IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Company Appeal No. 18 of 1996 (O&M)
Date of Decision: 05.02.2019

Ranbir Singh and others …..Appellants

versus

M/s Ambala Bus Syndicate Pvt. Ltd. and others ….Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Prateek Gupta, Advocate for the appellants.
Mr. Baldev Kapoor, Advocate, for the respondents.

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KRISHNA MURARI, CHIEF JUSTICE

This is a company appeal filed under Section 483 of the Companies Act, 1956 (for short 'the Act') challenging the judgment and order dated 09.02.1996 passed by the learned Single Judge dismissing the petition under section 433 read with Section 434 of the Act made by the appellants herein for winding up of the respondent-company.

2. Facts relevant for the purpose of the case required to be noticed are as under:-

Appellants herein filed a company petition under section 433 read with Section 434 of the Act for winding up respondent No.1 on the ground that they deposited certain amount with the respondent company which they were entitled to receive or withdraw on demand alongwith interest as and when they desire but despite repeated requests the amount has not been refunded.

3. Pleadings go to show that the deposit was made between 1954 to 1980. A notice under Section 434 of the Act was issued by the appellants herein through their counsel requiring the respondent-company to pay back a sum of ₹ 3,62,089.23 which was inclusive of interest at the rate of 15% at yearly rests upto 31.03.1989. Reply to the notice given by the respondent-company denied any amount due as per their books of account. On behalf of the respondent-company it was pleaded that it became financial sick in the year 1982 and completely closed its business in the year 1983 and its registered office remained completely closed and unattended from September, 1983 to October/November-1987. Subsequently, the major share holdings of the company were transferred in the year 1987 to one Ujaggar Singh and his relatives and friends who revived the business of the company with huge investment and on verification of the record of the company no amount whatsoever was found to be payable. Plea of limitation was also put up as a defence by the respondent-company.

4. Learned Single Judge after analyzing the pleadings of the parties as also the documentary evidence brought on record found that there were 26 petitioners but the receipts relate only to five petitioners, namely, Ranbir Singh, Pritam Singh, Baldev Singh, Gurdial Singh and Jagjit Singh and all the receipts are of the years 1954, 1962, 1965, 1972, 1973, 1978, 1979 and 1980. Apart from the aforesaid documents, the statement of account which has been annexed with the petition is not the one which was filed with the Income Tax Department but was signed by Sham Lal Aggarwal, Accountant.

5. Learned Single Judge further held that the demand for the first time has been raised vide legal notice dated 05.05.1989 and in the absence of any document showing the acknowledgement of the debt beyond 1980 in

view of Article 19 of the Limitation Act, 1963, the limitation to recover the debt being 3 years claim is clearly barred by limitation. Had there been an acknowledgment then benefit of Section 19 of the Limitation Act could have been availed but in the absence of any acknowledgment since the three years period expired much before the demand was raised, prima-facie the claim is barred by time and thus the company petition for winding up cannot be said to be an appropriate remedy.

6. Learned counsel for the appellants vehemently contends that the relevant article for determination of the period of limitation would be Article 22 of the Limitation Act which prescribes a period of three years from the date when the demand is made. It may be relevant to reproduce Article 22 of the Limitation Act which reads as under:-

"22. For money deposited under an agreement that it shall be payable on demand including money of a customer in the hands of his banker so payable"	***Three years***	*When the demand is made."*

7. A bare perusal of the language of Article 22 of the Limitation Act goes to show that it deals with a case where money is deposited under an agreement which shall be payable on demand. Article 22 shall stand attracted only where the transaction is in a form of deposit and there is an agreement that it shall be payable on demand.

8. In the case in hand, there is not even a whisper in the pleadings with respect of there being an agreement between the parties in respect of the alleged deposit containing a stipulation that the same shall be payable on demand. Thus the provisions of Article 22 of the Limitation Act do not stand attracted and the argument advanced by

learned counsel for the appellants based on the provisions of Article 22 has no force.

9. The relevant Article applicable in the facts of the case is Article 19 which prescribes a limitation for three years. In view of the admitted case that the amount was deposited between 1954 to 1980 and there being no acknowledgment of the deposit before the expiry of period of limitation so as to seek the benefit of extension of limitation from the date of acknowledgment, three years period has expired long back before filing of the company petition and thus the claim is hopelessly barred by limitation.

10. Apart from the above, there also appears to be a serious dispute between the parties with respect of the amount being due as has been found by the learned Single Judge. However, there is hardly any requirement for us to enter into this issue since admittedly the claim in our considered opinion on the basis of the facts and law is barred by limitation. We see no infirmity in the judgment of the learned Single Judge in dismissing the company petition on the ground of claim being barred by limitation. The company appeal thus is devoid of any merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

05.02.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No