
(1971) 11 DEL CK 0001
In the Delhi High Court
Case No : F.A.O. No. 142-D of 1965

Chhadami Lal Jain

APPELLANT

Vs

Veer Industries Ltd. (In liquidation) and Others

RESPONDENT

Date of Decision : 17-11-1971

Acts Referred:

Citation : (1973) 43 CompCas 185

Hon'ble Judges : M.R.A Ansari, J

Bench : Single Bench

Advocate : F.S. Bedi, for Rajinder Kumar Jain, a shareholde M.S. Vohra, for the Appellant; G.N. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, J.—The appellant had filed a Suit No. 100/55 against the respondent-company for the recovery of Rs. 6,87,764.40 representing the unpaid sale price of the factory known as Bimal Glass Works, Ferozabad, Agra, which was sold by the appellant to the respondent-company. While that suit was undergoing trial in the Court of the Civil Judge, Agra, a petition for the winding-up of the company was filed on May 31, 1963, in the High Court and the court vide its order dated May 31, 1963, directed the winding-up of the respondent-company. Therefore, the winding-up proceedings were transferred by the High Court u/s 435 of the Companies Act to the Court of the Additional District Judge, Delhi. The appellant then filed an application before the Additional District Judge u/s 446 of the Companies Act for permission to proceed with Suit No. 100/55 in the Court of the Civil Judge, Agra. This petition was opposed by the official liquidator of the respondent-company and it was prayed that the suit filed by the appellant be transferred to the Court of the Additional District Judge, Delhi. The learned Additional District Judge was of the view that it would not be in the interest of justice to allow the appellant to continue the proceedings in the civil court at Agra and, Therefore, directed that the suit be transferred to his court under Sub-section (3) of Section 446 of the Companies Act. The present appeal is filed by

the appellant against the said order of the learned Additional District Judge.

2. The learned counsel for the appellant contends that even if the formal permission of the winding-up court is necessary for the continuation of the suit in the civil court at Agra, such a permission should automatically be granted and that it is only in exceptional circumstances that such permission may be refused. In support of this contention, he seeks to rely upon the following decisions: Chunnilal Onkarmal, a joint Hindu Family, Firm and Another Vs. Shree Vikram Sugar Mills Ltd. and Others, , Balkrishna Mahadeo Vartak and Others Vs. Indian Association Chemical Industries Ltd., , Hansraj and Others Vs. Official Liquidators Dehra Dun Mussoorie Electric Tramway Co. Ltd. , Exchange Bank of India and Africa Ltd. v. Janda Rubber Works Ltd., [1950] 20 Comp. Cas. 242; AIR 1951 J&K291 and M.K. Ranganathan and Another Vs. Government of Madras and Others, .

3. These decisions, however, were given under the Companies Act, 1913, and the provision which required the permission of the winding-up court for the commencement or continuation of a suit against a company in liquidation was Section 171 which was in the following terms :

" When a winding-up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose."

4. Section 446 of the Companies Act, 1956, is the corresponding section and Sub-section (1) of this section is in the following terms :

" When a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding-up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose."

5. It would, thus, appear that Sub-section (1) of Section 446 of the Act of 1956, is more or less similar to Section 171 of the Act of 1913. However, there are three more Sub-sections to Section 446 of the Companies Act, 1956, which were not to be found in Section 171 of the old Act. Sub-section (3) of Section 446 of the new Act is in the following terms :

"(3) Any suit or proceeding by or against the company which is pending in any court other than that in which the winding-up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that court."

6. In none of the decisions cited by the learned counsel for the appellant had the court any occasion to consider the significance of Sub-section (3), as a similar provision did not exist in the Act of 1913. As a matter of fact, the winding-up court had no power under the Act of 1913 to direct the transfer of any suit

pending in any other court to itself. Therefore, the rule laid down in these decisions will not apply to the present case which has arisen under the new Act of 1956. The learned counsel has cited one decision under the Act of 1956, namely, the decision of the Calcutta High Court in *In re Osier Electric Lamp Manufacturing Co. Ltd.*, [1967] 37 Comp. Cas. 306; AIR 1967 Cal. 61. This decision however, explains the scope of Sub-sections (1) and (2) of Section 446 of the new Act and nothing is said about the scope of Sub-section (3). Therefore, this decision will also be of no help. As a matter of fact, my attention has not been drawn by the learned counsel, appearing for either side, to any decision explaining the scope of Sub-section (3) of Section 446 of the new Act. But, the interpretation of this Sub-section, to my mind, presents no difficulty. By this Sub-section, a power is vested in the winding-up court to transfer to itself any proceeding by or against the company which is pending in any other court. This power is, no doubt, discretionary, but the discretion has to be exercised judiciously and in the interest of all the parties concerned. The transfer of cases under this Sub-section is neither a rule nor an exception. The discretion has to be exercised taking into consideration the circumstances of each case.

7. The learned counsel for the appellant contends that the circumstances of this case do not justify the transfer of the case from the Agra court to the winding-up court. According to him, the suit was instituted as far back as 1955 and was ripe for disposal and that, as a matter of fact, a compromise had been effected between the appellant and the company which was ratified by the general body of the shareholders of the company and was also verified before the Registrar of the High Court at Allahabad and had also been filed in the Court of the Civil Judge at Agra and that all that the civil court at Agra has to do is to record the compromise and pass a decree in terms thereof. It is, further, urged that the transfer of the suit at this stage would result in considerable hardship to the appellant, inasmuch as he has to incur extra expenditure in engaging lawyers at Delhi and in bringing his witnesses to Delhi, after having already incurred considerable expense for engaging lawyers at Agra. These arguments, however, are unacceptable. Whatever the position might be before the winding-up of the respondent-company, the present position is that the official liquidator has to be brought on record in that suit and the compromise alleged to have been effected between the appellant and the respondent-company will not be binding upon the official liquidator. From the reply filed by the official liquidator, it is obvious that he has repudiated the compromise. Therefore, the suit has to proceed to trial. Although the suit was filed in 1955, it would appear that no evidence has been recorded so far. Therefore, the suit is in its initial stages. As regards the inconvenience that may be caused to the appellant by the transfer of the suit, it is pointed out that the official liquidator, who is yet to contest the suit, will be put to considerable expense and inconvenience if the suit is tried at Agra. Apart from the convenience of the parties to the suit, the winding-up court is more concerned with the interests of the company in liquidation. It has not only to safeguard the interests of the creditors of the company but also of the

shareholders of the company. Their interest can be safeguarded only if the suit is tried by the same court which is in charge of the company in liquidation.

8. The learned counsel for the appellant contends that the appellant is not in the same position as the other creditors of the company and that he enjoys the position of a secured creditor inasmuch as, according to the terms of the sale deed, the appellant was given a charge over the properties sold by him. It is not open to this court to go into this contention and it would be improper for this court to express any opinion at this stage. The contention would be considered by the learned Additional District Judge and I have no doubt that he will give suitable directions to the official liquidator.

9. The learned Additional District Judge has taken into consideration all the relevant factors before ordering the transfer of the suit to his court. He has passed the order in the exercise of his discretion vested in him under Sub-section (3) of Section 446 of the Companies Act, 1956. An appellate court ought not to interfere with the order passed by a court unless the discretion has not been exercised judiciously. I cannot say in this case that the learned district judge has not exercised his discretion judiciously in ordering the transfer of the suit.

10. In the result, the appeal is dismissed without any order as to costs.