(1950) 09 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Original No. 38 of 1950

City Bank of Ltd. APPELLANT

Vs

Shiv Sharma RESPONDENT

Date of Decision : 22-09-1950

Acts Referred:
Companies Act, 1913 — Section 144, 179
Limitation Act, 1908 — Section 22, 32

Citation : (1950) 09 P&H CK 0007

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : S.L. Puri, for the Appellant; B.R. Tuli, for the Respondent

Judgement

Harnam Singh, J.—In civil original No. 88 of 1950 Mr. Bal Raj Tuli, the learned Counsel for Pandit Shiv Ram Sharma Respondent, urges a preliminary objection that the petition ought to have been brought in the name and on behalf of the Company in liquidation and not in the name of the joint liquidators. In the petition out of which these proceedings have arisen the Petitioners are described as "Joint Liquidators of the City Bank of Lahore Ltd., in liquidation."

2. The point raised is covered by Section 179(a), Companies Act, 1913, hereinafter referred to as the Act, and by the decision of their Lordships of the Privy Council in Dawsons Bank, Ltd. v. Nippon Menkwa Kabushiki Kaisha AIR 1935 P.C. 79.

3. The relevant portion of Section 179 reads:

The official liquidator stall have power, with the sanction of the Court, to do the following things:

(a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company.

Clearly, a company in liquidation retains its corporate powers including the power to sue, although such powers must be exercised through the liquidator under the authority of the Court.

4. In AIR 1935 79 (Privy Council) Lord Russell of Killowen said:

The liquidation could make no difference in this regard: the claim of the Plaintiffs was a claim against the Bank, and not against the liquidators. The change which was brought about by the liquidation in regard to the suit was merely this, that in the conduct of their defence the Bank would, before liquidation, act through the directors during liquidation through the liquidators, and after the termination of the liquidation through the directors once more. If these considerations had been kept in mind, the tangle could never have arisen.

For the foregoing reasons, I find that the petition ought to have been made in the name and on behalf of the Company and not in the name of the joint liquidators.

5. Mr. Shambu Lal Puri for the Petitioners then urges that the Court may allow the Petitioners to amend the petition so as to remove the defeat mentioned above A similar point arose in Muhammad Yusaf v. The Himalaya Bank Ltd. 18 ALL. 198 u/s 144 of Act No. VI [6] of 1882. In that case the facts were these. In a suit to recover a debt due to the Himalaya Bank Ltd., in liquidation, the Plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank Ltd., in liquidation." In allowing amendment of the plaint Edge C.J., (Enox, Blair, Banerji, Burkitt and Aikhan JJ. concurring) said:

In my opinion, if there was a defect in the description of the Plaintiff in the suit originally, the amendment did not bring a new Plaintiff into the suit, and did not bring into operation Section 32 of Act No. XV [15] of 1877.

6. Section 179(a) of the Act reproduces Section 144(a) of Act No. VI [6] of 1882 and Section 22, Limitation Act, 1908, corresponds to Section 22 of Act XV [15] of 1877. That being so, 18 ALL. 198 governs the present case and I allow the Petitioners to amend the claim petition so as to bring it in conformity with the requirements of Section 179(a), Companies Act, 1913.

7. As the point that I am deciding was not conceded on the last date of hearing I award Rs. 50 as costs against the Bank to Pandit Shiv Ram Sharma.

