(1962) 11 AHC CK 0001

In the Allahabad High Court

Case No : F.A.F.O. No. 34 of 1958

Gourdhan Das Badri Prasad Khemka and Others — APPELLANT

Vs

Smt. Shilwati Devi and Others — RESPONDENT

Date of Decision : 06-11-1962

Acts Referred:
Companies Act, 1913 — Section 176, 202

Citation : AIR 1963 All 606

Hon'ble Judges : S.C. Manchanda, J

Bench : Single Bench

Advocate : Ambika Prasad, N.P. Asthana, G.S. Srivastava and Saran Behari Lal, for the Appellant; Sushil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Manchanda, J.

By The Court

1. This is a first appeal from order of the District Judge of Varanasi dated the 14th of January 1958 whereby under the provision of Section 176 of the Indian Companies Act and Rule 52 framed thereunder, one of the three liquidators appointed was removed on the ground that the expenses of liquidation could thereby be brought down without in any way impairing the efficiency of the liquidation proceedings.

Benaras Cotton and Silk Mills Limited was a public limited company and by an order of this Court dated the 4th of May 1955 it was directed to be wound up on the application of some of the creditors u/s 164 of the Indian Companies Act, 1913 (hereinafter referred to as the Act). It was directed that the liquidation proceedings would be carried on under the supervision of the District Judge of Varanasi. The said District Judge appointed three persons as liquidators of the Company by an order dated the 13th August, 1955. These were Sri C. D. Parikh, Advocate, Sri Ragho Ram Verma and Sri P. L. Tandon. Their remuneration was fixed at Rs. 300/- per month each together with one per cent as commission on the total receipts. They were appointed as liquidators on furnishing security of Rs. 15,000/- each.

The mills were not worked by the liquidators and ultimately on the 2nd of October 1956 the mills were leased out by an order of the District Judge to Messrs. Ramlal Rajaram of Kanpur. On the 14th of January 1958 one of the registered share-holders who is opposite party to these proceedings, but has not appeared to oppose this appeal, filed an application that the strength of the liquidators be reduced in order to curtail expenses and because three liquidators were wholly superfluous and unnecessary. No notice of this application appears to have been given to any share-holder or any other party and the learned District Judge, after taking into consideration, that the milts had been teased out and were not worked by the liquidators and that there was a competent superintendent who was a retired Manager of the State Bank of India looking after the liquidation proceedings of the Company, held that three liquidators were unnecessary and he, therefore, directed that Mr. R. R. Verma be removed from 14th of January 1958. Against the said order the present appeal has been filed.

2. The preliminary question which arises is as to whether an appeal u/s 202 of the Act lies against an order of the District Judge removing one of the liquidators. Section 202 of the Act runs:

"Re-hearings of and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction."

The words ''same manner'' and ''same condition'' in this section refer back to the jurisdiction of the High Court in such matters. Rule 5 of Ch. VIII, of the Rules of Court, 1952, Vol. I provides for a special appeal only from the judgment of a single Judge. The District Judge u/s 164 of the Act for purposes of such winding up has been given the same powers as the High Court. Therefore, unless the order removing a liquidator can be catted a judgment within the meaning of Rule 5 of Ch. VIII of the Rules of Court, 1952, no appeal would lie therefrom.

The word ''judgment'' has come up for consideration in numerous decisions and the one which is the nearest to the present case is a decision of this Court in the case of Vishnu Pratap and Others Vs. Sm. Revati Devi and Others, . In this case an order was passed by a single Judge of the High Court appointing an interim receiver u/s 153(c)(8), Companies Act read with Order 41, Rule 1, C. P. C. pending the final disposal of an application u/s 153(c) and it was held that such an order is not an order which is appealable u/s 202 of the Act. It was further held that such an order is not a judgment within the meaning of Clause 10, Letters Patent and as such is not appealable. It was further laid down that a judgment means an adjudication which conclusively determines the rights of the parties and not a mere interlocutory order during the pendency of a case. Every order passed by a single Judge in the exercise of his civil jurisdiction is not a judgment.

3. The question, therefore, that arises is whether the order removing one of the three liquidators can be said to be an order determining the final rights of the parties. It would not be possible to hold that such an order determines the final rights of the parties. The removal of the liquidator is not a matter which adjudges, much less finally determines the rights of the parties in liquidation proceedings. An order appointing a liquidator or removing a liquidator would not also fall u/s 96 or Section 104 read with Order 43, Rule 1, C. P. Code.

4. Mr. Ambika Prasad, the learned counsel for the appellants has strenuously contended that the removal of a liquidator stands on the same footing as the removal of a receiver and as the removal of a receiver under Order 40, Rule 4 has been made an appealable order under Order 43, Rule 1 (s). C. P. C. on a parity of reasoning it should be held that an order removing a liquidator is also an appealable order. The removal of a receiver under Order 40, Rule 4 is hedged in with certain conditions which are not to be found in the Companies Act and therefore apart from other reasons it would not be possible to equate the removal of a receiver under Order 40, Rule 4 of the C. P. Code with the removal of a liquidator u/s 176 of the Indian Companies Act. This contention, therefore, cannot be accepted.

5. For the reasons given above, I would hold that no appeal lies against an order passed by the District Judge u/s 176 of the Indian Companies Act as it is not an appealable order, it not being a judgment within the meaning of Rule 5, Ch. VIII, of the Rules of Court.

6. The appeal is accordingly dismissed. But in the circumstances of the case there will be no order as to costs.

7. Leave to appeal is refused.

