

IN THE HIGH COURT OF DELHI AT NEW DELHI

CO.APPL.(C) No. 1 of 2010 in Co. Pet. No. 95 of 1990

Reserved on: May 21, 2013

Decision on: May 28, 2013

ANAND PRATYABHOOT VITT NIGAM LTD. Petitioner

Through: Mr. Kanwal Chaudhary, Advocate for
the Official Liquidator

versus

MADHU BALA SHARMA Respondent

Through: Mr. Vikas Sharma, Advocate

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
28.05.2013

1. This is an application filed by the Official Liquidator ('OL') attached to this Court under Section 446 of the Companies Act, 1956 ('Act') seeking to recover from the Respondent, Mrs. Madhu Bala Sharma, a sum of Rs. 6,13,408 together with interest @18% p.a. from June 2006 till realisation along with administrative expenses of the OL and costs.

2. The background to this application is that Anand Pratyabhoot Vitt Nigam Ltd. (hereafter the 'company') was ordered to be wound up by this Court on 9th October 1997. The OL was appointed as its Liquidator. On 16th February

2005, the Court directed the OL to invite claims from the creditors and the workmen of the company. Notices to that effect were published in the newspapers and the claims received were processed by the OL.

3. The Respondent along with her husband had made a total of twenty investments in the sum of Rs. 82,099 between 23rd April 1988 to 24th June 1989 in two schemes of the company, i.e., fixed deposit scheme and hire purchase scheme. It is stated that under both the schemes, the cumulative/compound rate of interest @ 14% (for fixed deposit) and 27% quarterly or 30% p.a. (for hire purchase scheme) was payable.

4. The Respondent submitted claims in all the twenty investments along with the originals of the certificates of fixed deposits and the hire purchase agreements. She also furnished the calculations of maturity value of the investments from the date of deposit till the date of winding up, i.e., 9th October 1997. By a letter dated 4th November 2006, the OL informed the Respondent that her claim in the sum of Rs. 7,42,509 had been admitted. The payment of the said sum was made on 12th May 2006.

5. While hearing the main winding up petition, the Court was on 7th September 2009 informed that the OL was in the process of re-examining the question of settlement of claims. The Court was also informed that

certain complaints had been received which were under examination. The Court required a status report to be filed.

6. By letter dated 5th October 2009, the Respondent was requested to attend the office of the OL on 14th October 2009. Mr. V.K. Sharma, the husband of the Respondent, attended the office of the OL on 14th October 2009 and informed the OL that Mrs. Madhu Bala Sharma had in computing her claim included the compound interest. Taking the stand that no compound interest as such was admissible on her claims, the OL by letters dated 24th November 2009 and 14th December 2009, requested Ms. Madhu Bala Sharma to return the excess of Rs. 4,81,169.

7. On 21st January 2010 the Court granted the OL four weeks' time to file a status report with respect to each claim. It was directed that "the report will also point out all particulars of the officer or officers handling these claims. It is also open to the Official Liquidator to seek the assistance of a Chartered Accountant, if he considers it necessary to do so in this matter." Consequent upon the above order, the OL engaged the services of M/s Rai & Co., Chartered Accountant ('CA') and the claims filed were handed over to them. In the report the CA set out the principal amounts as well as the maturity value of the deposits. The CA found that some of the

disbursements made, including that made to the Respondent, were in excess of their legitimate dues. The OL then calculated that an excess payment of Rs. 4,81,169 was made to the Respondent. On the above basis, the present application was filed on 12th July 2010. It was, *inter alia*, stated in para 8 of the application as under:

“8. That in this regard the claim of Smt. Madhu Bala Sharma was sent to the Chartered Accountant for re-examination and the reply has been received from the Chartered Accountant in respect of the above said claim and he informed to this office that the principal amount of Rs. 82,099 has been claimed in the affidavit. The interest was calculated up to the date of maturity and not up to the date of winding up which affected the amount of interest. Moreover as stated above, the interest has not been calculated on compound interest basis. The interest comes to Rs. 47,002 instead of Rs. 6,60,410. Now the total amount payable comes to Rs. 1,29,101 (82,099 principal + 47,002 interest) admitted as claimed by the claim section of Official Liquidator office. Hence there is a difference of Rs. 6,13,048 which is due to calculation of simple interest up to the date of maturity, instead of compound interest till the date of winding up.”

8. Meanwhile, while hearing C. A. No. 1267 of 2010 in C.P. No. 95 of 1990 on 23rd July 2010, the Court was shown the claim-wise chart prepared showing the status of 43 claims scrutinised by the CA, M/s Rai & Co. As far as the present application is concerned, on 12th August 2010, notice was issued to the Respondent. In the reply filed to the application, it is first contended that the Respondent is entitled to compound interest under Rule 156 of the Companies (Court) Rules 1959 (‘Rules’). It is submitted that the

CA has not calculated the maturity value up to 1st October 1997, i.e., the date of the winding up and also the date up to which the OL had directed the Respondent to submit claims in the prescribed form. It is stated that the Respondent has a right to challenge the report of CA and is entitled to lead evidence and cross-examine the CA.

9. Mr. Vikas Sharma, learned counsel for the Respondent, first submitted that the application itself was not maintainable under Section 446 (2) (b) of the Act since no leave of the Court has been obtained by the OL before filing the present application. Secondly, it is submitted that the recovery, as sought to be made, is beyond the prescribed period of limitation as the disbursement was made way back on 12th May 2006, whereas the present application was filed only on 12th July 2010. Thirdly, it is submitted that the OL is seeking to recover the sum by invoking the summary procedure, whereas the OL had to file a proper application seeking the recovery of money. It is asserted that the Respondent has a right to defend the claim, to lead evidence, to cross-examine the CA upon whose report the present application was based. Fourthly, it is submitted that there was no infirmity or illegality *qua* the disbursement made by the OL and the report of the CA was erroneous. Fifthly, it is submitted by Mr. Sharma that the interpretation placed by the OL on Rule 156 was erroneous. It is submitted that in view of

the latter part of Rule 156, the Respondent was entitled to cumulative interest during the period of investment. It is submitted that after the expiry of the period of deposits up to the date of payment, the Respondent was entitled to the rate of interest on the basis of the current rate under Section 3(1) of the Interest Act, 1978 and not as per the first part of Rule 156 of the Rules wherein the flat rate has been stipulated. It is submitted that the deposits could not be renewed since the company officials went missing and the company itself was closed. In support of his submissions, Mr. Sharma placed reliance on the decisions in *S. Peer Mohammed v. B. Mohan Lal Sowcar* (1988) 2 SCC 513, *Sudarsan Chits (I) Ltd. v. G. Sukumaran Pillai* AIR 1984 SC 1579, *Rose Chit Funds (P.) Ltd. (In Liquidation) v. G. Venkatachalam* [1991] 70 Co. Cas. 280, *Ravindra S. More v. Sudarshan Chits (India) Ltd. (In Liquidation)* [1992] 73 Co. Cas. 393.

10. The contention that the claim was time-barred overlooks the fact that it was filed pursuant to the orders passed by the Court on 7th September 2009 and 21st January 2010. The cause of action for claiming the sum arose only when it was brought to the knowledge of the OL by way of the report of the CA submitted to the OL in February 2010. Consequently, this Court rejects the plea that the claim of the OL for refund of the excess amount paid to the Respondent is time-barred.

11. The plea that the present application is not maintainable under Section 446 of the Act is also untenable. Section 446 reads a under:

“446. **Suits stayed on winding up order**-(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The Court shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company (including claims by or against any of its branches in India);
- (c) any application made under section 391 by or in respect of the company;
- (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

[***]

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

12. Under Section 446(2)(b) any claim can be brought by the OL on behalf of the company. The question of obtaining the leave of the Court for filing an application under Section 446 does not arise. It is only where a claim is to be filed by the company in some other forum that the leave has to be obtained. The expression “claim” is of wide amplitude and includes a claim for refund of payment made in excess.

13. As regards the submission that parties should be permitted to lead evidence and only then the application is to be decided, it is seen that given the nature of the claim in the present case, which is a claim for refund of money paid in excess and which is based on the report of the CA, the matter cannot be said to be complicated. The affidavits both in support of the application as well as reply have been filed. There is actually no need for cross-examination since the question is of a simple arithmetical calculation once the legal principles are settled. A plain reading of Rule 156 shows that simple interest in excess of 4% p.a. on the deposits cannot be paid beyond the date of maturity of such deposits. In that view of the matter, no prejudice could be said to be caused to the Respondent if the Court were not to frame issues and permit the parties to lead evidence. In ***Ravindra S. More v. Sudarshan Chits (India) Ltd. (In Liquidation)*** the nature of the case was such that the Court found that it required framing of issues and leading of

evidence. It is, however, not correct to contend that in every case, irrespective of the nature of the case, the issues have to mandatorily be framed and the evidence permitted to be led.

14. The principal question that arises for determination is whether, as claimed by the OL, the Respondent was paid in excess? The facts not in dispute are that the Respondent along with her husband did make as many as twenty investments in the company. From the tabular chart placed on record, it is seen that the deposits which were processed for payment on various dates, the earliest being 23rd April 1990 and the last 27th February 1992. The deposits jointly held by Ms. Madhubala Sharma with her husband matured between 28th September 1988 and 24th July 1991. It is nobody's case, however, that the deposits were renewed beyond the aforementioned dates. Secondly, what is significant is that, as explained by the CA in its letter dated 29th September 1992, each document had a statement "that this arrangement will remain in force for ____ from this date unless otherwise renewed/extended by the parties." In most of the deposits, the figures were filled in by hand. The CA has explained why the calculation of interest by the Respondent is different from what has been calculated by them as under:

"The number of months has been filled with pen by hand and signed by the company. This period differs for each agreement. Wherever

the period of this agreement is extended, the same has been changed with pen and signed. **The last date of extended period has been taken as the maturity date for the purpose of calculation of interest as per the photo copy of the agreement made available to us.**

The Claimant has calculated the interest up to 01/10/1997 i.e. up to the date of liquidation but we have taken the period for calculation of interest up to the last date of maturity before the date of liquidation. The period of deposits varies from 07/12/1987 up to 08/12/1989 for different documents and the maturity date varies from 23/04/1990 to 27/02/1992 i.e. the period of deposit varies from 730 days to 1096 days (last date of maturity on 27/02/1992 for a few deposits) and total amount of interest comes out as Rs. 44,602.14 as per our report whereas the claimant has calculated cumulative interest for a period ranging from eight to ten years i.e. upto the date of liquidation 01/10/1997 which comes to Rs. 6,60,410. Hence claimant's calculated interest amount is much more than the interest shown in our report and hence there is a difference of Rs. 6,15,808 (6,60,410-44,602)." (emphasis in original)

15. Clearly, the deposits were not renewed beyond the dates of maturity. However, the Respondent has calculated the compound interest payable on the deposits for a period even beyond the date of maturity and up to the date of winding up.

16. Rule 156 of the Rules reads as under:

“156. Interest.- On any debt or certain sum, payable at a certain time or otherwise whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest at a rate not exceeding four per cent per annum up to that date from

the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment.”

17. The analysis of the above rule shows that there can be two situations – one where no interest is prescribed as payable on any debt or certain sum by the company. In that event, the creditor would be entitled to interest not exceeding 4% p.a. from the time when the debt or sum was payable up to the date of payment. In the second situation, if there was nothing to indicate from when the debt was payable, then it would be payable from the date when a demand is made and the interest would be calculated from that date till the date of payment.

18. In the instant case, beyond the date of maturity of the deposits, there was no agreement between the Respondent and the company as to the rate of interest that was payable. There was no automatic deemed renewal of the deposit. The compound rate of interest was payable only as long as the deposits had not matured. After the date of maturity and in the absence of any renewal, the Respondent would be entitled to interest not exceeding 4% on the deposit amounts for the period from the date of the maturity till the date of payment. The amount payable to Mrs. Madhu Bala Sharma was Rs. 1,26,701.14. Therefore, clearly, an excess payment was made to her.

19. Learned counsel for the Respondent placed reliance on the decision in *Central Bank of India v. Ravindra* (2002) 1 SCC 367, which in turn referred to the decision in *CIT v. Dr. Sham Lal Narula* AIR 1963 Punjab 411, is misplaced. It is submitted the Respondent was deprived of the money beyond the date of maturity till the date of payment and was, therefore, entitled to interest, compensation or damages based on the principle governing Section 34 of the Code of Civil Procedure, 1908. In particular, reliance was placed on the observations that “It may be regarded either as representing the profit he might have made if he had the use of the money, or, conversely, the loss he suffered because he had not that use.”

20. The decision in *Central Bank of India v. Ravindra* (supra) was not in the context of the winding up proceedings or Rule 156 of the Rules. It was in the general context of interest payable on a sum awarded in a civil suit. There was no occasion for the Court to interpret Section 156 of the Rules. Likewise, the decision in *CIT v. Dr. Sham Lal Narula* was in the context of Income Tax Act. In the present case, what governs is Rule 156 of the Rules. Its language is very clear. Where there was no agreed rate of interest, then the maximum interest that may be paid on the amount owing to the depositor by the company in liquidation cannot exceed simple interest @ 4%. The latter part of Rule 156 does not come to the aid of the Respondent

since, in fact, there has been no agreed rate of interest after the date of maturity.

21. For the aforementioned reasons, none of the objections of the Respondent either to the maintainability of the application or to its merits is tenable. The Respondent is directed to refund to the OL the excess amount of Rs. 6,13,408 together with simple interest @ 9% p.a. from 12th May 2006 till the date of payment, which, in any event, cannot be beyond eight weeks from today. If the payment is not made within the time granted, the Respondent will be liable to pay penal simple interest @ 12% p.a. on the said sum for the period of delay.

22. The application is accordingly allowed but with no order as to costs.

S. MURALIDHAR J.

May 28, 2013
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