

Raghunath and Son Private Ltd. Vs. Pandam Tea Company Ltd.

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Court : Kolkata

Decided On : Nov-25-1975

Reported in : [1978]48CompCas577(Cal)

Judge : Sankar Prasad Mitra, C.J. and ;S.K. Datta, JJ.

Appeal No. : Appeal from Original Order No. 1 of 1974

Appellant : Raghunath and Son Private Ltd.

Respondent : Pandam Tea Company Ltd.

Advocate for Def. : B.K. Chatterjee, Adv.

Advocate for Pet/Ap. : Jayanta Mitra, Adv.

Judgement :

Sankar Prasad Mitra, C.J.

1. This is an appeal from a judgment of Mr. Justice Sabyasachi Mukherjee delivered on June 27, 1973. The appellant claims to be a creditor of the respondent. The loan was advanced subject to certain debentures in 1958. It is stated that the loan was acknowledged in balance-sheets as it stood on the 31st December, 1967, which was signed by the directors on the 3rd June, 1968. But difficulty has been created by the alleged acknowledgment in the balance-sheet as at the 31st December, 1968, signed by the directors on the 26th July, 1970.

2. At page 6 in the list of liabilities the following entry appears :

' Secured Loans:

As per Schedule ' A' Rs. 9,34,545.'

3. Schedule ' A' is at page 12. In Schedule ' A' we find the following entry :

' Raghunath & Son Private Ltd. (Partly secured by deposit of the company's own debentures as per contra) (unconfirmed):

Rs. 1,49,110'

4. Then at page 2 of the report of the board of directors appears the following paragraph:

' Your directors are of the opinion that the liabilities shown in Schedules ' A ' & ' B ' of the balance-sheet excepting those of United Bank of India, Messrs. Goenka & Co. Private Ltd. and Carrit Moran & Co. P. Ltd. are barred by limitation, hence these liabilities are not confirmed by your directors.'

5. As we have said, the report for the balance-sheet as at 31st December, 1968, was signed on the 26th July, 1970. The application for winding up was presented on the 9th March, 1972.

6. The position, therefore, is that unless the statements made in the balance-sheet as at 31st December, 1968, and the directors' report referred to above are treated as admissions of liability, on the date of presentation of the winding-up petition, the appellant's claim may have been barred by limitation.

7. The learned trial judge has taken the view that there is a bona fide dispute as to the question of limitation. As we share this view for the reasons given in the judgment of the trial court, this appeal is dismissed.

8. There will be no order as to costs.

9. We make it clear, however, that this judgment would not prevent the appellant from pursuing other remedies in an appropriate forum, if so advised.

S.K. Datta, J.

10. I agree.

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