Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 18/09/2026

(1953) 10 MAD CK 0005

In the Madras High Court

Case No : Appln. No. 3411 of 1952

Andhra Bank Ltd., Bhimavaram — APPELLANT

Vs

D.P. Narayana Rao, Provisional Liquidator, Godavari Sugar and Refineries Ltd., Madras — RESPONDENT

Date of Decision : 08-10-1953

Acts Referred:
Companies Act, 1913 — Section 227(2)

Citation : AIR 1955 Mad 247 : (1954) 67 LW 256 : (1954) 2 MLJ 38

Hon'ble Judges : Ramaswami Gounder, J

Bench : Single Bench

Advocate : P. Somasundaram and P. Suryanarayana, for the Appellant; V.C. Gopalaratnam, A.R. Krishnaswami and K.R. Vepa, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami Gounder, J.—This is an application filed by the, Andhra Bank Ltd. for an order validating the charge created in their favour by

the company, namely, the Godavari Sugar and Refineries Ltd. through its Managing Agents, in respect of 224 . bags of sugar and 21 bales of

gunnies on 24-4-1952; The petition for the winding up of the said company was filed on 14-3-1952. Appln. No. 1628 of 1952 was also filed for

the appointment of a provisional liquidator. On that application, notice was given to the company'' and the learned counsel who appeared for the

company stated that it could not possibly oppose the winding up. That being so, the court thought that it Was a fit case for the appointment of a

provisional liquidator; and accordingly, a provisional liquidator was appointed on that application by an order dated 18-4-1,952.

It may be mentioned that the company was ordered to be wound up in O. P. No.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-...

112 of 1952 on 29-9-1952. After the appointment of the

provisional liquidator on 18-4-1952 and prior to the order of winding up, the applicant Bank is said--to have advanced a sum of Rs. 21000 to the

Company. This company was under the management of Managing Agents known as the Aidco Ltd. of which one V. Butchiah Chowdary was the

Managing Director. At a meeting of the Board of Directors of the company in liquidation held on 25-1-1952, it was resolved to'', borrow upto Rs.

10 lakhs from the Andhra Bank Ltd. on the pledge of sugar, jaggery and gunnies of the company. It was also resolved to authorise the Managing

Agents to execute the necessary documents to the Andhra Bank Ltd. to give effect to the above resolution. On. the same date, there was a

meeting of the Board of Directors of the Aidco Ltd. when it was resolved to authorise the Managing Director, V. Butchiah. Chowdary, to borrow

on behalf of the Aidco Ltd. as Managing .Agents for the Godavari Sugars and Refineries Ltd. from the Andhra Bank Ltd. (vide the resolutions

Exs. P. 5 and P. 6).

Accordingly, Butchiah Chowdary, as the Managing Director of the Managing Agents, made the loan application, Ex. P. 7, on 31-1-1952 to the

Andhra Bank (Bhimavaram branch), while its head office is at Masulipatam. A loan of 3 to 4 lakhs of rupees was asked for, ""for rotation of

business stocks"", offering as security the stocks of sugar, Jaggery, gunnies etc. and also offering the personal security of the partners of the

managing agency, namely, Butchiah Chowdhary, Saraswathi Bai and Sujata Devi. On that application, the agent of the Bhimavaram branch of the

Andhra Bank examined as P. W. 1, submitted his proposals by a letter of 31-1-1952 to the head office at Masulipatam. The matter was pending.

with the head office till 15-4-1952, when the head office addressed the letter, Ex. P. 8, to the Bhimavaram branch, advising the latter of their

having tentatively sanctioned to the Godavari Sugars and Refineries Ltd. who were having their manufactory at Tanuku near Bhimavaram a keyloan

cash credit upto a limit of Rs. 50000 on the pledge of stocks of sugar and gunnies and on the personal guarantee or the aforesaid three'' persons.

By a letter of 16-4-1952, the head office of the Andhra Bank further intimated the agent of the Bhimavaram branch that they had sanctioned an

advance of Rs. 1,25,000 and that for the present, an advance upto Rs. 50000

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…

was permitted. As the loan was thus sanctioned by the Andhra

Bank in favour of the company, the Managing Director of the Managing Agerita, namely Butchiah Chowdary, saw the agent of the Bhimavaram

branch on 24-4-1952 and executed in conjunction with the other two persons, the security agreement, Ex. P. 2, for a sum of Rs. 1,25,000 on the

security of 224 bags of sugar and 21 bales of -- gunnies; and on the same date, they also executed a promissory note, Ex. P. 1, in favour of the

Bhimavaram branch of the Andhra Bank for Rs. 1,25,000.

Having obtained the documents, Exs. P. 1 and P. 2, the agent of the Bhimavaram branch of the Andhra Bank is said to have advanced a sum of

Rs. 20,000 on 25-4-1952 to the company. That is shown in the company''s accounts, Ex. P. 10. It also shows that on the same date, the company

paid back a sum of Rs. 8000, so that, on that date, the loan obtained by the company .from the Andhra'' Bank was only Rs. 12000. The accounts

also show that the next day, 26-4-1952, a further sum of Rs. 9000 was taken by the company by a self-cheque drawn by Butchiah Chowdary.

Thus, the Andhra Bank is said to have advanced, as loop to the company in liquidation, a sum of Rs. 12000 on 25-4-1952 and a further sum of

Rs. 9000 on 26-4-1952, on the security of sugar and gunny bags stated above. It will be seen that those two advances were made after the

presentation of the petition for winding up, and indeed even after the appointment of the provisional liquidator, and prior to the order for winding

up. This application is Sled by the Andhra Bank u/s 227(2). Companies Act for validating the charge in their favour.

2. That section provides that in the case of a winding up by or subject to the supervision of the court, every disposition'' of the property (including

actionable claims) of the company made after the commencement of the winding up shall, unless the court otherwise orders, be void. In this case

there was a disposition of the sugar and the gunnies in favour of the applicant-Bank after the commencement of the winding up. That being so, the

security offered in ""favour of the applicant bank must be treated as void, unless the court otherwise orders. This section corresponds to Section

227 of the English Act of 1948. Under that section, the principle is well-established that the Directors who expend the company''s money pending

a winding up petition are prima facie liable, on a winding up, for all such monies

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…

not expended by them in the ordinary course of business and that

where such payments are honestly made and in the ordinary course of business, it is usual for the court to allow them (vide Palmer''s Company

Law. 19th Edn., at pages 193 and 194).

In -- In re Wiltshire Iron Co.'', (1868) 3 Ch A 443 (A), Lord Cairns, referring in the course of his judgment to the corresponding section of the

English Act, says:

This is a wholesome'' and necessary provision, to prevent, during the period which must elapse'' before a petition can be heard, the improper

alienation and dissipation of the property or a company in extremis. But where a company actually trading, which it is the interest of everyone to

preserve, and ultimately to sell, as a going concern, is made the object of a winding up petition, which may fail or may succeed, if It were to be

supposed that transactions in the ordinary course of its current trade-bona fide entered into and completed, would be avoided, and would not in

the discretion given to the court, be maintained, the result would be that the presentation of a petition, groundless or well-founded, would ipso

facto paralyse the trade of the company, and great injury, without any counter balance of advantage, would be done to those interested in the

assets of the company.

And so, the transactions that would be validated by the Court are transactions which are bona fide entered into and completed in the ordinary

course of the company''s current trade.

The principle so enunciated by Lord Cairns was applied in a very instructive case reported in --In re Park Ward & Co., 1926-1Ch D 828 (B). In

that case, the company was carrying on business, employing many workmen. Their wages fell due three days after the presentation of the petition

for the winding up of the company, which was on 8-12-1925. .On 16-12-1925, a debenture was issued by the company to secure a sum of

ï¿½1200 advanced by the debenture holder for the payment of the-wages of the staff of the company. It was found by the learned Judge that that

amount was advanced for the purpose of preserving the business as a going concern, & that if he had not done so, the wages would not have been

paid & the business temporarily at any rate, would have to be closed down. In those circumstances, it was held that the transaction was just the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…

sort of transaction which Lord Cairns thought it was the object of the proviso to the section to preserve and which ought to be rendered valid by

an order of the court.

In that case, it was also argued that the power under the section ought not be exercised in favour of a person who, at the date of the transaction in

question had knowledge that the winding up petition had been presented. In that, case, the debenture holder was aware, when he agreed to

advance the money, that a petition had been presented for the winding up of the company. That contention was repelled and Romer J. observed at

page 832:

If, therefore, I were to hold that no one who. knows of presentation of a petition can safely enter into any arrangement with the company, I think I

should be depriving the company of the benefit which, according to Lord Cairns, the provision of the section was intended to secura toit.

It therefore becomes Immaterial whether or not in this case the Andhra Bank had knowledge of the presentation of the winding up; petition. In --

Tulsidas Jasraj v. Industrial Bank of Western India AIR 1931 Bom 2 -(C), the question arose whether the security given by the company in favour

of three unsecured creditors, after the commencement of the winding up, should, in the circumstances of that case, be upheld by the court, that is to

say, there was a disposition of the property of the company made after the commencement of the winding up, and unsecured creditors, at the date

of the commencement of the winding up, had been converted into secured creditors. It was contended that the court should make an order u/s

227(3) on the ground that the dispositions were all bona fide and in the ordinary course of business. Having regard to the circumstances of that

case, the Court declined to validate the dispositions, because, as observed at page 9, the fundamental principle is that in a winding up all unsecured

creditors are to be paid ''pari passu'', the object being to prevent the injustice and scrambles and intrigues which would arise if the company were

to be at liberty to prefer one creditor to another.

Marten C. J., enunciated the general principle as well as the exception thereto embodied in Section 227 (2) of the Act in the following terms at

pages 10 and 11:

Now, here, as regards Section 227 (2), the Court has to steer a middle course

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…

between two extremes. On the one hand, the words of the section

are wide enough to include any sale or payment that a company may make after the date of the winding up petition. On that basis, any business

would practically have to be stopped if a petition was presented, because it would be unsafe to dispose of any of the company''s assets. For

instance, a Mill company, might not be able to buy a"" ton of coal for the use of its furnaces, or on the other hand, it might not be able to sell any of

its goods in the ordinary course of business. Consequently, the court has very properly laid down that speaking generally, any bona fide transaction

carried out and completed in the ordinary course of current business will be sanctioned by the court u/s 227 (2). On the other hand, it will not

allow the assets to be disposed of at the mere'' pleasure of the company, and thus cause the fundamental principle of equality amongst creditors to

be violated. To do so would in effect be to add to the preferential debts enumerated in Section 230 a further category- of all debts which the

company might choose to pay wholly or in part."" The learned Chief Justice also propounded at page 4 the following test for the proper exercise of

the court''s discretion:

And as the court''s sanction is now asked for ex post facto, I think It a fair test to consider whether the court would have sanctioned the giving of

these securities, supposing it had been asked to do so at the time"" In Official Liquidators Electric Supply Co. Ltd. Vs. Siemens (India) Ltd., , the

learned Judge sums up the principle as well as the exception thereto in these words at pagea 515 and 516, ""There can be no doubt that the

ordinary principle is that all creditors to whom money is due at the date of petition for winding up should be treated equally, with certain exceptions

is favour of those who have priority under the express provisions of the Act. Where the company or its officers make preferential payments to

some creditors, they are obviously acting in contravention of this rule. On the other hand, where the business of the company is continued in good

faith either because it is hoped that it may not be necessary eventually to wind up the company, or because, in the interests of all concerned it is

better that the company should, on being wound up, be transferred as a going concern, it is necessary for the company to enter into various

transactions and it would be impossible for it to do so if it was not able to make

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…

any transfers."" .

3. Having, regard to these principles, it becomes necessary to decide in the circumstances of this case whether the court would be justified in the

exercise of its discretion to validate the transaction evidenced by Ex. P. 2 in favour of the applicant Bank. The fundamental principle should be

borne in mind, namely, that the assets of the company should be made available for distribution ''pari passu'' amongst the creditors of| the company

and that no creditor should obtain an advantage over his fellow creditor. In this case, there is ho accusation of any fraud, or collusion oh the part of

the applicant Bank. On the evidence and having regard to the entries, in the accounts of the company, Ex. D. 1, as well as the accounts of the

applicant Bank, Ex. P. 10, there can be little ''doubt that the said sums of Rs. 12000 and Rs. 8000 were advanced by the Bank to the company in

liquidation after the commencement of the winding up proceedings. It may also be taken on the evidence that the Andhra Bank had no notice of the

presentation of the winding up petition. As I have stated above, even such notice would not make much difference. It is also necessary to bear in

mind the test that was applied in the Bombay case referred to above.

The result of Judicial decisions is that a transaction bona fide entered into and completed in the ordinary course of the company''s current trade

should be protected; for, otherwise, the result would be that the presentation of a petition, groundless'' or well founded, would ipso facto paralyse

the trade of the company, and great injury would be done to those interested in the assets of the company, as was pointed out by Lord Cairns. It is

equally clear from the decisions that even if a winding up petition is well founded, if the disposition is made for the purpose of preserving the

business as a going concern, then also the discretion of the court should be exercised, as neatly summarised, if I may say so with respect, in ,--

''Ramalal v. Official Liquidator Benares Bank Ltd AIR 1942 All 141:

The principle must prevail, that is, the principle of ''pari passu'' distribution among the creditors: it was not a case of salvage, of real necessity, -

nor of the transaction having been the only means of keeping the company going.

It may be that In this case, the Andhra Bank were bona fide (sic, lenders'') in having advanced the said sums to the company without any notice of

the presentation of the winding up petition. Merely because they'' were bona fide

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…

lenders, it does not at once follow that the transaction in their

favour should be validated. This is a case in which one of two innocent parties has to suffer, -- the applicant Bank on the one hand and the general

body of creditors on the other. It is for the applicant Bank to make out a case why they should-be preferred to the general body of creditors and

why the discretion of the court should be exercised In their favour u/s 227 (2) of the Act.

That leads us to the consideration of the circumstances in which the loans were advanced by the Bank to the company in liquidation. In considering

those circumstances, it is well to emphasise, one important fact, which I have already referred to, namely, that even on 18-4-1953, when the

provisional liquidator was appointed, the learned counsel who appeared for the company stated that the company could not possibly oppose the

winding up petition. It is therefore clear that the winding up petition was well founded, and not groundless. There was therefore no possibility of the

company thereafter -continuing to carry on its current business in the ordinary course. The company was by that time completely dead and

Incapable of being resuscitated. There was therefore no question of Butchaiah Chowdry, as the Managing Director of the Managing Agents, bona

fide borrowing those two sums in the ordinary course of the company''s current trade. It is true that the loan was applied for even as early as

January 1952. But the sanction was made only In April 1952, and the loans were actually advanced only on 25 and 26-4-1952. The question is,

for what purpose was the loan of Rs. 12000 taken on 25-4-1952 and the further, loan of Rs. 9000 taken on 26-4-1952? It is obvious that the

loans could not have been taken for the ordinary purpose of the company''s current trade, for, as I said, on the admission of the company''s

learned counsel on 18-4-52, there was no alternative for the company except to face the winding up. That being so, the question is, was this a case

of salvage or of any other real necessity or of keeping the company going, as was observed in AIR 1942 All 141 (E)'', quoted above. The only

evidence we have got on that point Is the Interested and unsatisfactory testimony of the Bank''s Bhimavaram agent, examined as P. W. 1.

(After discussion of evidence His Lordship proceeded). In these circumstances, I am not satisfied on the evidence of P. W. 1 that ""these two loans

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-...

were taken from the applicant Bank either for the purpose of its ordinary current trade or for the purpose of preserving the factory as a going

concern for the benefit of all concerned. At least, on 18-4-1952, the Company knew of the petition for: winding up. It stated on that date, through

its learned counsel, that It could . not possibly oppose the winding ""up it also. knew that a provisional - liquidator had been appointed on that date

itself. That being so, the borrowings by the Managing Director of the Managing Agents, namely, Butchaiah Chowdary, from the applicant Bank on

25 and 26-4-1952 on the security Of the company''s goods must be characterised as a flagrant violation of the pro visions of the company law.

They were not for any bona fide purpose, which would Justify the court, in upholding them. It is clear, applying the test laid down in the Bombay

cage, that If '' the application were made at that time, to ""sanction, the transaction, the court would have dedined to do so.

4. It was further contended by the learned Official Liquidator that in this case, there with a change in the constitution of the Managing Agents and

inasmuch as the change had not been recognised under. Section 87-BB, the Managing Agents ceased to function, and that therefore they became

wholly incompetent to borrow any loan on behalf of the company. There is no evidence now placed before me as to the time or nature of the

change in the constitution of the managing agency; and even otherwise, that may not make much difference, because the same result should flow,

from the fact that prior to the present loans, a provisional liquidator was appointed. However, it is unnecessary to consider this question further;

and it will be left open to the Official Liquidator to examine it in case the Andhra Bank chooses to prefer a claim as an ordinary creditor.

5. The application falls and is dismissed with costs of Official Liquidator and the contesting creditor, Messrs. Soundararajan & Co. Counsel''s fee,

Rs. 250.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/andhra-bank-ltd-bhimavaram-…