

(1951) 10 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 128 of 1950

Dalip Singh and Others

APPELLANT

Vs

The First National Bank Ltd.

RESPONDENT

Date of Decision : 16-10-1951

Acts Referred:

Banking Companies Act, 1949 — Section 162, 271, 38(1)
Companies Act, 1913 — Section 153
General Clauses Act, 1897 — Section 6

Citation : AIR 1952 P&H 158 : (1952) 22 CompCas 157

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : Shamair Chand, for the Appellant; Ved Vyas and B.R. Tuli, for the Respondent

Judgement

Harnam Singh, J.—In C. O. No. 128 of 1950 and C. O. No. 136 of 1951 it is said that once it is established that a Banking Company is unable to pay its debts the Court has no power to sanction a scheme of arrangement u/s 153 of the Indian Companies Act, 1913, hereinafter referred to as the Act, in relation to the affairs of that Banking Company.

2. In arguments Counsel for the objectors rely upon the provisions of Section 38 (1) of the Banking Companies Act, 1949. Section 38 (1) reads: "38 (1) Without prejudice to the provisions contained in Section 162 or Section 271 of the Indian Companies Act, 1913 (VII of 1913), and without prejudice to its powers u/s 37, the Court shall order the winding up of a banking company if it is unable to pay its debts and the Court shall also order the winding up of a banking company if the Reserve Bank applies in this behalf to the Court."

3. Now, it is said that Section 38 (1) of the Banking Companies Act must be understood to have repealed the provisions of Section 153 of the Act. In my judgment this contention has no force.

Section 56 of the Banking Companies Act read with the Second schedule to that

Act shows that the only part of the Act which has been repealed by Act X of 1949 is Part X-A of the Act. Indeed, Section 45 of Act X of 1949 provided that the Court may sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them when the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of the depositors of that banking company. Clearly Act X of 1949 does not repeal Section 153 of the Act.

4. But then it is said that Section 38 (1) of the Banking Companies Act is repugnant to the provisions of Section 153 of the Act. Section 2 of the Banking Companies Act provides that the provisions of the Banking Companies Act shall be in addition to, and not, save as expressly provided in that Act, in derogation of, the Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force. That being so, we have to see whether there is any express provision in the Banking Companies Act which is in derogation of the provisions of Section 153 of the Act.

5. In plain English Section 38 (1) of the Banking Companies Act while providing for the winding up of a banking company if it is unable to pay its debts preserves the powers of the Court under Sections 162 and 271 of the Act and does not touch in any manner whatsoever the powers of the Court u/s 153 of the Act. On the other hand the express provisions of Sections 39, 40, 41, 42, 43, 44 and 45 of the Banking Companies Act are in derogation of the provisions of law mentioned in those sections. In such cases the rule of law is that a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provision of an earlier one that the two cannot stand together. In other words, unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied.

6. In the present case there is no inconsistency between Section 38 (1) of the Banking Companies Act and Section 153 of the Act. As stated above, Section 38 (1) of the Banking Companies Act provides "inter alia" that the Court shall order the winding up of a banking company if it is unable to pay its debts. This provision of law is in addition to the provisions of the Indian Companies Act contained in Sections 162 and 271 of the Act and there is nothing in Section 38 of the Banking Companies Act or any other provision of Act X of 1949 showing that the provisions of Section 38 (1) are in derogation of Section 153 of the Act in their application to a banking company which is unable to pay its debts. Clearly, Section 38 does not touch the powers of the Court to sanction a scheme of arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, if that scheme of arrangement or compromise is covered by the provisions of Section 153 of the Act. In this connection it is significant to notice that Section 153 of the Act is applicable in the case of a going company as well as a company in liquidation.

7. For the foregoing reasons I am of the view that Section 38 of Act X of 1949 does not take away the powers of the Court to act u/s 153 of the Act in relation to the affairs of a banking company which is unable to pay its debts.

8. In the result, I overrule the objection raised and order that C. O. No. 128 of 1950 and C. O. No. 136 of 1951, will be put up for further proceedings on the 9th of November 1951, and 19th of October 1951, respectively.

9. No order as to costs in these proceedings.