

(1907) 03 BOM CK 0004
In the Bombay High Court
Case No : Second Appeal No. 249 of 1906

Bai Chanchal

APPELLANT

Vs

Laxmi Dying and Co. Ltd.

RESPONDENT

Date of Decision : 25-03-1907

Acts Referred:

Companies Act, 1956 — Section 182

Citation : (1907) 9 BOMLR 825

Hon'ble Judges : K.C.I.E., C.J;Lawrence Jenkins, J;Beaman, J

Bench : Full Bench

Judgement

Lawrence Jenkins, C.J.—This is a suit brought by the Lakshmi Dying, Printing, Bleaching and Manufacturing Company Limited and it is expressed to be so brought by its liquidator Hiralal Chhotalal.

2. Apparently there is no defence to the suit on its merits. But it is said that as the suit is for the recovery of calls in a liquidation, it has been instituted in a wrong Court and that it is also defective in that only one liquidator has taken part in the suit.

3. We will deal first with this last point. There is nothing on the record to show that at the institution of the suit there was any liquidator beyond the one named and we clearly cannot at this stage allow an affidavit to be read for the purpose of showing that there were two liquidators at that time. Therefore we need not express any opinion as to what would have been the result, had it been shown that there were two liquidators.

4. Then it is said that the suit should have been brought in the District Court. This is based upon Section 130 of the Indian Companies Act which says "the expression "the Court" as used in this part of this Act shall mean the principal Court having Original Civil Jurisdiction in the place in which the registered office of the Company is situate. "

5. In addition to this section there is a Rule of the High Court. No. 659, which

lays down that "in the Mofus3il of the Bombay Presidency all petitions shall be presented, applications made to and proceedings taken under the direction of, the Judge for the time being of the District Court within whose jurisdiction the principal office of the Company may be situate. "

6. It is then contended that this is an application u/s 182 of the Companies Act, which provides that " where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court... "

7. Therefore, it is argued, this is a proceeding under Part IV and recourse can only be had to the District Court. But the fault in this argument is that this is not a proceeding u/s 182; it is a suit.

8. Then it is argued if it is a suit and not an application, the procedure is erroneous.

9. But the answer to that is to be found in Section 165, which appears to us plainly to point to the power to institute a suit in respect of calls.

10. We are only concerned here with the suit in respect of calls. In Maganlal Vahalji Liquidator of the Shakti Lakshmi Labhalc Friendly Society Limited v. Maganlal Garbar and others, Civil Application under Extraordinary Jurisdiction, No. 317 of 1905, the purpose of the suit was not for enforcing calls, but to establish certain rights and we cannot in the circumstances regard that case as a decision governing this. The learned Judges do not seem to have regarded it as a suit to which pro-visions of Section 165 were applicable inasmuch as they do not mention it.

11. That authority being out of the way, we see no reason for holding that this suit could only be brought in the District Court. The point of limitation obviously cannot be sustained.

12. In the circumstances we confirm the decree with costs.