

(1938) 08 AHC CK 0025
In the Allahabad High Court

Babu Parshottam Das

APPELLANT

Vs

Official Liquidator, Gorakhpur Electric Supply Co. Ltd.

RESPONDENT

Date of Decision : 25-08-1938

Acts Referred:

Companies Act, 1956 — Section 186(2)

Citation : AIR 1938 All 613

Hon'ble Judges : Harries, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Harries, J.—This is an application by Babu Parshottam Das praying that this Court should direct the Official Liquidators to settle their bill for work done by the company for Rs. 4500 and to set off such sum against the amount due from the company to the petitioner and further to direct the Official Liquidators to set off the sums due monthly for electric current supplied against the balance due from the company to the petitioner. Before this company went into liquidation, the applicant had made a number of advances to the company and on 21st May 1935 the company executed a promissory note for Rs. 7000 in favour of the applicant. This promissory note covered all past advances and an advance of Rupees 3500 odd made on the date upon which the note was executed. It is the applicant's case that the company was doing a considerable amount of work for the applicant and was of course supplying him with electric current. It is alleged that an agreement was entered into between the parties whereby the company agreed to set off against its liability to the applicant all sums due from the applicant to it for work done and electricity supplied and there can be no doubt that various small set-offs were made from time to time. On 18th April 1936, provisional liquidators were appointed, but it was not until 2nd September 1936 that an order was passed by this Court compulsorily winding up the company. It appears that the provisional liquidators did not agree to this arrangement to set off mutual liabilities and informed the applicant that they would not make any set off in respect of any sums due from the applicant to them and this has been the

position of the Official Liquidators since the order for winding up was passed.

2. I am not satisfied on the materials before me that the applicant and the company ever agreed to any sum due for work done as opposed to current supplied to be set off as against the liability of the company to the applicant. The applicant submitted a petition to this Court on 8th January 1937 in which he sets out his claim to an adjustment or set-off. In para. 1 of that application he sets out the advance of Rs. 7000 upon the promissory note. In para. 2 he alleges that there was a contemporaneous agreement whereby the company agreed to set off this liability under the aforesaid promissory note by setting off the money due by the applicant to the Company on account of consumption of electricity supplied as it fell due.

3. It is to be observed that in this application nothing is said as to any agreement by which sums due for work done were to be set off. This application was obviously settled after due consideration and it is impossible to hold in face of it that the agreement made by the applicant and the company ever covered anything more than a set-off of the cost of electricity supplied. The Official Liquidators repudiated this agreement and it is not suggested that they are bound by it so far as the period after the winding up order is concerned. They could have adopted it had they felt disposed, but this they did not do. The Official Liquidators have refused to set off their claims against the applicant against the sum due from them to the applicant. I may observe at this stage that the bill for work done by the company for the applicant has now been settled at Rs. 4500 subject to the approval of the Court. It appears to me to be a perfectly reasonable settlement and I accordingly approve of it.

4. The only question therefore which I have to decide is whether the applicant can be called upon to pay this sum of Rs. 4500 and monthly sums for current supplied or whether the applicant is entitled to claim that those sums should be set off against the liability of the Company to him under the promissory note. It would appear that the liability of the Company under the promissory note at the present moment is Rs. 6000 odd. The Official Liquidators refused to allow a set-off upon the ground that they had no power to do so by reason of Section 186 (2), Companies Act. Section 186(1), Companies Act, is as follows:

The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the Company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

5. Sub-section (2) of this Section is as follows:

The Court in making such an order may, in the case of an unlimited Company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the Company, on any independent dealing or contract with the Company, but not any money due to him as a member of the Company

in respect of any dividend or profit; and may, in the case of a limited Company, make to any director whose liability is unlimited or to his estate the like allowance.

6. applicant Babu Parshottam Das is a share-holder of the Company and held at the date of the liquidation a number of fully paid-up shares. Further, I am informed that his name has been entered upon the list of contributories and this is a common ground. It is the case for the liquidators that Babu Parshottam Das is a contributory and as the Company is a limited liability Company, no set-off is permissible u/s 186(2), Indian Companies Act. It is to be observed that this sub-section permits a limited right of set-off in the case of a contributory where the Company is unlimited and no mention whatsoever is made as to his rights where the Company is limited. In my view as this sub-section gives the contributory a right only in the case of an unlimited Company, it follows that he has no such right of set-off if the Company be limited. This was the view of Jessel M.R. in the case in *In re Whitehouse & Co.* (1879) 9 Ch. D 595. In dealing with a similar provision in the English Companies Act, 1862, Jessel M.R. observed:

Therefore this Section empowers the Court to direct payment of any debt of the Company and it may allow, where the Company is not limited, a set-off. Surely that does not allow the Court to do it where the Company is limited. If there is any implication to be drawn from the Section at all, it is that set-off is not to be allowed when the Company is limited....

7. Accordingly the liquidators contend that the applicant has no right to a set-off and that they have no power to grant the same. On the other hand, the applicant contends that he is not a contributory and therefore Section 186(2), Indian Companies Act, does not apply to this case. The term "contributory" is defined in Section 158, Indian Companies Act, in these term:

The term "contributory" means every person liable to contribute to the assets of a Company in the event of its being wound up and in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

8. As I have stated previously, the applicant owns fully paid-up shares and therefore it is argued that he is under no liability to contribute to the assets of the Company in the winding up. At first sight this appears an attractive argument but it has been held time and again by the Courts in England and by some Courts in this country that the term "contributory" as defined in Section 158, Indian Companies Act, includes a share-holder who holds fully paid-up shares only. In *In re National Savings Bank Association* (1866) 1 Ch. 547 it was held that a fully paid, up share-holder in a limited Company could present a petition under the Companies Act, 1862, for winding up the Company because he was a contributory within the meaning of the term as used in the English Companies Act, 1862. In *In re Anglesea Colliery Co.* (1866) 1 Ch. 555 it Was again held that

a holder of fully paid-up-shares in a limited Company is a "contributory" within the meaning of the Companies Act, 1862. It was accordingly held that where under a voluntary winding up all debts had been provided for, the liquidators were justified in making a call upon the partly paid-up share-holders for the purpose of adjusting the rights between them and the fully paid-up share-holders. Modern English text book-writers on Company Law hold the view that these two cases apply with equal force to the present Companies Act in force in England, though the wording of the statutory definition of a contributory has been altered slightly. I may add that the definition of a "contributory" in the present English Companies Act is very similar to that given in Section 158, Indian Companies Act. The only material difference between the old and the present statutes appears to be that in the Companies Act, 1862, which gave rise to the two cases to which I have referred, contributory was defined to be "every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up", whereas in the present English Statute and the Indian Statute "contributory" means "every person liable to contribute to the assets of the Company in the event of its being wound up." The phrase "under this Act" seems to have been omitted.

9. In my view, the omission of that phrase cannot make any difference because the liability to contribute to the assets of a Company in the event of its being wound up is a liability which is imposed by the Companies Act and by no other law. The English cases to which I have referred were followed by the Punjab Chief Court in *Imperial Oil, Shop and General Mills Co. Ltd. v. Ram Chand* AIR (1916) Lah. 78. Shadi Lal, J. (as he then was) held that a fully paid-up share-holder of a Company is a contributory within the meaning of Section 158, Companies Act and may, subject to certain conditions, present a petition for winding up of the Company. It appears to me that I am bound to follow these cases and to hold that a holder of fully paid-up shares in a Company is a contributory within the meaning of 8.158, Companies Act. Where a term has been defined in a statute, it must be given that meaning throughout the statute unless some provision makes it clear that for certain purposes the term must be given another meaning. It appears to me that I am compelled to hold that the term "contributory" as used in Section 186(2), Companies Act, includes a fully paid-up share-holder and accordingly such a share-holder cannot, where the Company is limited, claim a set-off in the circumstances of the present case. It may well be argued that in the particular circumstances of this case the decision of the Official Liquidators works an injustice, but be that as it may, they had no alternative in my view but to reject this claim to a set-off. They can only allow a set-off in the terms of the statute and in my view the express term of the Companies Act prohibits a set-off in this case. For the reasons which I have given, this application fails and is dismissed.

Note. - Mr. Govind Das on behalf of the applicant in this application has very properly admitted the genuineness of the copies of the various documents filed by the Official Liquidators in this case.