
(1952) 08 CAL CK 0002
In the Calcutta High Court
Case No : Application

Dhakuria Banking Corporation Ltd.

APPELLANT

Vs

Sm. Surabala Debi and Others

RESPONDENT

Date of Decision : 25-08-1952

Acts Referred:

Banking Companies (Amendment) Act, 1959 — Section 45A, 45B, 45H
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 39(1), 42, 51
Companies Act, 1913 — Section 199

Citation : AIR 1953 Cal 610 : 57 CWN 448

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : R. Choudhuri, for the Appellant; R.C. Kar, Attorney, for the Respondent

Judgement

P.B. Mukharji, J.—This is an application for the appointment of a Receiver to enforce what is known as Balance order on the contributions. The order was made on 4-12-1951 and provides:

"It is ordered that the said applicant be at liberty to enforce a call on the contributories of the said bank as set out in the Schedule annexed to the affidavit of the said applicant and specified in the Schedule hereunder written for payment of the balance of the amounts due in respect of the shares of the said Bank except that such call be not enforced on the said Promotho Nath Sanyal."

The applicant in that case was the Official Liquidator of the Dhakuria Banking Corporation Ltd. (In Liquidation).

2. In the tabular statement the applicant official Liquidator now before me asks for an order appointing a Receiver of the properties mentioned in Dhakuria and at Bolepur, Santiniketan, more particularly described in paras. 15 and 16 of the petition used in support of this summons. This order is asked as against Sm. Surabala Debi, Dwijendra Nath Chatterjee, Sm. Provarani Chatterjee, Satyendra Nath Chatterjee and Birendra Nath Chatterjee.

3. The grounds alleged by the applicant to have this mode of execution by Receiver are expeditious sale, and avoidance of separate and independent proceedings in different courts which mean more expense to the banking company already in liquidation. These grounds are set out in paras. 19, 20 and 21 of the petition.

4. On behalf of the respondents there is an affidavit by Satyendra Nath Chatterjee. The main points raised in that affidavit are first, that he has no knowledge of the order of 4-12-1951, and, secondly, that the sum is not payable by him. The defence raised is that the Dhakuria property No. 14, Station Road, is a debutter property dedicated to Deity Lakshmi Narayan and does not belong to Sm. Surabala Debi and other persons against whom a receiver is sought in tabular statement. Lastly, the defence is taken that the application is not maintainable & is misconceived.

5. The defences about lack of knowledge of the order of 4-12-1951, and existence of an alleged de butter have not been pressed before me. The only point urged against this application is that the ordinary method of execution by attachment and sale should not be discarded in favour of the extraordinary method of execution by appointment of a receiver. The important argument advanced on behalf of the applicant is that under the Banking Companies Act the lower district Courts have no jurisdiction to deal with any question in execution in relation to a Banking Company in liquidation and therefore the most convenient course will be for this Court having exclusive jurisdiction to deal with the present execution through a receiver. It is contended by the respondents that this application should not be granted, first, on the ground that the Receiver is an extraordinary method of execution and the normal methods of execution should be followed and, secondly, that in this particular case the point on the Banking Companies Act is concluded by the decision of the Special Bench in -- Bharati Central Bank Ltd. (in liquidation) Vs. Rathindra Nath Sen, (A).

6. It is necessary to elaborate this last point. In that case Banerjee J. referred the matter to a Special Bench under Ch. V, Rule 3, Original Side Rules, and himself sat in the Special Bench and delivered the judgment. The unfortunate part in that decision is that no one appeared for the respondent and there was only the petitioner present and the decision of the Special Bench of two learned Judges was necessarily given on ex parte arguments. But in that judgment delivered by Banerjee J. with which Harries C. J. agreed, it is said at p. 978:

"We are unable to read the sections of the Banking Companies Act in the manner Counsel suggests. It seems to us that Section 45H is an exception to Sections 45A, 45B and Section 11 and makes special provisions for enforcement of the orders."

Thereafter Banerjee J. quoting an English case as to how to construe a statute, observes:

"Reading, therefore, Sections 45A, 45B, II and 45H together it is clear to us that

the Court which winds up the company and passes orders as referred to in Section 45H, Banking Companies Act, 1950, may execute the orders in the manner provided in the Civil Procedure Code. For example, if necessary, it may transfer the order to any Court for execution."

7. Mr. R. Chowdhury who has very ably argued this case before me had: to contend against this decision because of the following considerations.

8. The allegations made in paras. 19, 20 and 21 of the petition he very fairly and readily conceded as not sufficient allegations for departing from the ordinary mode of execution by attachment and sale of Immovable properties and for adopting the extraordinary remedy of execution by the appointment of a Receiver. For if in every case the properties being in the district it could be said that ordinary processes of attachment and sale should not be resorted to in the District Courts within whose jurisdiction these properties are situate on the ground of expense and delay, then as a matter of course ordinary processes of execution would be supplanted by the mere consideration of the suits of these properties. I do not conceive that to be the law.

9. But the other argument that Mr. Chowdhury has advanced on this branch of the law requires greater consideration. It is this. He says that under the Banking Companies (Amendment) Act, 1950, this Court is made the only Court with exclusive jurisdiction to deal with matters mentioned in Sections 45A and 45B. The argument is that under these sections the only Court having jurisdiction is the High Court within the jurisdiction of which the registered office of the Banking Company is situate. This statute also divests all other Courts of their jurisdiction to entertain any matter relating to or arising out of the winding up of a Banking Company. The argument proceeds that if any order under the Banking Companies Act is transferred to a district Court, then the moment any objection relating to any matter arising in course of execution is taken in the transferee Court which is executing this order, the dispute or the objection will have to be referred back to this Court for determination as being the only Court of jurisdiction to decide the issue. Therefore Mr. Chowdhury argues that execution by appointment of a receiver by this Court will be the more appropriate and the more proper and convenient remedy and ordinary methods of execution by attachment and sale should not be followed.

10. To that the answer is given by quoting the decision in the "Bharati Central Bank, (A)" where the learned Judge delivering the judgment observed that Section 45H was to be read as "an exception to Sections, 45A and 45B, Banking Companies Act."

11. It may be necessary later in an appropriate case, and proceeding to reconsider the scope and ambit of this decision in Bharati Central Bank because some of the arguments made Before me in this case do not appear to have been noticed in the judgment of that case. I propose, therefore, briefly to discuss such arguments if only to show their nature and importance.

12. All that Section 45A, Banking Companies Act, says is:

"All orders made in any civil proceeding by a Court exercising jurisdiction, under part III or part IIIA may be enforced in the same manner in which the decree of such Court made in any suit pending therein may be enforced."

The language there used relates to enforcement in the same "manner". For the purpose of enforcing in the same "manner" as a decree, can this Court transfer an order for execution to a Court which has been expressly divested by statute of all jurisdiction, is the real question to which I do not find sufficient attention paid by the Special Bench.

13. Mr. Choudhury has contended that this language means that ordinarily the orders under the Banking Companies Act would not have been enforced as decrees and all that this Section 45H does is to say that they will be enforceable in the same manner as such decrees and it does no more than what Section 199, Companies Act, does in enabling orders under the Companies Act to be enforced as decrees. By making the "same manner" of enforcement available to orders under the Banking Companies Act I should have thought Section 45H meant such manner as delivery, sale, receiver, arrest and detention in prison and such other manner as the nature of relief may require and as are provided in Section 51, Civil P. C., for execution, of decrees. But it does not, to my mind, recreate jurisdiction in the Court, may be a transferee Court for execution, for dealing with a matter in respect of which statute has expressly and manifestly taken away jurisdiction under Sections 45A and 45B, Banking Companies Act.

14. If it were otherwise, most illogical and inconsistent situations appear to arise. An execution case relating to a Banking Company in liquidation pending or originally arising in any Court other than the High Court will be beyond the jurisdiction of such Court to determine. But by the decision in "Bharati Central Bank, (A)", the same Court will determine the same issue when it comes to that Court by transfer of execution from the High Court.

15. Section 45H, as it says, relates to the "power of the Court to enforce" orders. The Court there is the High Court u/s 45A and no other Court, and Section 45H gives the High Court power to enforce orders under the Banking Companies Act by such manner as delivery, attachment, sale, receiver, arrest or otherwise as provided in Section 51, Civil P. C., whose marginal note "powers of Court to enforce" execution is the same as Section 45H. The group of Sections 38-46, Civil P. C., which apparently persuaded the Special Bench in Bharati Central Bank case to come to that particular conclusion which it did, does not concern powers of enforcement but describes the "Courts by which decrees may be executed." Section 39 of the Code deals with Courts to which decrees may be transferred for execution and sub-s. (2) thereof at any rate implies that the subordinate Court to which the decree is transferred is itself a Court of competent jurisdiction although the same postulate for competent jurisdiction is not stated in Section 39(1) of the Code.

The powers of the transferee Court are clearly laid down in Section 42 of the Code which provides that a transferee Court "shall have the same powers in executing such decree as if it had been passed by itself." The words "powers in executing such decrees" in Section 42 of the Code cannot reasonably be said to include jurisdiction to execute where such jurisdiction has been expressly taken away by statute. That conclusion appears to be supported by the subsequent words that follow "as if it had been passed by itself". These words indicate that though the transferee Court itself did not pass the decree the law deems it as though it had passed it. How can it be deemed and how can this implication of law be still drawn where Section 45B provides expressly that "notwithstanding anything to the contrary in any other law for the time being in force" the High Court shall have the power to determine all questions in this respect and Section 45A expressly provides "notwithstanding anything to the contrary in any other law for the time being in force" no other Court shall have jurisdiction. Left to myself, I should have thought these provisions override Section 42, Civil P. C. Two grounds are stated towards the end of the judgment in Bharati Central Bank case, one of cost and the other of machinery for execution, it is debatable whether the prospect of higher costs of execution or absence of machinery of execution should be used as arguments to influence the construction of the express words of this statute.

The example given in the "Bharati Central Bank case, (A)", of Allahabad High Court without having original jurisdiction, executing Company Orders by transferring them to district Courts for execution, is misleading because the Companies Act does not lay the embargo on other Courts as Sections 45A and 45B, Banking Companies Act. If the Act is clear, costs and machinery of execution will have to be suitably devised by the Court invested with jurisdiction under the Act.

16. Mr. Chowdhuri has contended before me that a Special Bench decision under Chapter 5 of the Original Side Rules is not an Appellate Bench but a bench of co-ordinate jurisdiction with the Original Side Court and that if I am convinced that the special Bench decision is wrong I should dissent from it. It is not necessary for me to adopt that course although I hope I have made sufficiently clear my own views on the matter. At the present moment, I need not further pursue this branch of the law as I propose to rest my decision in this case on the more general aspect of this application.

17. To me it appears that enough ground has not been shown in the petition as to why any Receiver should be appointed in preference to the ordinary methods of execution by attachment and sale. Form 53 of the Company Rules under Rule 152 provides that when the person is served with a copy of an enforcement call order from the Court then his failure or neglect to obey that order makes him liable to process of execution.

The exact language of that form is:

"If you the under-mentioned neglect to obey this order by the time mentioned therein you will be liable to process of execution for the purpose of compelling you to obey the same".

It follows the form of the "Balance Orders" in English Company Law.

In Company jurisprudence a balance order is a summary statutory proceeding for the purpose of enabling the liquidator to get payment from a contributory in lieu of proceeding by action. This, however, does not mean that the execution by appointment of a Receiver at once becomes the ordinary remedy in such cases. As I read the law on this point, the ordinary method of execution by attachment and sale should even here be normally adopted and a Receiver will not be appointed in execution unless there are some grounds at least shown which will indicate that the ordinary methods of execution by attachment and sale are not the proper mode in the particular case. The publicity with which a land is sold in the particular locality in which it is situate is the very basic justification of holding the sale at such a place. For a Receiver to sell district properties here in Calcutta may not be attended with the publicity and interest which a local sale will create notwithstanding advertisements. Besides there may be other interests affected by such sale and persons holding such other interests are more likely to know about the sale if it is held on the spot where the land or the property is situate.

These are cogent and moving considerations which are also expressly recognised in Sub-clauses (b) and (c) of Section 39(1), Civil P. C. in case of transfers and apart from and independently of cases of transferred execution the principles of attachment and sale are basically local in their manifestations for obvious reasons of convenience and fairness alike. This Court does not ordinarily appoint a Receiver to sell properties which are outside the jurisdiction of this Court. This Court certainly has the power and jurisdiction to adopt that course. But the question is one of propriety and whether it is proper to do so in a particular case, I have no doubt in my mind that an enforcement order such as the one before me calling upon the contributory! to pay is an order which is executable u/s 199, Companies Act, and Section 45H, Banking Companies Amendment Act, 1950, as a decree under the CPC by attachment and sale in this case by this Court. I am not satisfied that in this case the applicant has taken the matter out of the ordinary method of execution by attachment and sale and qualified himself to get a Receiver by way of execution.

18. For these reasons I will make no order on this application. Having regard to the fact that the money remains unpaid there will be no order for costs also in favour of the respondents. The liquidator, however, will retain his own costs out of the estate. Certified for Counsel.