

(1980) 04 KL CK 0006

In the High Court Of Kerala

Case No : M.F.A. No's. 137 of 1977 and 469 of 1978

C.K. Siva Sankara Panicker

APPELLANT

Vs

Kerala Financial Corporation and Others

RESPONDENT

Date of Decision : 18-04-1980

Acts Referred:

Companies Act, 1956 — Section 109, 125, 125(1), 141, 193

Citation : (1980) 04 KL CK 0006

Hon'ble Judges : P. Subramonian Poti, J;P. Janaki Amma, J

Bench : Division Bench

Advocate : K.N. Parameswaran, Pillai, for the Appellant; K.S. Rajamony, A. Shahul Hameed, Siby Mathew and T.V. Ramakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Janaki Amma, J.—The appellant in these appeals is a major creditor of the Sree Rama Vilasam Press and Publications (Private) Ltd., Quilon, now under liquidation in Company Petition No. 1 of 1973. He filed Company Application No. 515 of 1975 for staying the sale of a Plamag Rotary Press and Block Studio which was ordered in O.P. No. 54 of 1970 and obtained an order of stay. The order of stay was vacated in Company Application No. 88 of 1976 filed by the Kerala Financial Corporation. M.F.A. No/137 of 1977 is an appeal filed against the order. The appellant had also filed Company Application No. 6 of 1977 for rectification of the register of charges mentioned by the Registrar of Companies by cancelling the registration of the charge created by the mortgage dated February 11, 1970, executed by the Malayala Rajyam Private Ltd., and the Sree Rama Vilasam Press & Publications (Private) Ltd., hereinafter referred to as the mortgagor and the co-mortgagor respectively. That petition was dismissed. M. F. A. No. 469 of 1978 is against the said order of dismissal.

2. The Sree Rama Vilasam Press and Publications (Private) Ltd., was incorporated under the Indian Companies Act, 1913, with its registered office in S.R.V. Buildings, Main Road, Quilon. As per its memorandum of association it was

competent to guarantee any loan advanced to any other company as might to be considered necessary to carry on or advance its business. The mortgagor-company incorporated under the Companies Act, 1956, and having its registered office in the same S.R.V. Buildings was formed by the co-mortgagor company as a sister concern to carry on a part of its business, with the assets transferred by it. Some time in December, 1969, the mortgagor company applied to the first respondent, Kerala State Financial Corporation, hereinafter referred to as "the Corporation", for a loan of Rs. 10,00,000 for the purchase of a Plamag Rotary Press. The Corporation as per Ex. P-1, letter dated February 10, 1970, sanctioned a loan not exceeding Rs. 9,60,000 for the acquisition of the press including its transportation and erection charges. The loan was to be secured by, (i) the legal mortgage of the assets of the mortgagor company including those to be acquired during the currency of the loan, (ii) the personal guarantees of the then directors of the mortgagor company, viz., Sri N. Chandrasekharan Nair, N. Madhavan Nair and K. Ambujakshi Amma, and (iii) the assets of the co-mortgagor company offered as security. Annexure I to Ex. P-1 contains the more important conditions applicable to the loan. Annexure II gives the details of the papers and documents to be produced and the requirements to be fulfilled for eligibility to the loan. As per these terms all the invoices, bills and vouchers relating to the plant and machinery accepted as security and those additionally acquired were to be deposited with the Corporation and the charge created in favour of the Corporation should be registered with the Registrar of Companies provided in the Companies Act and evidence of having done so should be produced.

3. Going by the case put forward by the Corporation the board of directors of the mortgagor company had a meeting convened on 25th January, 1970, when a resolution was passed authorising Sri. N. Chandrasekharan Nair to execute a mortgage in favour of the Corporation for availing a loan of Rs. 9,60,000 and pledging the necessary assets of the company as security for repayment. The managing director was also authorised to affix the common seal of the company to the said mortgage and/or other documents securing the repayment of the loan in the presence of Sri N. Madhavan Nair, another director of the company. On the same day the board of directors of Sree Rama Vilasam Press and Publication (Private) Ltd., the co-mortgagor, is also stated to have passed a resolution guaranteeing the repayment of the above loan and offering the landed properties scheduled to the resolution as additional security. Sri N Chandrasekharan Nair who was also the managing director of the co-mortgagor company was authorised to execute the guarantee deed and also to affix the common seal in the presence of Sri N. Balakrishnan Nair, a director of the co-mortgagor company. Exhibit P-3 and Ex. P-4 are stated to be copies of the resolutions of the co-mortgagor company and the mortgagor company respectively, certified by Sri N. Chandrasekharan Nair, the common managing director. In due course, Ex. P-2 mortgage was executed by Sri Chandrasekharan Nair as managing director, representing the mortgagor and the mortgagee companies. Sri Chandrasekharan

Nair, Sri N. Madhavan Nair Sri K. Ambujakshi Amma also joined in the document in their personal capacities as guarantors. The common seals of both the mortgagor and the mortgage companies were also affixed in the mortgage deed as directed in Ex. P-3 and Ex. P-4. An amount of Rs. 4,00,000 being the first instalment of the loan was paid on February 10, 1970, to meet part of the price of the Plamag Rotary Press. The amount remaining was to be paid to meet the balance cost of the said machinery including the transportation and erection charges only after the Plamag Rotary Press was brought to the mortgaged site and installed, after the Corporation was satisfied on valuation through its technical advisor that the press was worth not less than Rs. 10,00,000 in the erected condition and after the mortgagor company constructed an extension to the existing press building included in the mortgage to house the new press which on valuation by the Corporation was to be not less than Rs. 50,000, The documents relating to the new press were to be surrendered to the Corporation and a supplementary mortgage deed was to be executed by the mortgagor company in favour of the Corporation securing the new press for the repayment of the loan with interest and costs.

4. Subsequent to the execution of Ex. P-2 and payment of Rs. 4,00,000 there was correspondence between the Corporation and M/s. Manubhai Sons & Co., the vendor of the Plamag Rotary Press. On the Corporation undertaking to pay Rs. 5,00,000 towards the balance price, the vendor agreed to send the bank delivery order to the Corporation to be handed over to the mortgagor, M/s, Malayala Rajyam after the formalities required by the Corporation were fulfilled (see Ex. P-8). On 26th May, 1970, the manager of the mortgagor company wrote to the Corporation that the machinery had been " cleared and stored in the premises pledged " and that the inspection thereof would take place in a day or two. On 10th June, 1970, the board of directors of the mortgagor company again met and passed a resolution authorising the managing director to execute a supplementary mortgage securing the Plamag Rotary Press. A similar resolution was passed by the board of directors of the co-mortgagor company on the same day. Ex. P-13 and Ex. P-14 are copies of the resolutions certified by the managing director. Ex. P-12 is the supplementary mortgage deed executed by the mortgagor, the co-mortgagor and the guarantors, charging the machinery by way of simple mortgage. The common seals of both the companies have been affixed in Ex. P-12 as in the case of Ex. P-2. Ex. P-12 contains an undertaking that the installation of the machinery which was being proceeded with would be over within a month and that the machinery would not be shifted from the said premises without the prior consent of the Corporation.

5. Under the terms of Ex. P-1, it may be recalled, the charges created in favour of the Corporation was to be registered as provided in the Companies Act. Section 125 of the Companies Act provides that the particulars of the charge should be filed with the Registrar of Companies for registration within a period of thirty days after the date of its creation. It appears that the particulars of Ex. P-2 were filed by the co-mortgagor company only by June 19, 1970. A petition was

filed u/s 141 of the Companies Act by the co-mortgagor to condone delay in furnishing the particulars. This petition was allowed on November 30, 1970, The charge was registered by the Registrar on October 10, 1972, as is seen from Ex. P-5 extract from the register of charges. The supplementary mortgage under Ex. P-12 remained unregistered.

6. In the meanwhile, there was default on the part of the mortgagor company to pay up the debt as provided in Ex. P-2 and Ex. P-12. The Corporation initiated proceedings O.P. No. 54 of 1971, before the District Court, Quilon, as provided in Sections 29, 30 and 31 of the State Financial Corporations Act, 1951, for realisation of the amounts due by sale of the properties secured and from the guarantors personally, impleading the mortgagor company, the co-mortgagor company and the guarantors. None of the parties opposed the claim. The petition was allowed on 30th January, 1973, limiting future interest at 6 per cent. per annum.

7. It so happened that due to labour disputes and financial strain there was hindrance to the smooth working of the co-mortgagor company and on March 20, 1972, one of the creditors of the company filed C.P. No. 3 of 1972 for winding up of the company. This petition was followed by C.P. No. 1 of 1973, which was filed on January 1, 1973, by another creditor. Both the petitions were being posted together; but C.P. No. 3 of 1972 was dismissed for non-prosecution. Apprehending a similar fate for C.P. No. 1 of 1973, the present appellant claiming that an amount of Rs. 1,42,000 with interest from 1972, was due to him from the co-mortgagor got himself substituted as the petitioner in O.P. No. 1 of 1973. He found that steps were afoot for the sale of the Plamag Rotary Press by the Corporation on the basis of the order in O.P. No. 54 of 1970. The appellant apprehended that there was a collusive move by the Corporation, the managing director and M/s. Manubhai Sons & Company to have the machinery sold to the detriment of the creditors of the co-mortgagor. The appellant also challenged the binding nature of the mortgage so far as the co-mortgagor was concerned on the ground that there was violation of Section 125 and Section 292 of the Companies Act. He filed C.A. No. 197 of 1975, in C.P. No. 1 of 1973, for an injunction restraining the mortgagor and the co-mortgagor companies from alienating their assets and C.A. No. 515 of 1975, for staying the sale of the Plamag Rotary Press. An order of stay was issued by the company court. The Corporation, thereupon, moved, for getting itself impleaded in C.P. No. 1 of 1973, and filed C.A. No. 88 of 1976, for vacating the order staying the sale of the press. C.A. No. 189 of 1977 was filed for permission to proceed with the sale. The petitions, though opposed by the mortgagor, and the co-mortgagor, were allowed by the company court. In M.F.A. 137 of 1977, the appellant seeks to set aside the orders in C.A. No. 88 of 1976, and C.A. No. 189 of 1977.

8. Pending appeal the appellant filed C.M.P. No. 3049 of 1978, for stay of the operation of the order in C.A. No. 88 of 1976, and also the sale of the Plamag Rotary Press. Although this court ordered stay of confirmation of the sale, the

said order was subsequently reviewed in C.M.P. No. 3510 of 1978. Rupees 9,55,000 obtained by way of sale of the Plamag Rotary Press has been directed to be deposited in the State Bank of India pending disposal of the appeal. The auction purchaser company has got itself impleaded as the fourth respondent in the appeal. Confirmation of the sale of other properties of the mortgagor and co-mortgagor companies stands stayed till the disposal of the appeal as per the order in C.M.P. No. 16138 of 1978.

9. The main contention of the appellant is that the mortgage Ex. P-2, and the supplementary mortgage, Ex. P-12, are not binding on either the mortgagor company or the co-mortgagor company since they were not executed with the concurrence of the board of directors. The co-mortgagor company was not benefited by the mortgage. The loans were granted in violation of Section 292 of the Companies Act. The board of directors of the Sree Rama Vilasam Press and Publications (Private) Ltd., the co-mortgagor had no occasion to meet and pass the resolutions evidenced by Ex. P-4 and Ex. P-14 and, therefore, the execution of the mortgage deeds Ex. P-2 and Ex. P-12 was an unauthorised act on the part of the managing director and as such the two transactions are not binding on the co-mortgagor company or its creditors.

10. It has to be noted at this stage that the original minutes books containing the proceedings of the meetings stated to have been held on January 25, 1970, and June 10, 1970, by the board of directors of the mortgagor company and also the minutes book of the co-mortgagor company containing similar resolutions have not been produced. There are only the copies of Ex. P-3, Ex. P-4 and Ex. P-13 and Ex. P-14 signed by the common managing director, Chandrasekharan Nair. Chandrasekharan Nair having died before the proceedings came up for evidence, could not be examined. The only witness examined on the side of the Corporation when the proceedings were in the company court was PW. 1, Gangadharan, the law officer of the Corporation. When the copies of the resolutions were sought to be proved by this witness, objection was raised regarding the non-production of the original minutes books. The company court overruled the objections in view of Clause (2) of the proviso to Section 66 of the Evidence Act, 1872. After the appeal came up for hearing the appellant filed C.M.P. No. 4266 of 1979, for production of additional evidence by examining the official liquidator and persons who were directors of the co-mortgagor company during the relevant period to ascertain the existence or otherwise of the concerned minutes books of that company. The petition was not opposed and we allowed it. Accordingly RW. 1, M. Ramachandran Nair, one of the directors of the co-mortgagor company and RW. 2, the official liquidator, were examined apparently to prove that there were no minutes books for the concerned period.

11. The case of the appellant is that no meetings of the board of directors of the co-mortgagor company was held after November 20, 1968, on which date the board met for passing director's report and balance-sheets and profit and loss accounts for the year ended 31-12-1143 (M.E.). Though RW. 1 was a shareholder

and also a director of the co-mortgagor company he could not say when the last meeting of the board of directors was held. No doubt, when a leading question was put he said that it was on 31-12-1143 M.E. Exhibit R-1, the minutes book of the board of directors of the co-mortgagor company for the period November 27, 1952 to November 20, 1968, would show that R.W. 1 was co-opted as a director. According to the witness, he was a director from 1968 to 1971 and the managing director for a short period, during the interval, there were no minutes books other than those produced and there was no meeting of the board of directors authorising the managing director to borrow funds from the Corporation during the period he was a director. However, he admitted in cross-examination that he was removed from managing directorship at a meeting of the board of directors held in October, 1971. He himself did not attend that meeting. He also admitted that there were meetings of the board of directors of the co-mortgagor company during the period when he was the managing director. The minutes of those meetings were not recorded in the minutes books produced in the case. The witness would say that the minutes of those meetings were recorded in sheets of paper signed by the directors present and delivered to Chandrasekharan Nair who was keeping minutes book. The latter portion of his evidence belies his earlier case that there were no meetings of the board of directors since November 20, 1968, It is noted that Ex. R-1, minutes book, contains a number of instances where the typed sheets of papers containing minutes of the board of directors are pasted in the book. Therefore, the possibility of the meetings of the board of directors of the co-mortgagor company being held on January 25, 1970 and June 10, 1970, for passing the resolutions covered by Ex. P-3 and Ex. P-14 and the minutes of the meetings being recorded in sheets of paper is not overruled. The evidence of RW. 2, official liquidator, also does not overrule the above possibility inasmuch as his evidence only shows that he did not receive the minutes book for the concerned period. It has come out from the evidence of PW. 1, that Ex. P-3, Ex. P-4, Ex. P-13, and Ex. P-14 are copies of resolutions of the board of directors of the mortgagor and co-mortgagor companies signed by the common managing director and delivered over to the Corporation to make out that the managing director was authorised to execute the mortgages. The managing director and the guarantors who were also directors of the mortgagor companies have signed in Ex. P-2 and Ex. P-12. The common seals of the two companies are seen affixed in the mortgage deeds in the presence of the directors, Madhavan Nair and Balakrishnan Nair, respectively of the co-mortgagor and mortgagor companies as mentioned in the copies of the resolutions above referred to. These are strong circumstances which make out that there were meetings of the board of directors of the two companies held on January 25, 1970 and June 10, 1970, as mentioned in the copies of the resolutions.

12. u/s 193 of the Companies Act, it is incumbent that the minutes of the board of directors are entered in a book kept for the purpose. Sub-section (1B) of that section directs that in no case the minutes of proceedings of a meeting should be attached to the minutes book by pasting or otherwise. The penalty for non-

compliance of the direction is provided in Section 193(2) under which provision every officer of the company who is in default becomes liable to fine which may extend to fifty rupees. Evidently non-compliance may not affect the validity of the resolutions passed during the meeting.

13. The further question is how far the absence of the minutes book would affect the rights of parties in a case where borrowing is involved. Section 292 of the Companies Act enjoins that the board of directors of a company should exercise the power to borrow money otherwise than on debenture only by means of resolutions passed at the meetings of the board of directors. The minutes of the meeting where the decision is taken will be prima facie evidence regarding the passing of the resolution contemplated in Section 292. In cases where formal resolutions are not insisted upon, decisions need not in all cases be recorded in writing; they can be inferred from conduct [see *H. L. Bolton (Engineering) Co. Ltd. v. T. J. Graham & Sons Ltd.* [1956] 3 All ER 624 (CA)]. " In the absence of a minute other evidence can be given ; and if the book of a company shows a record of a transaction, as, for instance, the forfeiture of share, which would not be valid without a resolution of the directors, the court will, in the absence of other evidence, presume that such a resolution has been passed " (Halsbury's Laws of England, 4th Edn., Vol. 7, para. 533).

14. In the present case Ex. P-3, Ex. P-4, Ex. P-13 and Ex. P-14 are prima facie, copies of resolutions stated to have been passed by the mortgagor and the co-mortgagor companies. They contain the signature of Chandra-sekharan Nair, who was the managing director of both the companies--nobody has a case that Chandrasekharan Nair was not the managing director or that he has not signed in the above documents. Section 54 of the Companies Act directs that a document or proceeding requiring authentication by a company may be signed by a director, the manager, the secretary or other authorised officer of the company and need not be under the common seal. The substance of what is contained in Ex. P-3, Ex. P-4, Ex. P-13 and Ex. P-14 has been implemented by execution of Ex. P-2 and Ex. P-12 wherein not only the managing director but the guarantors who are also directors have joined. The common seal of the company has been affixed in the presence of managing director and another director (or shareholder). None of the directors chose to challenge the act of borrowing. There is no case that the amount borrowed was beyond the powers of the board of directors. Under such circumstances there is a strong presumption in favour of the regularity of the action taken and it can be safely assumed, even in the absence of the minutes books that meetings of the board of directors of both the mortgagor and the co-mortgagor companies had in fact taken place on the dates mentioned in Ex. P-3, Ex. P-4, Ex. P-13 and Ex. P-14 and resolutions in conformity with those documents had been passed at those meetings.

15. It will be advantageous at this stage to have a glance at the scheme of management of companies under the Companies Act. u/s 291, the board of directors of a company is entitled to exercise all such powers and to do all such

acts and things as the company is authorised to exercise and do, except those which under any law or memorandum or articles of the company or otherwise are to be exercised or done by the company in a general meeting. Power to issue debentures and to borrow money otherwise than on debentures is vested in the board of directors [Section 292(1)(b) and (c)], to be exercised subject to the limitation fixed by the company in general meeting [Section 292(5)]. Under the proviso to Section 292(1) the board may by means of a resolution delegate the powers to borrow under Clause (c) to the managing director. But the total amount up to which moneys may be borrowed should be specified in the resolution delegating the power [Section 292(2)]. The managing director is to exercise his powers subject to the superintendence, control and direction of the board of directors [see proviso to Section 2(26)]. Therefore, in a case where there is a resolution by the board of directors delegating the power to borrow to the managing director it is open to an outsider or a stranger, to the company to act upon the resolution and lend money to the company subject to the limitations mentioned in the resolution. An authenticated copy of the resolution signed by the managing director is in the ordinary course sufficient evidence to show that there has been a delegation to the managing director. The question in the present case is whether the Corporation was right in acting upon the ostensible authority apparent from the copies of the resolutions produced before it and whether it was incumbent on the Corporation to probe further and see if such a resolution had in fact been passed at a meeting of the board of directors and whether the concerned meeting was properly convened. The leading case where the principles involved are discussed and which is often referred to in subsequent decisions is the English case, *Royal British Bank v. Turquand* (1856] 6 E & B 327. Turquand was the official manager of a company incorporated under the Act of 1844. A bond under the seal of the company, signed by two directors and the secretary was given by the company to the plaintiff-bank to secure its drawings on current account. In an action based on the bond the company alleged that under the terms of the registered deed of settlement the directors had power to borrow only such sums as had been authorised by general resolution of the company, and that in the particular case no sufficiently specific resolution had been passed. The Court of Exchequer Chamber overruled the objection and held that the bond was binding on the company. The relevant portion of the judgment of Jervis C. J. reads :

" The deed allows the directors to borrow on bond such sum or sums of money as shall from time to time, by a resolution passed at a general meeting of the company, be authorised to be borrowed : and the replication shows a resolution passed at a general meeting, authorising the directors to borrow on bond such sums for such periods and at such rates of interest as they might deem expedient, in accordance with the deed of settlement and Act of Parliament; but the resolution does not define the amount to be borrowed. That seems to me enough.....We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and the parties dealing with them

are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here on reading the deed of settlement, would find, not a prohibition from borrowing but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorising that which on the face of the document appear to be legitimately done."

16. The rule enunciated in the decision is often referred to as "Turquand's rule" and "indoor management rule". The gist of the rule is that persons dealing with limited liability companies are not bound to enquire into their indoor management and will not be affected by irregularities of which they had no notice. The Turquand's rule has now obtained statutory recognition in the country of its origin in Section 9(1) of the European Communities Act, 1972, which reads.

" 9. Companies.--(1) In favour of a person dealing with a company in good faith, any transaction decided on by the directors shall be deemed to be one which it is within the capacity of the company to enter into, and the power of the directors to bind the company shall be deemed to be free of any limitation under the memorandum or articles of association ; and a party to a transaction so decided on shall not be bound to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and shall be presumed to have acted in good faith unless the contrary is proved."

17. The Turquand's rule has been approved and followed by Varadaraja Iyengar J., in *Varkey Souriar v. Keraleeya Banking Co. Ltd.* [1957] 27 Comp Cas 591 ; *Varkey Souriar Vs. Keraleeya Banking Co. Ltd., Thiruvalla, ,* in the following passage :

" Coming to the alternative ground, it is no doubt true that where a company is regulated by a memorandum and articles registered in some public office, persons dealing with the company are bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith but they are not bound to do more. They need not enquire into the regularity of the internal proceedings what--Lord Hatherley called "indoor management". See *Royal British Bank v. Turquand* [1856] 6 E&B 327 , *Daya Ram Vs. Sita Ram and Others , Dehra Dun Mussoorie Electric Tramway Co. Ltd. v. Jagmandar Das* [1931] 1 Comp Cas 227 ; *Dehra Dun Mussorie Electric Tramway Co. Ltd. and Another Vs. Jagmandar Das and Others* [1936] 6 Comp Cas 90 ; *T.R. Pratt (Bombay) Ltd. Vs. E.D. Sassoon and Co. Ltd. and Another, .* So if there is a managing director and authority in the articles for the directors to delegate their powers to him, a person dealing with him may assume that it is within the ordinary duties of a managing director. All he has to see is that the managing director might have power to do what he purports to do. See *Biggerstaff v. Rowatt's Wharf Ltd.* [1896] 2 Ch 93 (CA). But the rule cannot apply where the question, as here, is not one as to the scope of the power exercised by an apparent agent of the company, but is in regard to the very existence of the

agency."

18. In *Federal Bank Ltd. v. Geevarghese* [1974] KLT 249 a Division Bench of this court, of which one of us (Subramonian Poti J.) was a party, had occasion to consider in detail with Turquand's rule in relation to its applicability to cases of fraud and forgery. In that case an agent of a bank received amounts offered by a customer by way of fixed deposit, appropriated the amount and gave a receipt apparently duly executed, but where the signatures of the accountant and the cashier were forged. The question arose whether the depositor who was not a party to the fraud was entitled to a decree against the bank. After a detailed discussion of the English cases, it was held that he was. The reasons are given in the following passage :

"That the agent, Sri George who received the deposit from the plaintiff was at that time functioning as agent of the Angamali branch, that he had a power of attorney to receive such deposit and issue receipt, that he was acting in the course of his employment in receiving such deposit in the instant case, the delivery of the deposit receipt was also in the course of his employment and that he had sufficient authority for what he did are matters either admitted or proved. When a customer approaches the Bank, puts the money by way of deposit in the hands of the Agent of the Bank and gets the receipt in due course from the Agent, he would be justified in assuming that the amount has been paid to the defendant-bank as whose Agent the person who received the money apparently functioned at the time payment was made. It is not practical to expect the customer on receiving the deposit receipt to proceed to the Accounts section and ascertain whether the amount has been entered in the books of account of the bank. It is not practical to expect the customer to go to the Accountant and the cashier and ascertain from them whether the signatures in the deposit receipt purporting to be theirs are really affixed by them".

19. It is also advantageous to refer to the case *Mahony v. East Holyford Mining Co.* [1875] LR 7 HL 869. Therein the company's bank made payments based on a formal copy of a resolution of the board authorising payments of cheques signed by any two of three named "directors" and countersigned by the named "secretary ". The copy was itself signed by the secretary. It came out subsequently that neither the directors nor the secretary had ever been formally appointed. According to the articles, the directors were to be nominated by the subscribers to the memorandum and the cheques were to be signed in such manner as the board might determine. It was held that since the bank had received formal notice in the ordinary way of the board's decision, it was not bound to enquire further. Lord Hatherley said :

" When there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company."

20. In *Lakshmi Ratan Cotton Mills Co. Ltd. Vs. J.K. Jute Mills Co. Ltd.*, , the plaintiff company sued the defendant company on a loan for Rs. 1,50,000. Among other things the defendant company raised the plea that the transaction was not binding as no resolution sanctioning the loan was passed by the board of directors. The court, after referring to *Turquand's* case [1856] 6 E & B 327 and other Indian cases, held (p. 668):

" If it is found that the transaction of loan into which the creditor is entering is not barred by the charter of the company or its articles of association, and could be entered into on behalf of the company by the person negotiating it, then he is entitled to presume that all the formalities required in connection therewith have been complied with. If the transaction in question could be authorised by the passing of a resolution, such an act is a mere formality. A bona fide creditor, in the absence of any suspicious circumstances, is entitled to presume its existence. A transaction entered into by the borrowing company under such circumstances cannot be defeated merely on the ground that no such resolution was in fact passed. The passing of such a resolution is a mere matter of indoor or internal management and its absence, under such circumstances, cannot be used to defeat the just claim of a bona fide creditor. A creditor being an outsider or a third party and an innocent stranger is entitled to proceed on the assumption of its existence ; and is not expected to know what happens within the doors that are closed to him. Where the act is not ultra vires the statute or the company such a creditor would be entitled to assume the apparent or ostensible authority of the agent to be a real or genuine one. He could assume that such a person had the power to represent the company, and if he in fact advanced the money on such assumption, he would be protected by the doctrine of internal management."

21. *Sri Kishan Rathi Vs. Mondal Bros. and Co. (P) Ltd. and Another*, and *P. Rangaswami Reddiar and Another Vs. R. Krishnaswami Reddiar and Another*, , lay down the same principle. In the present case the managing director is authorised to authenticate documents of the two companies. Ex. P-2 and Ex. P-12 were executed by the managing director in conformity with the terms of the resolutions, Ex. P-3, Ex. P-4, Ex. P-13 and Ex. P-14. Persons interested in the company have joined in the deeds as guarantors. The common seal of the concerned company has been affixed in the documents in the presence of one of its directors. The resolutions, copies of which were produced, satisfied the requirements of law. There is no allegation of fraud or collusion. There is also no case that the boards of directors of the companies acted beyond their powers in passing the resolution or in incurring the debts. Under such circumstances, if the Corporation was to demand the minutes books of the companies it would amount to probing into the internal management of the companies, which it was not bound to do. If the Corporation was not bound to look into the minutes books, neither is the court expected to draw an adverse inference based on the non-production of the minutes book.

22. The non-availability of the minutes book in this case is, therefore, not a ground for holding that there was no resolution of the board of directors or that the loan was incurred unauthorisedly by the managing director. The case of the Corporation is that the mortgagor company is a sister concern started by the shareholders of the co-mortgagor company for carrying on its business activities, and under the memorandum of articles of association of the co-mortgagor that company is authorised to guarantee loans to the mortgagor company. Under the circumstances, it is not open to the co-mortgagor company to say that its board of directors acted beyond its powers in mortgaging its assets by way of guarantee for the loan incurred by the mortgagor.

23. The next ground of attack by the appellant is based on Section 125(1) of the Companies Act. Under the said provision a charge created by a company to the extent to which it confers security on the company's property or undertaking would be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by the Act within thirty days of its creation. A certificate of registration is provided in Section 132 of the Act. The Registrar is competent to extend the period for filing the particulars by seven days if he is satisfied that there was sufficient reason for the omission to file within the period. u/s 141 as it stood on the relevant date the court could extend the time on application, on being satisfied that the omission to file the particulars was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of the creditors or shareholders of the company or that it was due to other just and equitable grounds. Such order of extension was not to prejudice any right acquired in the property concerned before the charge was actually registered. As already stated, Ex. P-2 mortgage was executed on 10th February, 1970. The particulars of the charge were filed only on May 19, 1970. A petition was filed on August 13, 1970, in the District Court, Quilon, for condoning the delay and for extending the time for filing the particulars till May 19, 1970. The petition was allowed on November 30, 1970, but the charge was registered only on October 10, 1972. In the meanwhile, C.P. No. 3 of 1972 was filed on March 20, 1972, by a creditor of the co-mortgagor company for winding up of that company, which was followed by C.P. No. 1 of 1973 filed on January 1, 1973, by another petitioner. The appellant subsequently got himself substituted in the place of the petitioner in C.P. No. 1 of 1973. The appellant would contend that since the registration was effected at a time when winding up proceedings were pending, the registration is invalid and the Ex. P-2 mortgage would not get precedence over the other debts of the co-mortgagor company. The appellant has also a case that O.P. No. 58 of 1970, stated to be the petition for extending the period for filing the particulars of the charge under Ex. P-2 was in fact a petition for condoning the delay in filing the release of a charge in favour of the Syndicate Bank in respect of a mortgage of Rs. 50,000 and that there was no

application for enlarging the time for registration of the charge in favour of the Corporation. It was also contended that the registration of the charge in favour of the Corporation offended Section 536(2) of the Companies Act. C.P. No. 6 of 1977 was filed by him for rectification of the register of charges by cancelling the registration of the charge in favour of the Corporation. The company court did not accept the contention. It dismissed C.P. No. 6 of 1977. The contentions are reiterated in M.F.A. No. 469 of 1978.

24. We may at the outset dispose of the contention that there was no application for extension of time filed in respect of the mortgage, Ex. P-2, in favour of the appellant. What has given room to such a case being put forward is some mistake committed in the filing of affidavits in two petitions filed by the co-mortgagor company, O.P. No. 57 of 1970 and C.P. No. 58 of 1970, both u/s 141 of the Companies Act. One of these petitions was for condoning the delay in filing the documents relating to the release of a charge in favour of the Syndicate Bank while the other was in respect of the charge created under Ex. P-2 in favour of the Corporation. Both the petitions were filed on August 13, 1970. Though all the details are mentioned correctly in the petitions in the respective cases, it appears that there was an inter-change of affidavits, the affidavit meant for Corporation's charge being tacked on with the petition for condonation of delay in the Syndicate Bank's charge and vice versa. This did not, however, affect the ultimate result of the petitions since both O.P. No. 57 of 1970 and O.P. No. 58 of 1970 were allowed by the court. The Registrar of Companies has produced all the relevant documents connected with both the petitions as also the register of charges. These documents clearly make out that the particulars of the charge under Ex. P-2 were filed before the Registrar on May 19, 1970, that the petition for condonation was filed in court on August 13, 1970, that it was allowed on November 30, 1970, and that the charge was registered in register of charges on October 10, 1972.

25. Whether the court should extend the time for filing the particulars is a matter left to the discretion of the court to be exercised in a judicial manner. Decided cases go to the extent of laying down that even the insolvency of the company is not a matter to which the court need pay attention while deciding whether time should be extended (see *Re Kris Cruisers* [1949] 19 Comp Cas 134; [1948] 2 All ER 1105 (CHD) and *Akkirath Mundanat Manakkal Thuppan Nambudiri Vs. A.P. Kutti Sankara Menon*, Official Liquidator of the Malayalee Bank Ltd. (in liquidation) and Another, . No doubt, it is open to the court to consider the effect, of giving extension, on the creditors of the company before deciding whether extension should be allowed, AIR 1937 62 (Oudh) .

26. There is also no weight in the contention that delay in registering the charge by entering it in the register of charges would affect its validity or would render it void. The argument overlooks the fact that the period fixed in Section 125 is for the filing of the particulars of the charge and not for the registration of it. The delay in registration contemplated in Section 141 of the Act is the delay due to

the omission to file the particulars in time. This is evident from the fact that Section 125 does not prescribe a period within which the Registrar is to register the charge or make entries in the register of charges. Therefore, the delay in registering the charges even after the court condoned the delay in filing the particulars and extended the time til] May 19, 1970, the date of filing the particulars, may not affect the validity and the binding nature of the mortgages on the companies.

27. According to the scheme of the provisions relating to the registration of charges, the discretion vested only in the court to decide whether the period for filing the particulars should be extended. Once time is extended, and it is made out that the particulars have been filed within the extended time, the Registrar is bound to register the charge. He is also to issue a certificate of registration as provided in Section 132 of the Act. Once a certificate of registration is granted, Section 132 states that it is conclusive evidence that the requirements of registration have been complied with. [See also *In re Eric Holmes (Property) Ltd.* [1965] 35 Com Cas 811; [1965] 2 All ER 333 (Ch D)].

28. A contention is then raised that since the registration of the charge was after the filing of C.P. No. 3 of 1972 for winding up of the company, it will not affect the rights of the creditors of the co-mortgagor company. We have already held that it is the date of filing the particulars of the charge that is relevant and not the date of registration. Even assuming otherwise, since C.P. No. 3 of 1972 was dismissed for default subsequently, the pendency of that petition would not have prejudicially affected the right of the creditor under Ex. P-2.

29. It was argued on the basis of Rules 101 and 102 of the Companies (Court) Rules, 1959, that since C.P. No. 1 of 1973 was filed before the dismissal of C.P. No. 3 of 1972, the former proceedings should be considered to be a continuation of the latter. The language of Rules 101 and 102 does not warrant such a contention. For the application of those rules the petition in respect of which substitution is sought should be pending at the time when the order of substitution is made. If the appellant really wanted to take advantage of the earlier filing of C.P. No. 3 of 1972, he should have moved for substitution of his name in that petition before its dismissal rather than in C. P. No. 1 of 1973.

30. Since both the execution of Ex. P-2 and the registration of the charge by the Registrar were prior to the filing of C.P. No. 1 of 1973, Section 536(2) has no application. Even assuming that C.P. No. 1 of 1973 could be presumed to have been filed before the registration of the charge by the Registrar the petitioner may not have any locus standi to file the present petition or claim any preference against the rights of the Corporation inasmuch as he is only an unsecured creditor of the co-mortgagor company. The provision contained in Section 125, that the charge sought to be registered, would be void against any creditor of the company unless the particulars are filed within the period prescribed, may not have any application to the case of an unsecured creditor. No doubt, the word "creditor" is wide enough to include an unsecured creditor also. But Section 125

has to be taken in conjunction with Section 141(3). The latter provision, as it stood on the relevant date, reads:

" Where the court extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered."

31. The section necessarily implies that it has application only to cases of debts, which have reference to property, namely, secured debts. In other words, an unsecured creditor has no right to challenge the validity of a charge or to claim that he has preferential right over the charge holder on the ground that he incurred the liability prior to the registration of the charge.

32. On behalf of the appellant reliance was placed on the decision in the matter of Sathgram Coal Company Ltd. 40 CWN 1171 . One of the creditors of the company, which was in liquidation, obtained two decrees on mortgages, which had not been registered u/s 109 of the Indian Companies Act, 1913. The court held, that being unregistered charges they were void against all creditors irrespective of the date on which their debts accrued. The decision may not be of help to the appellant, because the question as to whether the provision has application in respect of an unsecured creditor did not specifically arise in the case. That question arose for consideration in Akkirath Mundanat Manakkal Thuppan Nambudiri Vs. A.P. Kutti Sankara Menon, Official Liquidator of the Malayalee Bank Ltd. (in liquidation) and Another, . A Division Bench of the Madras High Court held that Section 120(2) of the Indian Companies Act, 1913, which corresponds to Section 141(3) of the present Act, excluded unsecured creditors. The cases. In re Cardiff Workmen's Cottage Company Ltd. [1906] 2 Ch 627 (Ch D); In re M.I.G. Trust Ltd. [1933] 1 Ch 542 ; 3 Comp Cas 345 (CA) and Calcutta National Bank v. Abhoy Singh Sahela [1959] 29 Comp Cas 337 (Cal), are also to the same effect.

33. It follows that the appellant is not entitled to challenge the validity of the mortgage under Ex. P-2 on the ground that it was not registered in conformity with the provisions contained in Section 125 of the Companies Act. No grounds are also made out for cancellation of the registration in respect of the charge as prayed for by him. This will dispose of M.F.A. No. 469 of 1978.

34. One other aspect which has been dealt with by the company court is the effect of non-registration of the supplementary mortgage under Ex. P-12. Relying on Ex. P-6 to Ex. P-17 the court held that Ex. P-12 amounted to a pledge of the machinery and it did not require registration. Section 125(1)(c) exempts from registration a pledge of movable property. The supplementary mortgage Ex. P-12 is in respect of the Plamag Press purchased by the mortgagor company utilising the loan sanctioned by the Corporation. The appellant is not a creditor of the mortgagor company and he is interested in challenging the validity of the transaction only as a creditor of the co-mortgagor. If as has been held above, Ex. P-2 mortgage is binding on the co-mortgagor, the upholding of the transaction

under Ex. P-12 will only work to the appellant's advantage because to the extent the amount under the loan is recovered from out of the Plamag Press, the liability of the co-mortgagor, of which the appellant is a creditor, will stand reduced.

35. It would appear that though Ex. P-12 mentions the word " mortgage" what is secured under the document is the machinery of the press. u/s 2(26) of the General Clauses Act machinery would become immovable property only if it is embedded to earth or attached to what is so embedded. There is no evidence that the Plamag Press got fastened up or embedded at any place. Evidence if at all is otherwise. Under the terms of Ex, P-2, the documents of title relating to the press were to be surrendered to the Corporation. The said documents have been in the possession of the Corporation. The company court held that the machinery was in the premises mortgaged to the Corporation and that the Corporation was in legal possession of the article and security was by way of pledge. The above findings were not seriously challenged before us.

36. What remains to be considered is whether the order for sale in O.P. No, 54 of 1971 is binding on the co-mortgagor company. Exhibit P-18, a certified copy of the order, shows that the co-mortgagor was a party to the proceedings. The order was passed on 30th January, 1973, after the winding up petition, C.P. No. 1 of 1973, was filed. Section 31 and Section 32 of the State Financial Corporations Act lay down a special procedure for enforcement of the claims of the Corporation. Exhibit P-18 order for sale was passed following the said procedure. The question is whether the pendency of the petition for winding up on the date of disposal of O.P. No. 54 of 1970 would in any way affect the validity of the order. Reference may in this connection be made to Section 46-B of the State-Financial Corporations Act, which came into effect from October, 1, 1956. By virtue of Section 46-B, the provisions of that Act, and Rules or Orders made thereunder would have effect notwithstanding anything inconsistent therewith contained in any other law. Except as aforesaid the provisions of the Act are in addition and not in derogation of any other law for the time being in force. Section 32(10) of the Act states that where proceedings in liquidation in respect of an industrial concern have commenced before an application is made u/s 31(1) the Financial Corporation is not entitled to any preference over other creditors. It follows that in cases where proceedings u/s 31(1) commenced prior to the starting of the winding up proceedings the orders passed under the former proceedings would remain unaffected. Therefore, in the present case the order of sale in O.P. No. 54 of 1970, is not affected by the proceedings in C.P. No. 1 of 1973. Thus, the appellant has not succeeded in establishing a case for stay of the sale in O.P. No. 54 of 1970. The company court rightly allowed the application in C.A. No. 88 of 1976.

37. The result is both M.F.A. No. 137 of 1977 and M.F.A. No. 469 of 1976 are dismissed. No costs.

38. An oral application is made under Article 134A of "the Constitution for

certificate for appeal to the Supreme Court. The case does not involve a substantial question of law of general importance which question needs decision by the Supreme Court. The application is dismissed.