ltd. v. Sarkar Butt Roy and Company Supra (p. 1956) Sarkar J., in considering with the

object of this very statute, held:

Now the object of the present Act is beyond doubt. It is well-known that prior to 1949 in our country a large number of mushroom banks had

come into existence and were in the control of persons not very scrupulous or competent. Many banks came to grief and failed with the result that

the depositors largely lost their moneys. It was with the object of giving relief to these innocent depositors that the original Act of 1949 and the

Acts amending it were passed. A few of the sections may be referred to by way of illustration. Section 43 of the Act provides that every depositor

shall be deemed to have proved his claim for the amount shown in the books of the bank until the liquidator showed reasons for doubting the

correctness of the entry. Section 43A gives a right to preferential payment upto a sum of Rs. 250 to such depositors. Indeed in Joseph Kuruvilla

Vellukunnel Vs. The Reserve Bank of India and Others, it was observed by this Court (at p. 656 of Supp S.C.R. : at p. 1382 of A.I.R.) ""the

whole intend (sic.) and purpose of that Act is to secure the interests of the depositors."" There need now be no doubt about the object of the Act.

One of the methods by which that object can be achieved clearly is by extending the period of limitation for the enforcement of the claims of a

bank in liquidation so that more money may be collected for payment to the depositors. That is why Section 45-O and its predecessor Section 45-

F had been enacted. Both extended the existing period of limitation in regard to claims by a bank against its debtors. That being so, it would be

natural to think that the largest extension which the language used is capable of giving was intended. Then I find no reason why a distinction should

have been intended between debtors the claims against whom might have become barred before the section was enacted and those the claims

against whom became barred thereafter. The object would be better achieved by applying the section to both classes. I, therefore, think that the

Act was intended to have a retrospective operation.

Raghubar Dayal J. observes at p. 1971:

It is clear that the object of the Legislature was that the running of time during the period when the winding up proceedings were pending in Court

and when the Court supervised those proceedings be not included in the period of limitation prescribed under the ordinary law of limitation. The

banking company is entitled for the exclusion of the period from the date on which the application for winding up had been presented upto the date

of institution of the suit or filing of an application, from the period of limitation prescribed for any suit or application and it would be illogical to hold

that it is not entitled to ask that a shorter period, as the case would be when cause of action arose subsequently to the presentation of the

application for winding up, be also excluded from the period of limitation prescribed for any suit or application. It appears to me that the object

and intention of the Legislature in enacting Sub-section (1) of Section 45-O was that the period subsequent to the presentation of the petition for

winding up be not taken into consideration in computing the period of limitation. The entire period will be excluded from consideration if the

limitation had begun to run prior to the presentation of the petition for winding up and the relevant lesser period, i.e., the period commencing from

the accrual of the cause of action subsequent to the date of presentation of the petition for winding up of the company would be excluded from the

period of limitation which also commences from the accrual of the cause of action.

13. Mr. Mitter argues that to construe the word "claim" in Section 45-O(2) to include judgment claims will frustrate the object for which the said

enactment was made, instead of furthering the same. It is the contention of Mr. Mitter that such construction will also lead to the very absurd result

that the period of execution-against Directors will become shorter than the period of limitation provided under the Act of 1908, as, according to

Mr. Mitter, under the Act of 1908 the period of limitation in such cases would have been in the minimum a period of 12 years under Article 183

with further benefit of the said period being extended by revivers of the decree for an indefinite period and whereas the period fixed under the new

Act will be a period of 12 years only. Mr. Mitter submits that could not obviously have been the intention of the Legislature. Mr. Mitter contends

that such construction will also produce absurd result of an unreasonable and unexplained discrimination in favour of Directors as against others,

because against Directors there will be a period of limitation of 12 years whereas there will be no period of limitation for others u/s 45-O(1). Mr.

Mitter has submitted that the various sub-sections of Section 45-O should not be considered to be independent provisions and Section 45-O(2)

should not be construed to be a self-contained code of limitation against Directors of the Bank. Mr. Mitter argues that the said Section 45-O has

to be construed as a whole and such construction should be put as will result in harmonising all the provisions of the said section for effective

implementation of its object. Mr. Mitter contends that Section 45-O(1) deals with computation of limitation without effecting and/or modifying the

periods of limitation prescribed under the Limitation Act and Section 45-O(2) prescribes special provisions of limitation in case of Directors

modifying the period of limitation prescribed under the Limitation Act or any other law to get hold of the delinquent Directors of the Bank. It is the

contention of Mr. Mitter that if as a result of the provisions contained in the Limitation Act claims or causes of action against other debtors of the

Bank have become barred before the presentation of the winding up petition of the Bank, such claims or causes of action are not revived and are

not protected by virtue of the provisions contained in Section 45-O(1). With the object of depriving Directors of any such benefit, special period

of limitation has been provided against Directors in Section 45-O(2) modifying provisions of the Limitation Act with regard to limitation of such

claims or causes of action. According to Mr. Mitter, Section 45-O(2) has been introduced as a stringent measure against Directors and not for

conferring any benefits on them. Mr. Mitter contends that the true construction of Section 45-O is, as made manifestly clear by the section itself,

that Section 45-O(1) deals with the question of exclusion in computation of the periods of limitation and Section 45-O(2) provides for special

periods of limitation against Directors; and such construction, argues the Learned Counsel, will lead to harmonious construction of the entire

section and will achieve the real object for which the section was enacted. Mr. Mitter has argued that Section 45-O(1) is applicable to the instant

case and saves limitation and this question, according to Mr. Mitter, is concluded by the decision of the Supreme Court in the case of Sree Bank

Ltd. (in liquidation) v. Sarkar Butt Roy and Company Supra (p. 1963). Mr. Mitter has further submitted that even if Section 45-O(1) is held not to

be applicable, the application is still not barred, as by virtue of previous orders made on application in execution on earlier occasions, the decree

will remain alive because of the benefit of revivorship to which the decree-holder was entitled under the Act of 1908. Mr. Mitter submits that the

new Limitation Act of 1963 which came into force on January 1, 1964, does not and cannot take away the vested right which has accrued to the

decree-holder under the old Limitation Act. Mr. Mitter has argued that the decision of the Division Bench in the case of Subodh Chandra Mitra v.

Kanai Lal Mukherjee Supra is clearly distinguishable on facts and does not lay down that the rights under the old Act already accrued are

confiscated by the new Act.

14. Section 45-O of Banking Companies Act was obviously introduced by way of amendment in the interest of Banks in liquidation to preserve

and protect the claims of such Banks for the purpose of enabling them to meet their liabilities to their depositors, contributors and other creditors.

The main object of incorporating Section 45-O is to see that legitimate claims of such Banks are not defeated by the ordinary laws of limitation. To

prevent the claims of Banks in liquidation from getting barred by the operation of the law of limitation, the Legislature considered it necessary and

fit to incorporate Section 45-O in the interest of Banks in liquidation and in the larger interest of the innocent depositors. The liquidation of a large

number of Banks very seriously affected a large number of people and created a situation which necessitated the intervention of the Legislature.

With the object of protecting the interests of a vast number of people including the large number of innocent depositors as far as could be possible,

the Legislature in its wisdom enacted Section 45-O to save claims of such Banks from getting barred by the operation of the ordinary laws of

limitation and provided for special period of limitation in respect of such Banks in liquidation. The object of this section has been very lucidly stated

in the decision of the Supreme Court in the case of Sree Bank Ltd. (in liquidation) v. Sarkar Dutt Roy and Company Supra and particularly, in the

judgments of Sarkar J. and Raghubar Dayal J. The observations of these learned Judges which clearly lay down the purpose and object of this

section and particularly of Sub-section (1) have been earlier quoted in this judgment.

15. Section 45-O which I have earlier set out in its entirety consists of three sub-sections. Sub-section (1), it may be noted, does not alter the

period of limitation prescribed under the Limitation Act for any suit or application. Without altering or amending the period of limitation prescribed

for suits and applications under the Limitation Act, Sub-section (1) provides that in computing the period of limitation prescribed for a suit or

application under the Limitation Act, the period in case of a Banking Company which is being wound up, will be computed by excluding the entire

period commencing from the date of the presentation of the petition for the winding up of the Banking Company. Though Sub-section (1) does not

seek to modify or amend the periods of limitation for suits and applications under the Limitation Act, yet by providing for the special mode of

computation of the period in the case of a Bank in liquidation, this sub-section prevents the periods prescribed by the Limitation Act for suits and

applications from running in the case of a Bank in liquidation by the method provided in the said sub-section and thereby protects the claims of

such Banks from getting barred. The effect of Sub-section (1) is that every claim of any Bank in liquidation which has not become barred by the

law of limitation before the date of presentation of the petition for winding up is kept alive during the entire period the winding up of the Bank,

whether such claim has been decreed or not. In other words, this Sub-section (1) of Section 45-O lays down that unless the remedy, whether by

suit or application, has already become barred before the date of presentation of the petition for winding up there will be no question of any

limitation, either in the matter of filing a suit or making any application which will necessarily include an application in execution, after the Bank goes

into liquidation. Section 45-O(1) in its terms is expressly made applicable to application and must necessarily include an application for execution.

16. It is to be noted that though Section 45-O(1) prevents the period of limitation from running in respect of suits or applications by a Bank in

liquidation from the date of presentation of the winding up petition, this section does not alter or amend the periods of limitation prescribed under

the Limitation Act or any other law for any suit or application; and as Section 45-O(1) does not choose to amend or after the prescribed periods

of limitation, this sub-section does not have the effect of reviving or saving any claim of any Bank in liquidation which has become barred by

limitation before the date of presentation of the petition for winding up of the Bank. If any suit or application becomes barred under the provisions

of the Limitation Act or any other law before presentation of the winding up petition, Section 45-O(1) does not have the effect of saving such suits

and applications; and enforcement of any such claims which have become barred by limitation before the date of presentation of the winding up

petition is not protected by Section 45-O(1). The Directors of the Banks who were in charge of the management and affairs of the Banks may be

considered to be responsible to some extent for the liquidation of the Banks which were under their charge. These Directors would also be entitled

to the benefit of limitation in respect of claims against them which have become barred before the date of presentation of the winding up petition on

the basis of the periods of limitation fixed under the ordinary law. The Legislature thought it fit to make special provisions in respect of claims

against such Directors with the main object of providing that Directors do not enjoy the benefit of the ordinary laws of limitation in relation to the

claims against them by the Bank. For this purpose and with this object in view Section 45-O(2) was incorporated. Unlike Section 45-O(1) which

does not modify or alter the periods of limitation prescribed under the Limitation Act, Section 45-O(2) makes express provisions as to limitation in

respect of claims against Directors and Section 45-O(2) has the effect of modifying or amending the periods of limitation prescribed under the

ordinary laws of limitation. The claims against Directors are broadly classified into three categories in Section 45-O(2). The first category relates to

claims for arrears of calls, the second category relates to any claims based on a contract express or implied and the third category embraces in its

fold all other kinds of claims. Amending or altering the provisions of the general laws relating to limitation for recovery of arrears of calls and

enforcement of claims based on a contract express or implied, Sub-section 45-O(2) specifically provides that in case of Directors there shall be no

period of limitation in respect of any such claims payable by Directors for arrears of calls and on a contract, express or implied. The effect of Sub-

section (2), therefore, clearly is that in respect of the first two classes of claims, namely, claims for arrears of calls and claims on contracts, express,

or implied, against Directors of any Bank in liquidation, the ordinary law of limitation is abrogated and there shall be no period of limitation and

such claims shall never be considered to be barred by limitation. But for the provisions contained in Section 45-O(2) such claims against Directors,

if they had become barred before the date of presentation of the winding up petition under the ordinary law of limitation, would not become

recoverable as Section 45-O(1) does not save such claims. Claim against any other contributory for arrears of call or any claim based on a

contract express or implied against any other party, if barred before the presentation of the petition for winding up, cannot be recovered by the

Bank in liquidation. By virtue of the provisions contained in Section 45-O(2) irrespective of the question whether any such claim would otherwise

become barred against other debtors at the date the winding up petition was presented, such claims against Directors are saved. To this extent, the

ordinary law of limitation is clearly altered. In the same way, with regard to the third category of claims which include all other kinds of claims

against Directors, this sub-section provides a special period of limitation and the period of limitation prescribed is ""12 years from the date of the

accrual of such claims or 5 years from the date of the first appointment of the Liquidator whichever is longer."" In other words, in respect of other

kinds of claims against Directors, the Legislature has thought it fit to prescribe this special period of limitation by extending the same in such manner

as the Legislature in its wisdom considered expedient and proper in supersession of the periods of limitation that might have been prescribed in

respect of such claims by the Limitation Act or by any other law. Section 45-O(2), therefore, clearly prescribes special periods of limitation in

respect of claims against Directors by superseding the provisions with regard to the limitation of such claims prescribed by the Limitation Act or

any other law. Section 45-O(1) prescribes the special mode of computation of the period of limitation without in any way modifying or altering the

periods of limitation prescribed under the Limitation Act or in any other law for suits or applications by a Banking Company which is being wound

up and Section 45-O(2) prescribes special periods of limitation in respect of claims against Directors by a Banking Company in liquidation by

superseding or modifying the periods of limitation prescribed under } the Limitation Act or in any other law for the time being in force in respect of

such claims. Section 45-O(2) cannot be considered to be a self-contained code against Directors. The said sub-section is supplemental to Sub-

section (1) and has to be read and understood in the light of the provisions made in Sub-section (1). The object of Sub-section (2), in our opinion,

is to get hold of Directors and make them liable even in respect of claims which others might have avoided on the ground of limitation. The main

purpose of incorporating Section 45-O(2), in our opinion, is to deny to Directors of Banks in liquidation the benefit of the plea of the claim being

barred at the date of presentation of the winding up petition, a plea which may be available to other debtors u/s 45-O(1). The scheme of the said

Section 45-O, to our mind, appears to be preservation of all claims except those which have not become barred at the date of presentation of the

winding up petition against all debtors by prescribing the special mode of computation of the period of limitation and also to preserve all claims

including claims which would otherwise become barred at the date of presentation of the winding up petition under the ordinary law of limitation

against Directors by prescribing special periods of limitation in respect of claims against Directors. The scheme, further, "is to make all such

provisions retrospective by introduction of Sub-section (3) so that Banks in liquidation do not suffer any prejudice and the provisions for

preserving the claims of Banks in liquidation are really made effective.

17. Taking into consideration the scheme of Section 45-O and its object and purpose, we are of the opinion that the words "all other claims" in

Sub-section (2) cannot and do not include judgment claims. In construing any particular word or expression in any statute, if the said word or

expression be capable of having more sense than one, the Court should interpret that the word or expression to give it that sense and meaning

which will fit in with the scheme of the statute or the particular section and will promote the object for which the same has been enacted. Such

expression or word should not be given the meaning and be interpreted in the sense which will render the section meaningless or will frustrate the

very object of the section and of the statute. In such cases, the Court must consider the context in which the said expression or word is used and

the Court should give to such word or expression a harmonious construction which fits in with the scheme of the statute and promotes its object.

This principle of construction appears to be well-settled. The observations of the Supreme Court in the case of New Sugar Mills Ltd. v.

Commissioner of Sales Tax Bihar Supra (p. 213) and in Maxwell on the Interpretation of the Statutes (12th ed., pp. 61-62), which have already

been noted, in our opinion, lay down and support this rule of construction. The word "claim" in appropriate cases may be construed to mean and

include judgment claims. Such construction in the cases referred to by Mr. Mukherjee was clearly indicated in the context and scheme of the

sections in which they occurred and which came up for consideration in those cases. Those decisions are of no assistance in construing the words

"all other claims" in Sub-section (2) of Section 45-O. Even the use of the same word "claim" in Section 45-B of the very same Act is of no avail.

The words "all other claims" in Sub-section (2) of Section 45-O have to be construed in the context the same have been used bearing in mind the

scheme and object of Section 45-O which was incorporated in the Act by an amendment. An interpretation of the words "all other claims" in Sub-

section (2) of Section 45-O to mean and include judgment claims will not only not be in conformity with the scheme and object of the section but

will also lead to manifest absurdities. From such an interpretation will necessarily follow that "all other claims" in Sub-section (2) of Section 45-O

in respect of which the period of limitation is prescribed in the manner stated therein from the date of accrual of such claims, will have two such

periods of limitation. A period of limitation will commence from the date of accrual of such claims before institution of suits or other proceedings for

establishment or enforcement of such claims by decrees and orders for considering and deciding whether the suit or the proceeding is barred by

limitation or not. There will then be again another similar period of limitation from the dates of the decrees or orders which must be considered to

be the dates of accrual of the judgment claims. Such construction is clearly untenable. Such construction will further result in an unreasonable and

unexplained discretion in favour of Directors against other persons against whom the Bank may have any such claim, while the very object of the

said Sub-section (2) of Section 45-O is clearly otherwise and to the contrary as has been rightly pointed out by the Learned Counsel for the Bank.

A claim does not accrue when a decree or order which gives rise to a judgment debt is passed. Decree or order is passed on the basis of claims

which have already accrued for proper enforcement thereof. Decree or order j does not create any claim as contemplated in the said sub-section,

but is indeed made in recognition of any claim which has already accrued for proper enforcement thereof in law. ''All other claims" referred to in

Sub-section (2) of Section 45-O, therefore, do not include judgment claims and as judgment claims do not come within the fold of ''all other

claims", the said Sub-section (2) of Section 45-O has or can have no application to proceedings in execution for recovery of any judgment debt or

claim. The said Sub-section (2) of Section 45-O has, therefore, no application in the present case.

18. The next question that arises for consideration is whether Sub-section (1) of Section 45-O has any application in the instant case and whether

limitation can be saved by virtue of the provisions contained in the said sub-section. Sub-section (1) of Section 45-O in express terms applies to all

suits and applications by Banking companies in liquidation, if the requirements of the said sub-sections are satisfied. As this sub-section is expressly

made applicable to applications by Banking Companies in liquidation, it necessarily includes applications in execution by a Banking Company in

liquidation and therefore, applies to execution proceedings. It is also to be noted that the mode of computation of the period of limitation

prescribed in Sub-section (1) of Section 45-O applies to all suits and applications including applications in execution by Banking Companies in

liquidation against all persons, whether the person concerned happens to be a Director or any other person provided, however, that the

requirement of the said section is satisfied. The contention of Mr. Mukherjee, on behalf of the Appellant, has been that the said Sub-section (1) of

Section 45-O cannot have any application, as Sub-section (2) of Section 45-O is a complete self-contained code dealing with all kinds of cases

against Directors and is entirely independent of the provisions contained in Sub-section (1) of Section 45-O. We have earlier dealt with this aspect

and have held that Sub-section (2) of Section 45-O cannot be considered to be a complete self-contained code dealing with all kinds of cases

against Directors and should not be construed and considered to be entirely independent of Sub-section (1) of Section 45-O and this Sub-section

(2) of Section 45-O indeed supplements the provisions contained in Sub-section (1) of Section 45-O by trying to save limitation in particular cases

specifically relating to Directors where there may be limitation against other parties in such cases; and we have also held that Sub-section (2) of

Section 45-O has no application in the instant case. The further contention of Mr. Mukherjee has been that Sub-section (1) of Section 45-O

cannot have any application, as the basic requirement of the said sub-section is not complied with. It has been the argument of Mr. Mukherjee that

the basic requirement of Sub-section (1) of Section 45-O is that the claims or causes of action in respect of which suits or applications are

contemplated in the said sub-section must have arisen before the petition for winding up of the Bank has been presented, as the said sub-section

speaks of exclusion of the period commencing from the date of presentation of the winding up in computing the necessary period of limitation of the

suit or the application. The argument, in substance, is that there cannot be any question of exclusion in computing the period of limitation, unless

limitation has already begun to run and the period, commencing from the date of presentation of the winding up petition, cannot be excluded unless

before that date the claim or the cause of action has already arisen and the period has started running. The contention of Mr. Mukherjee, therefore,

is that in the instant case as the claim or cause of action for misfeasance proceedings arose and could arise only during the winding up proceeding

and not before the date of presentation of the winding up petition, there cannot be any question of exclusion in computation of the period of

limitation as provided in Sub-section (1) of Section 45-O and the said sub-section can, therefore, have no application in the instant case. This

contention of Mr. Mukherjee indeed appears to be attractive. The decision of the Madras High Court in the case of Brahmayya if Company,

Official Liquidators of Hanuman Bank (in liquidation) v. Mohammed Rowher and Ors. Supra to which he has referred and the observations of

Wanchoo J. in the case of Sree Bank Ltd. (in liquidation) v. Sarkar Dutt Roy and Company Supra, on which he has relied and which we have

earlier quoted, tend to lend support to this contention. In view, however, of the decision of the Supreme Court in the case of Sree Bank Ltd. (in

liquidation) v. Sarkar Dutt Roy and Company Supra we are unable to accept this contention. This decision of the Supreme Court, in our opinion,

clearly negatives this contention of Mr. Mukherjee.

19. The facts in the case of Sree Bank Ltd. (in liquidation) v. Sarkar Dutt Roy if Company Supra were as follows. The Appellant Sree Bank Ltd.

through its Midnapore Branch obtained a compromise decree against the Respondent in O.S. No. 25 of 1947 of the First Court of the

Subordinate Judge, Midnapore, on May 1, 1947. The decree was for an amount of Rs. 31,000 of which Rs. 2,115 were paid by the Respondent

that very day. The decree provided that Rs. 6,885 were to be paid by May 9, 1947 and the balance of Rs. 22,000 in seven instalments as under:

Rs. 1,000 on May 30, 1947

Rs. 2,000 on December 30, 1947

Rs. 4,000 on December 30, 1948

Rs. 4,000 on December 30, 1949

Rs. 4,000 on December 30, 1950

Rs. 4,000 on December 30, 1951

Rs. 3,000 on December 30, 1952

Paragraph 5 of the compromise which forms part of the decree provided that, if the Plaintiff decree-holder did not get the amount due to it on

account of the instalments within four months from the time of default, it was to deem, on the expiry of the said four months, all the other

instalments to be in default and would be entitled to realise the entire amount of the decree then due through execution proceedings. The judgment-

debtor Respondent paid the first instalment of Rs. 1,000 within May 30, 1947, in terms of the compromise decree, but he failed and neglected to

pay the second and subsequent instalments. A petition for winding up of the Bank was presented on May 11, 1948 and on August 3, 1948, an

order for winding up of the Bank was made. Before the winding up petition was presented on May 11, 1948, the instalment payable by the

judgment-debtor Respondent on December 30, 1947, had fallen due and the period of four months had also expired. On December 30, 1953,

Section 45-O was introduced by the Banking Companies (Amendment) Act, 1953 and at the time when the said section was incorporated by the

amendment, all the instalments under the decree had become payable. On August 26, 1957, the Bank, then in liquidation, applied for execution for

realising all the six instalments which had fallen due under the decree. In the tabular statement for execution of the decree on the Ordinary Original

Civil Jurisdiction of the Calcutta High Court it was stated that the Defendant judgment-debtor had failed to pay any portion of the decretal amount

or interest, that the decree-holder-Bank was wound up by an order of the Court dated August 3, 1948, on a petition for winding up presented to it

on May 11, 1948 and that the Court Liquidator, High Court and the Official Liquidator of the decree-holder Bank be appointed Receiver without

security and without remuneration to collect and realise the amount payable to the Defendant firm and/or Sukumar Dutt, one of its partners, by the

Executive Engineer, Works and Building Department, Midnapore Division, upto a maximum of Rs. 35,000. A further prayer was made that an

interim Receiver be appointed before issue of any notice of the application to the judgment-debtor. On this application an interim order for the

appointment of a Receiver was made on August 26, 1957 and this order was confirmed on June 2, 1958. The judgment-debtor Respondent

appealed against the order contending that the execution of the decree was barred by limitation. The High. Court agreed with the contention and

dismissed the application and also set aside the order for appointment of the Receiver. Against the said order an appeal was preferred by the Bank

to the Supreme Court.

20. On a construction of the compromise decree the High Court had held that the default clause in the consent decree was intended for the benefit

of the Appellant Bank and the said clause had no operation unless the Appellant Bank chose to exercise its option under the decree to take

advantage of the said clause. The High Court further held that the Appellant Bank had not exercised the option to enforce that clause and

Bachawat J., one of the learned Judges of the Division Bench of the High Court at Calcutta, had expressly said that the Appellant "in fact has

waived the benefit of that option". The learned Chief Justice, who presided over the Division Bench of the Calcutta High Court, held that in view of

the option the starting point of limitation would be the dates on which each instalment became due. It may be noted that of the six instalments, the

instalment of Rs. 2,000 payable on December 30, 1947, had fallen due before presentation of the winding up petition on May 11, 1948 and

before the order of winding up of the Bank on August 3, 1948. The other five instalments under the decree all fell due after the order for winding

up of the Bank was made on August 3, 1948. The due dates of the other five instalments were December 30, 1948, 1949, 1950, 1951 and 1952.

The application for execution was made on August 26, 1957, after Section 45-O had been incorporated in the Act by amendment made on

December 30, 1953. The Supreme Court reversed the decision of the High Court and allowed the appeal preferred by the Bank holding that by

virtue of the provisions contained in Section 45-O(1) the claim of the Bank was not barred.

21. Amongst various other contentions raised on behalf of the Respondent judgment-debtor it was specifically contended that Section 45-O(1)

could not in any event have any application to the instalments which fell due after the Bank went into liquidation as the said sub-section applied to

claims or causes of action which had arisen before the Bank had gone into liquidation and were alive at the time when the winding up order was

made and the said sub-section did not have any application to any claims or causes of action which accrued or arose after the Bank went into

liquidation.

22. Sarkar J. in his judgment observed Supra (P. 155):

First, as to the effect of the default clause, no real difficulty arises. It obviously gave an option to the Appellant as was said in Ram Culpo

Bhattacharji v. Ram Chunder Shome (1887) ILR 14 Cal. 352 at p. 354--""The proviso by which the whole amount of the decree becomes due

upon default in payment of any one instalment is a proviso which, look at it how you will, is put in for the benefit of the creditor, the decree-holder

and his benefit alone; and when a proviso is put into a contract or security and in "security" I include "decree", for the benefit of one individual

party, he can waive it if he thinks fit."" There is not the least doubt that the default in the case in hand was intended for the benefit of the Appellant

Bank; the clause had no operation till the Appellant Bank wanted to take advantage of it. The High Court took that view and with that I am in full

agreement. The High Court further held that the Appellant Bank had not exercised the option to enforce that clause. Bachawat J. expressly said

that the Appellant "in fact has waived the benefit of that option". The learned Chief Justice held, in view of the option, that "the starting point of

limitation will be the dates on which each instalment became due". He could have held this only in the view that the option had not been exercised.

None of the parties appears to have contended to the contrary in the High Court. This being a question of fact, it cannot be raised for the first time

in this Court. On such a question of fact, the High Court"s finding is binding on us. Furthermore, undoubtedly if the Respondents wished to contend

that the option had been exercised, it was for them to have given evidence of such exercise, but they did not do so. No such evidence has been

brought to our notice from the records of the case. It has, therefore, to be held that the right to apply for execution in respect of the instalments

under the decree arose on the dates on which they respectively fell due.

23. Having held that the Plaintiff decree-holder had not taken advantage of the benefit of the default clause and had waived the same and that the

instalments did not fall due under the default clause for non-payment of the instalment payable on December 30, 1947 and the instalments fell due

on the due dates, they were payable under the consent decree. Sarkar J. proceeded to examine this contention of the judgment-debtor and held

Supra (pp. 1957-58):

It remains now to deal with the last point. It is said that since Sub-section (1) allows the period commencing from the date of the presentation of

the petition for winding up to be excluded in the computation of the period of limitation, it can only apply to a case where the period of limitation

had commenced to run before that date. The contention is, unless it did so, the whole of the period cannot be excluded and the section permits

exclusion of the whole or none. It is, therefore, said that even if the first sub-section had a retrospective operation, it could result in saving the bar

of limitation only so far as the application concerned the instalment which fell due on December 30, 1947, for the petition for the winding up of the

Appellant Bank had been presented on May 11, 1948 and hence, before the other instalments became due and the period of limitation in respect

of them commenced to run.

I am not inclined to accept this contention. I see no reason why it should have been intended that debts which fell due before the winding up

petition was presented but were not barred on that date could be recovered and not those which became due thereafter. It has to be remembered

that a Liquidator is not always appointed on the presentation of the petition for winding up and it does not infrequently happen that a long time

elapses between the two. It has also to be remembered that a Liquidator would require quite some time after his appointment to get acquainted

with the state of affairs of the company in liquidation and start taking steps for the recovery of its dues. Therefore, there is no reason to think that it

was not intended to give the benefit of the Act to a debt accruing due to a Banking Company after the presentation of a petition for its winding up.

No doubt, if Sub-section (1) is applied to a case of a debt accruing due after the presentation of the petition for winding up, such a debt would be

completely free from the bar of limitation. But, is there any reason to think that this was not intended? I find none apart from a rigid and somewhat

technical reading of the words used and this I am unable to accept as it, to my mind, manifestly defeats the object of the Act. I here wish to point

out that the bar of limitation is completely lifted in the case of a debt accruing due before the presentation of the petition for winding up which had

not become time-barred then and it is natural to think that the intention must also have been to lift the bar completely in the case of debts accruing

due subsequently. There is no reason to make a distinction between the two classes of debts. I may add that the complete lifting of the bar of

limitation would not produce an astounding result or a great hardship. It has to be remembered that the Act is geared up to seeing that the winding

up proceedings are concluded as quickly as possible. To ensure that, large powers have been given to the Reserve Bank of India. Therefore, the

removal of the bar of limitation should not keep a debtor in suspense for an inordinately long time. It is true that the sub-section does not expressly

say that the bar of limitation is totally removed in certain cases. That, however, is no reason for saying that it has not that effect. It clearly has that

effect in the case of debts which accrued due prior to the presentation of the winding up petition and had not become barred on that date, even

though the sub-section does not expressly say so. The absence of these words, therefore, is not a reason leading to the view that debts which

became due after the presentation of the petition for winding up were not intended to be protected.

In my view, the first sub-section should be read as permitting the exclusion of the entire period commencing from the date of the presentation of the

petition for winding up where the debt became due before that date and in cases where the debt became due subsequently, such part of that

period as commences from the date of the accrual of the debt. I think, such a reading has the support of authority. In Cortis v. The Kent

Waterworks Company (1827) 7 B and C 314, it was held that a statute which enabled a rate to be made upon certain persons and permitted a

person against whom the rate had been made to file an appeal against the order making it on his entering into a recognizance, allowed a

corporation which could not enter into a recognizance to prefer the appeal without doing so. It was said that any other reading of the Act would

defeat the object of the statute which was to subject corporations to rates. Bailey J. observed:

But assuming that they cannot enter into a recognizance, yet if they are persons capable of being aggrieved by and appealing against a rate, I

should say that that part of the clause which gives the appeal applies to all persons capable of appealing and that the other part of the clause which

requires a recognizance to be entered into applies only to those persons who are capable of entering into a recognizance, but is inapplicable to

those who are not. (Page 331).

On the same principle I would hold that the section permitted the whole of the period commencing from the presentation of the petition for winding

up to be excluded where it could in fact be so done and a part of that period only where the whole of it could not be excluded. Any other reading

would, to my mind, defeat the object of the Act and should, therefore, be avoided.

24. Raghubar Dayal J. proceeding on the basis that the Bank waived the benefit of the option under the default clause and the instalments fell due

on the due dates, dealt with the contention of the judgment-debtor that the provision of Sub-section (1) of Section 45-O applied only to such suits

or applications, the causes of action for which accrued before the date of presentation of the application for winding up. Dealing with this

contention the learned Judge held Supra (pp. 1957-58):

In the present case, the judgment-debtor Respondent defaulted in payment of the second instalment due on December 30, 1947. On May 1948

the Appellant''s right to execute the decree for the entire amount due under the decree arose. The petition for winding up of the Company was

made on May 11, 1948. The Appellant''s application for execution presented in 1957 for the entire decretal amount due to it would not be time-

barred if it had exercised its option to have realised the entire decretal amount in default of payment of the second instalment. The right to exercise

such an option arose on May 1, 1948, earlier than the presentation of the winding up application, but the Appellant decree-holder, however,

appeared to have waived its such right and to have sought execution for the realisation of the various instalments. Bachawat J. said in his judgment:

The Respondent could waive and in fact has waived the benefit of that option and became entitled to enforce payment of each instalment as and

when it fell due.

It was, therefore, that an objection was raised to the execution of the decree for the instalments falling due after the presentation of the winding up

application on May 11, 1948, on the ground that the provisions of Sub-section (1) of Section 45-O applied only to such suits or applications, the

causes of action for which accrued before the relevant date, i.e., the date of the presentation of the application for winding up. The contention is

that the provision about the exclusion of time in the period of limitation predicates that the period of limitation had commenced to run prior to the

beginning of the period to be excluded and that, therefore, the provisions of Sub-section (1) of Section 45-O would apply only to suits or

applications with respect to such causes of action which had accrued prior to the date of the winding up petition. This contention for the

Respondent has been accepted by the High Court. In this the High Court was in error.

It is clear that the object of the Legislature was that the running of time during the period when the winding up proceedings were pending in Court

and when the Court supervised those proceedings be not included in the period of limitation prescribed in the ordinary law of limitation. The

Banking Company is entitled for the exclusion of the period of limitation from the date on which the application for winding up had been presented

up to the date of institution of the suit or filing of an application from the period of limitation prescribed for any suit or application and it would be

illogical to hold that it is not entitled to ask for a shorter period, as the case would be, when cause of action arose subsequently to the presentation

of the application for winding up, be also excluded from the period of limitation prescribed for any suit or application. It appears to me that the

object and intention of the Legislature in enacting Sub-section (1) of Section 45-O was that the period subsequent to the petition for winding up be

not taken into consideration in computing the period of limitation. The entire period will be excluded from consideration if the limitation had begun

to run prior to the presentation of the petition for winding up and the relevant lesser period, i.e., the period commencing from the accrual of the

cause of action subsequent to the date of presentation of the petition for winding up of the company would be excluded from the period of

limitation which also commences from the accrual of the cause of action.

It may be said that this means that the entire period of limitation is abrogated with respect to causes of action arising subsequent to the date of

presentation of the petition for winding up. Such may be the result, but that does not mean construing the provisions of Sub-section (1) of Section

45-O in the context of the circumstances and reasons in the enactment of those provisions. It would be anomalous to hold that action can be taken

with the help of the provisions of Sub-section (1) of Section 45-O with respect to causes of action which had arisen much earlier than the date of

the presentation of the petition for winding up, but action cannot be taken with respect to causes of action arising subsequent to such a date if it had

not been taken within the prescribed period of limitation. There is nothing in the language of the sub-section, in my opinion, to accept the contention

for the Respondent whose acceptance would lead to results which would not have been contemplated by the Legislature.

25. Wanchoo J., the other learned Judge on the Bench, however took a different view on this aspect, although the learned Judge agreed that the

appeal of the Bank should be allowed on the basis that the entire decretal amount had fallen due by virtue of the provisions contained in the default

clause before presentation of the winding up petition.

26. It will, therefore, clearly appear from the decision of the Supreme Court that the very same contention, which has been urged before us by Mr.

Mukherjee, fell for consideration before the Supreme Court and the majority of the Judges negatived the said contention. The decision of the

Supreme Court, in our opinion, therefore clearly concludes this question.

27. This distinction sought to be made by Mr. Mukherjee that in the case of Sree Bank Ltd. Supra before the Supreme Court, the claim or the

cause of action had in fact accrued before presentation of the winding up petition on the basis of the decree and the default clause contained

therein, only provided that the amount of the decree would be payable in instalments in the future and did not give rise to any new cause of action,

is not tenable. The basis of the decision of Sarkar and Raghubar Dayal JJ. was that the instalments fell due on the respective dates, they were

payable under the decree as the benefit of the default clause had been waived by the decree-holder Bank and the cause of action for execution

must, therefore, have arisen and could only arise only when the instalments fell due. The decision of the majority Judges and their observations,

which we have earlier quoted, clearly lay down that the provisions of Sub-section (1) of Section 45-O applied even if the cause of action for the

suit or application arises after the petition for winding up has been presented. The decision of the Supreme Court and the observations of Sarkar

and Raghubar Dayal JJ., which we have earlier noted, apply, in our opinion, with full force to the present case and the distinction sought to be

made by Mr. Mukherjee is without any merit. Though Sub-section (1) of Section 45-O speaks of exclusion of the period of limitation in computing

the period for any suit or application, yet the effect of the sub-section, in our opinion, is to suspend the period of limitation in respect of any suit or

application to which the said sub-section applies after the petition for winding up has been presented. It may be noted that Sub-section (1) Section

45-O provides for exclusion of the period of limitation in computing the same for a suit or application commencing from the date of presentation of

the petition for winding up of any Banking Company, but the same does"" not make any provision as to any specified period upto which or for

which the said exclusion should be made. In our opinion, the effect of Sub-section (1) of Section 45-O is to keep alive causes of action in respect

of all suits and applications to which the said sub-section applies, unless such causes of action become barred before the date of presentation of

the winding up petition. If any cause of action for any suit or application has not become barred before presentation of the winding up petition of

the Bank, there r is by virtue of the provisions contained in Sub-section (1) of Section 45-O no question of any limitation for any suit or

application, whether the cause of action arose before or after presentation of the winding up petition.

28. The decision of the Supreme Court in the case of Amitava Das Gupta v. Nath Bank Ltd. Supra, relied on by Mr. Mukherjee, is of no

assistance. In this case the Supreme Court was concerned only with the question as to whether Article 183 of the Limitation Act, 1908, applied to

a decree passed by the High Court in the suit which was transferred to the High Court from the Patna Court under the provisions of the Banking

Regulation Act, 1949, read with the Banking Companies (Amendment) Act, 1950. Section 45-O did not at all come up for consideration in this

case as the question of exclusion of any period in computation of the period of limitation did not at all arise. The Supreme Court in this case held

that in respect of the decree passed by the High Court in the suit transferred to the High Court, Article 183 was the appropriate Article which was

applicable for execution of such a decree passed by the High Court. The mode of computation of the period of limitation and the question of any

exclusion in computing such period as provided under Sub-section (1) of Section 45-O did not come up for consideration at all and it was also not

necessary to consider Sub-section (1) of Section 45-O as the execution of the decree was well within the period of 12 years, the period of

limitation prescribed for execution under Article 183. This decision does not lay down that notwithstanding the provisions contained in Sub-section

(1) of Section 45-O, the period of limitation of any decree passed by the High Court must necessarily expire on the expiry of the period of 12

years under Article 183 of the Limitation Act. Article 183 undoubtedly lays down the period of limitation for execution of a decree passed by the

High Court, but Sub-section (1) of Section 45-O specifically provides for the mode of computation of such period in case of Banking Companies

in liquidation and stipulates exclusion of the period provided in the said sub-section.

29. As, in our opinion, Sub-section (1) of Section 45-O applies to the application for execution in the instant case, there is no question of any

limitation and the said application is not barred by limitation.

30. In view of our decision that Section 45-O(1) applies and the application for execution is not barred by limitation, we do not consider it

necessary to discuss the other contention raised by Mr. Mukherjee as to what would be the effect of revivers of the decree under the old Act on

the application in view of the provisions contained in the new Limitation Act and whether such revivers would give the decree in question fresh

periods of limitation. In view of our finding that the provisions contained in Sub-section (1) of Section 45-O apply to the application for execution

in question, this contention of Mr. Mukherjee is of no consequence and the decisions cited by Mr. Mukherjee on this aspect are immaterial and we

do not, therefore, consider it necessary to discuss the same.

31. The decision of the learned trial Judge is upheld and the appeal fails. The appeal is, therefore, dismissed with costs.

32. Certified for two counsel.

33. The Liquidator will be entitled to retain his costs out of the assets as between Attorney and client. The amount which is now being held by the

Liquidator pursuant to an order of this Court will be appropriated by the Liquidator in pro tanto satisfaction of the claim against the Appellant

judgment-debtor.

34. On behalf of the Appellant an oral application for stay was made and was refused.

Ghose, J.

35. I agree.