

Before Mr. Justice Wazir Hasan and Mr. Justice Muhammad Raza.

THE PEOPLES INDUSTRIAL BANK, LTD., IN LIQUIDATION (DECREE-HOLDER APPELLANT) v. MAHESH CHARAN SINHA (JUDGEMENT-DEBTOR RESPONDENT).\*

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January, 29.

*Indian Companies Act (VII of 1913), sections 186 and 199—Contribution order by court—Execution application to enforce the order of contribution—Limitation Act, applicability of, to contribution orders and execution applications to enforce contribution orders—Step in aid of execution—Process fee—Payment of process fee is not a step in aid of execution.*

*Held*, that in making an order of contribution under section 186 of the Indian Companies Act the court is not subjected to rules of limitation, but when that order is sought to be enforced by the liquidators by means of an application under section 199 of that Act, such an application is controlled by the provisions of the Limitation Act. Before the order of contribution is passed the liability is a contractual liability. Subsequent to that order it is a new liability which may be described as a statutory liability. [L.R., 9 Ch. Div., 595, referred to.]

*Held further*, that a mere payment of process fee is not a step in aid of execution within the meaning of section 182 of the Limitation Act.

Mr. H. D. Chandra, for the appellant.

Mr. Niamat-ullah and Mr. Mukund Behari Lal, for the respondent.

HASAN and RAZA, JJ. :—In the process of the compulsory winding up of the Peoples Industrial Bank, Limited, a company incorporated and registered under the Indian Companies Act, 1882, the respondent was placed on the list of contributories in

\* First Execution Decree Appeal No. 53 of 1925 against the order of C. H. B. Kendall, District Judge of Lucknow, dated the 1st of May, 1925.

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respect of an amount of Rs. 5,000 odd as the price of unpaid purchase money of certain shares which he had purchased in that company. The order was passed by the Court of the District Judge of Allahabad so far back as the 21st of February, 1917.

Babu Hardeo Prasad, the official liquidator, applied to the Court of the District Judge of Allahabad on the 14th of April, 1924 for execution of the order of the 21st of February, 1917 by attachment of the general effects of the respondent, Mahesh Charan Sinha. The application for execution was accompanied with a prayer that it be transferred to the Court of the District Judge of Lucknow for the purpose of execution. Accordingly the application came up to be heard by the latter court. The judgment-debtor appeared and pleaded the bar of limitation against the liquidator's application. The learned District Judge upheld the plea and rejected the application as barred by the provisions of article 182, schedule I of the Indian Limitation Act. The appeal before us is against that order.

We have heard arguments on both sides at great length and have given anxious consideration to the question of limitation involved in this appeal. The conclusion at which we have reached is that the order of the learned District Judge of Lucknow against which this appeal has been preferred is right and should be maintained.

The contention urged on behalf of the appellant is that the application under consideration was a step in execution taken under the Indian Companies Act, 1913, now in force, and that there was no period of limitation prescribed in that Act for such an

application. The conclusion which the learned pleader for the appellant attempted to draw from these premises was that article 182 of schedule I of the Indian Limitation Act had no application to the present case. In support of this argument several sections of the Indian Companies Act, 1913, were read to us and it was pointed out that they all relate to acts of the court and one of such acts was to collect the assets of the company under liquidation for the benefit of the creditors and that consequently there was no bar of time as to the acts of the court. Reliance was also placed on the cases of *Sorabji Jamsetji v. Ishwar Das Jugjiwandas Store* (1), *Jagannath Prasad v. The U. P. Flour & Oil Mills Company, Limited* (2), and *Vaidiswara Ayyar v. Siva Subramania Mudaliar* (3).

The first part of the reasoning may be conceded to be correct and it may further be conceded that the decisions on which reliance is placed are also correct. According to our judgement they do not establish the proposition that when an order of the court passed under the provisions of section 186 of the Indian Companies Act comes to be enforced by the liquidator by means of an application under the provisions of section 199 of the same Act there is no bar of limitation to such an application. The act of the court consists of making an order of contribution in compliance with the provisions of section 156 *et seq* of the Indian Companies Act. Then there are further provisions in the same Act for the administration and distribution of the assets of the company under liquidation by the official liquidator amongst the creditors of the company. The act of the liquidator is subject to an order of the court in appeal.

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(1) I.L.R., 20 Bom., 654.

(2) I.L.R., 38 All., 347.

(3) I.L.R., 31 Mad., 66.

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The cases, to which reference has been made in the preceding paragraph of this judgement, establish that in making an order of contribution the court is not subjected to rules of limitation. As soon as the list of contributories is settled the liability of the contributory is founded on a different footing from the one on which it rested till then. Before the order of contribution is passed the liability is a contractual liability. Subsequent to that order it is a new liability which may be described as a statutory liability. This view of law is supported by the decision of *Jessel, M. R.*, in *re Whitehouse & Co.* (1), and the cases to which we have referred proceed on that decision.

That the making of an order of contribution is not controlled by any rule of limitation does not lead to the conclusion that the enforcement of the same order is equally not so controlled. It is agreed that there is no express provision in the Indian Companies Act, which has the effect of obviating the application of the law of limitation to the enforcement of the orders made by the court under the said Act. On the contrary, we think that the provisions of that Act clearly lead to the conclusion that steps taken for the enforcement of the order are controlled by the general law of limitation. Section 199 of the Act is as follows:—“All orders made by a court under this Act may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.” The decrees of the court of the District Judge of Allahabad in any suit decided by that court could only be enforced in accordance with the provisions of the Code of Civil Procedure. The procedure applicable to the execution of decrees is given in order XXI of that Code. The liquidator

(1) L.R., 9 Ch. D., 595.

in enforcing the order of the District Judge of Allahabad must make an application for execution of that order in accordance with the provisions of that order as in reality the present application was made. An application for execution of a decree under the provisions of the Code of Civil Procedure must fall under either one or the other of the articles of the Indian Limitation Act applicable to applications for execution of decrees. In the present case the article applicable is 182. By the force of section 3 of the Indian Limitation Act, 1908, the application must be rejected if it is not presented within the time prescribed by that article. It is agreed that if that article is applicable the present application is beyond time. On these grounds we hold that the application is governed by article 182 and is beyond time as such.

In support of the appeal it was further argued that the liquidator paid a certain sum of money into court by way of process-fee on a certain date and that that payment constituted a step in aid of execution and the present application was within three years from that date. This argument does not require any serious consideration. It is beyond doubt that the mere payment of process-fee is not a step in aid of execution.

The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

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