

(1937) 02 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 87 of 1936

Bharat Dharma Syndicate Ltd.

APPELLANT

Vs

Harish Chandra

RESPONDENT

Date of Decision : 22-02-1937

Acts Referred:

Citation : (1937) AIR(PC) 146

Hon'ble Judges : Lancelot Sanderson, Lord Macmillan, Lord Russell of Killowen, JJ.

Advocate : Dold, Grant, Douglas, T.L. Wilson and Co., M.J. Clark, Pullen, H. Cunliffe, J.M. Parikh, Lionel Cohen, for the Appearing Parties.

Judgement

Lord Russell of Killowen

This is an appeal from an order of the High Court of Allahabad, by which it was ordered that the appellant company, the Bharat Dharma Syndicate Limited, be wound up. The decree was made on the petition of the respondent, who when he presented the petition was the holder of one ordinary share of Rs. 25 upon which Rs. 12 had been paid up. He deposited the balance of Rs. 13 in Court during the proceedings.

The petition was heard by two Judges, Thom, and Iqbal Ahmad, JJ. A long and elaborate reserved judgment was delivered, which dealt in great detail with the history of the company from its formation down to the time when the petition was presented, and with the evidence and credibility of the witnesses in the case. The Court came to the conclusion that the company ought to be wound up on two grounds viz.-(i) that it was insolvent and (ii) that it was just and equitable that it should be wound up owing (to put it shortly) to its fraudulent notation and its fraudulent career, and to the consequent advisability (in the interest of the public and all concerned) of bringing its undesirable life to an end. Their Lordships have had the great advantage of a full argument by counsel for the appellants, in the course of which they made a close examination of the relevant facts, documents and evidence. Nothing could have been more complete. It was

contended that no order for winding up on the ground of insolvency should have been made on the evidence, and in no event at the instance of this petitioner; and further that no order should have been made on the "just and equitable" ground, because no charge of fraud had been made in the petition, and no fraud had been established by the evidence in the case. In regard to the first contention, their Lordships feel no doubt that this company is, and for the greater part of its existence has been, insolvent. Whether an order for winding up on this ground should have been made at the instance of this petitioner, is of small importance in view of the fact that in their Lordships' opinion, no case has been made out by the appellants which would justify them in interfering with the decision of the High Court.

The objection that fraud was not alleged in the petition cannot prevail at this stage. The allegations were made in the affidavit evidence, and the whole matter was clearly fought in the High Court on those lines; and apparently without any objection being taken, which had it been taken would no doubt have led to the necessary amendment being made in the petition. Upon the merits of the case however, their Lordships feel bound to state-(but without having heard counsel for the respondent on the subject)-that they are not prepared to accept as established by the evidence, all the findings of fraud embodied by the High Court in the last paragraph but three of the judgment. They think that it is only right to make this clear in view of the possibility of criminal proceedings which is indicated in the next succeeding paragraph of that judgment. Nevertheless, without pausing to consider in detail whether the unfavourable view taken by the learned Judges, of the doings of this company, and of the actions of Gyananand and others who controlled the company's affairs, was completely justified in all respects, their Lordships are satisfied that there was ample material upon which the Judges of the High Court might, in their discretion, reach the conclusion that this company should not be permitted to continue in existence, and that it was just and equitable that it should be wound up. Their Lordships are not so well qualified, as were the Judges who heard many of the witnesses and observed their demeanour, to form a conclusion as to the effect of the evidence as a whole. They observe however that after all the evidence had been placed before the Court, counsel appearing for the company based his opposition to a winding up order (which, he admitted, must have been made, had the company been an ordinary commercial concern) upon the ground of the exceptional and religious or national objects of this company. That plea was not advanced before the Board; but the fact that it was raised in the High Court, coupled with the admission which preceded it, throws a strong light on the effect which the whole evidence had produced.

Their Lordships are of opinion that the order for winding up this company was justified both in fact and in law, and that this appeal should fail. They will humbly advise His Majesty accordingly. The appellant will pay the costs of the appeal. Before parting with this case their Lordships desire to call attention to the great difficulty which is occasioned both to persons charged with fraud or other

improper conduct, and to the tribunals which are called upon to decide such issues, if the litigant who prefers the charges is not compelled to place on record precise and specific details of those charges. In the present case the petitioner ought not to have been allowed to proceed with his petition and seek to prove fraud, unless and until he had, upon such terms as the Court thought fit to impose, amended his petition by including therein full particulars of the allegations which he intended to prove. Such cases as the present will be much simplified if this practice is strictly observed and insisted upon by the Court, even if, as in the present case, no objection is taken on behalf of the parties who are interested in disproving the accusations.