

(1961) 04 MAD CK 0002

In the Madras High Court

Case No : Petition No. 10 of 1961

In Re: A.R. Sivaramakrishna Chettiar (debtor)

Date of Decision : 14-04-1961

Acts Referred:

Companies Act, 1956 — Section 391

Presidency Towns Insolvency Act, 1909 — Section 10, 14, 15

Citation : AIR 1962 Mad 75 : (1961) 31 CompCas 539 : (1962) ILR (Mad) 86 : (1961) 2 MLJ 494

Hon'ble Judges : Venkatadri, J;Ganapatia Pillai, J

Bench : Division Bench

Advocate : C. Vasudevan and T.V. Srinivasan, for the Appellant;

Judgement

Ganapatia Pillai, J.—This is a debtor's insolvency petition under Ss. 10, 14, and 15 of the Presidency Towns Insolvency Act for

adjudication of the applicant. When the proceeding originally came up before the Master he passed an order directing the matter to be placed

before the Insolvency Judge since the question of jurisdiction of the High Court to entertain the application was raised by the Official Assignee

which is not settled by any authoritative decision of this Court. When the matter came up before the Insolvency Judge (one of us) it was found that

there was a conflict between the view taken by Ramaswami, J., in *Thungia v. Hanuman Bank* AIR 1958 Mad. 403 = 71 L.W. 281, following

certain decisions of the Orissa High Court and the view taken by Ramachandra Iyer J., in *Shenoy v. Raghunath* ILR 1959 Mad. 715 = 72 L. W.

199, regarding the scope and effect of Ss. 45-A and 45-B of the Indian Banking Companies Act as amended in 1953 (hereinafter referred to as

the Act). Thereupon at the instance of one of us this petition has been referred to this Bench. The petitioner was carrying on a business in Dindigul

which failed and a creditor of the petitioner obtained a decree for money against the petitioner and got him arrested in execution of that decree.

Thereupon the petitioner filed I. P. No. 5 of 1959 in the Court of the Subordinate Judge, Dindigul.

2. One of the creditors of the petitioner is the Kannika Bank Ltd., Dindigul, which is under liquidation by order of this Court. The Official

Liquidator of the Kannika Bank raised an objection before the Subordinate Judge of Dindigul to the maintainability of the insolvency petition and

the Subordinate Judge held that the insolvency proceeding could not be commenced without the leave of this Court which had charge of the

winding up proceedings of the Kannika Bank and dismissed the insolvency petition. Thereupon the petitioner filed C. M. A. No. 45 of 1960 in the

District Court, Madurai, against that order and that Court also dismissed the appeal relying upon the decision of Ramaswami, J., in Thangiah v.

Hanuman Bank AIR 1958 Mad. 403 = 71 L.W. 281. Against the order of the District Court, a civil miscellaneous second appeal has been filed

by the petitioner in this Court. He has also filed an application on the Original Side of this Court asking leave of the company Judge to institute the

insolvency proceedings in the Court of the Subordinate Judge at Dindigul.

3. We are not now concerned with the application for leave for instituting the insolvency proceeding in the Court of the Subordinate Judge,

Dindigul, which will be heard and disposed of by the company Judge. It was the Official Assignee who raised before the Master and before one of

us sitting as Insolvency Judge the question whether the High Court on the insolvency side had jurisdiction to entertain this application.

4. It is common ground that but for the winding up of the Kannika Bank by an order of this Court the insolvency Court having jurisdiction to

entertain this debtor's petition would be the Court of the Subordinate Judge, Dindigul, where the insolvent was carrying on business and where

most of his assets are located. Mr. Vasudevan for the petitioner contends that the Court of the Subordinate Judge of Dindigul has lost jurisdiction

to entertain this application by reason of the provisions of S. 45-A and 45-B of the Act.

5. Before we deal with the argument addressed to us which indeed covered a wide field it may be necessary to state that we are not called upon to

decide in an abstract manner what all proceedings are covered by S. 45-B which gives exclusive jurisdiction to the High Court as the company

Court to entertain and decide claims by and against a banking company in liquidation. The short question for our determination is whether by

reason of the provisions of Ss. 45-A and 45-B of the Act, the jurisdiction of the Subordinate Judge of Dindigul which could be the insolvency

Court having jurisdiction under the Provincial Insolvency Act if it applied to this case, is taken away and such jurisdiction is vested in this Court. By

the Amending Act of 1950, Part III-A containing Ss. 45-A and 45-H was first inserted in the Banking Companies Act, 1949. By the Amending

Act of 1953 that part was enlarged and recast and the present provisions of Ss. 45-A and 45-X were introduced into the Act. Ss. 45 A and 45-

B, as amended in 1953 read thus:

45-A. Part III-A to override other laws- The provisions of this part and the rules made thereunder shall have effect notwithstanding anything

inconsistent therewith contained in the Companies Act, 1956 (I of 1956) or the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of

Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force or any instrument having effect by virtue of any such law;

but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with the provisions of this part or rules

made thereunder shall apply to all proceedings under this Part.

45-B. Power of High Court to decide all claims in respect of banking companies- The High Court shall have as otherwise expressly provided in S.

45-C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including

claims by or against any of its branches in India) or any application made under S. 391 of the Companies Act, 1956 (I of 1956), by or in respect

of a banking company or any question of priorities or any other question whatsoever, whether of law or fact which may relate to or arise in the

course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made

before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies

(Amendment) Act, 1953.

6. It is unnecessary to refer to old Ss. 45-A and 45-B of the Amending Act of 1950, as the new Ss. 45-A and 45-B have taken their place and

they alone apply to this case. An analysis of the two sections yields the following result: exclusive jurisdiction is given to the High Court (the Court

winding up the banking company to entertain and decide (a) any claim made by a banking company which is being wound up (b) any claim against

such banking company (c) any question of priorities arising in the course of winding up of such company, and (d) any other question of law or fact

which may relate to or arise in the course of the winding up of such company.

7. Mr. Vasudevan, learned counsel for the petitioner, confined his arguments to the last clause in the above analysis and contended that this

proceeding, viz., the insolvency petition filed by the debtor though it did not arise in the course of the winding up of the banking company at least

related to the winding up of such company. That is the narrow compass within which we have to decide the question arising in this case.

8. Mr. Vasudevan referred to the history of the various amendments of the Act for pointing out the purpose for which the Amending Act of 1953

was enacted. He relied on the following passage in the statement of objects and reasons:

Experience of the liquidator of a large number of banks that fell during the postwar and post-partition period disclosed that the procedure for the

liquidation of joint stock companies was totally inadequate for the liquidation of banking companies in a manner satisfactory to the depositors. A

bank has a far larger number of debtors than a joint stock company of a comparable size and the necessity to pursue legal proceedings against

each debtor quite frequently in different Courts involved considerable expenditure and immense delay. In order to remove such difficulties the

Banking Companies Act was amended in 1950.

The law thus amended, however, did not go far enough and complaints continued to be received about the distress to the depositors. The

Committee was therefore appointed in July 1950 to examine the difficulties and defects in the existing liquidation proceedings and to recommend

changes in law, procedure and machinery in order to facilitate the speedy disposal of proceedings in liquidation.

9. He stressed that the Amending Act of 1953 was therefore intended to prevent

considerable expense and immense delay involved in the official liquidator being compelled to pursue legal proceedings against debtors of banking companies in various Courts and to facilitate speedy disposal of proceedings in liquidation.

10. It is of course manifest that in giving exclusive jurisdiction to the High Court under S. 45-B the object was not only speedy disposal of the liquidation proceeding but also to avoid recourse to a multiplicity of Courts. Giving due weight to these objects of the enactment we are not satisfied that in interpreting the language of S. 45-B, we are compelled to hold that an application for adjudication in insolvency by a debtor of a banking company in liquidation should come up before the liquidation Court.

11. For our present purpose, S. 45-B may be condensed to read as follows:

The High Court shall have exclusive jurisdiction to entertain and decide any claim which may relate to the winding up of a banking company.

12. The claim to be adjudged insolvent by a debtor of a banking company, Mr. Vasudevan argued, related to the winding up of the company,

because it affected the speedy realisation of the debt due to the banking company in liquidation and also the amount which may be realisable from

that debtor. Mr. Vasudevan relied on some decisions which have interpreted the phrase ""any other question whatsoever, whether of law or fact

which may relate to"" a winding up of a banking company occurring in S. 45-B. In *Jadunath Roy and Others Vs. Bank of Calcutta Ltd.*, a Special

Bench of the Calcutta High Court had to consider the question whether a suit filed against a banking company under liquidation for partition of

certain immoveable properties could be proceeded against in the Court in which the suit had been originally instituted, or the High Court alone had

jurisdiction to proceed further with that suit after the order for winding up of the company had been made. For that purpose the Court had to

consider the language of S. 11 of the Banking Companies Act, 1949, as it originally stood and which has now been replaced by S. 45-C in Part

III-A as introduced by the Amending Act of 1953. By reading S. 11 along with Ss. 45-A and 45-B as they stood before the Amendment in 1953,

the Court posed the question for consideration thus whether the proceeding in question has arisen out of or arises in the course of the winding up of

the banking company. The Court assumed that the partition suit had not arisen

out of the winding up but held that it arose in the course of the winding up. In coming to this conclusion the Court thought that the phrase "in the course of" means during the winding up. The reason given by the Court for holding that the partition suit must be deemed to have arisen in the course of the winding up was that it became necessary to make the liquidator a party to that proceeding. Following up this line of reasoning the Court laid down the test in such cases to be that if at any stage of a proceeding the liquidator becomes a party to it, it arises in the course of the winding up. Mr. Vasudevan urged upon us that this test should be adopted in the present case also and since in the insolvency proceeding the liquidator should be made a party as one of the creditors of the insolvent, the proceeding should be deemed to arise in the course of the winding up, Of at least should be deemed to relate to the winding up of the banking company.

13. Before considering whether the test propounded by the Bench applies here we must make the comment that the authority of the ruling in the decision may not apply to this case because admittedly the insolvency proceeding here does not arise in the course of the liquidation proceeding. But, even granting that the test laid down in the above mentioned case would apply here, we have to see how far that test would be valid in the different context with which we are faced. The suit in the above decision was in respect of a property which was held by the Bank as owner. Any claim made against that property in the hands of the bank under liquidation would be certainly a claim against the company. Obviously, that would fall under the second class provided by S. 45-B out of four classes of cases indicated in a prior portion of our judgment. On that ground alone, the test propounded in the above decision cannot be held applicable to the present case.

14. Ramachandra Iyer, J., had to deal with a similar question in a different context in *Shenoy v. Raghunatha* ILR 1959 Mad. 715...72 L. W. 199.

Counsel, who appeared in that case relied upon a number of decisions for the contention that proceedings unconnected with the winding up would

still come within the ambit of the exclusive jurisdiction conferred upon the High Court under S. 45-B and all those decisions have been relied on by

Mr. Vasudevan in his argument before us. They are: *Dhirendra Chandra Pal Vs.*

Associated Bank of Tripura Ltd. (In Liquidation), Shri Ram

Narain Vs. The Simla Banking and Industrial Co. Limited, , Discount Bank of India v. Trilokinath AIR 1953 Punj. 145, Gurbindar Singh v.

Munshiram AIR 1954 Punj. 196. As is pointed out by Ramachandra Iyer, J., Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In

Liquidation), related to a dispute between a person who was a tenant of the bank and the Official Liquidator and there the question which arose at

the instance of the tenant of the bank was held to be a claim against the bank. That decision has therefore no application here. In Shri Ram Narain

v. Simla Banking and Industrial Co., Ltd. ILR 1959 Mad. 715...72 L. W. 199 the Supreme Court had to deal with a claim against a bank in

liquidation in respect of its liability. That also falls under the category of the rule in Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In

Liquidation), , and cannot apply to the facts of the present case. In Discount Bank of India v. Trilokinath AIR 1953 Punj. 145, there was a claim

by the bank against one of its constituents by way of a suit. As the suit related to realisation of a debt due to the bank the Court ruled that it related

to the winding up of the bank and therefore the suit ought to be exclusively tried by the winding up Court. What we said above with reference to

the two Supreme Court cases equally applies here. But, in Gurbinder Singh v. Munshiram AIR 1954 Punj. 196, the question was whether a suit by

an assignee of a mortgage from a bank on the mortgage against a third party would come under the provisions of S. 45-B of the Act. The learned

Judges in that decision held that in regard to pleas raised in that suit wherein the bank was impleaded as a party the claim amounted to a claim

against the bank and the suit was therefore triable only by the High Court, viz., the Court which was in charge of the winding up proceedings of the

bank. That principle falls outside the scope of the controversy now before us. None of these decisions, therefore, help Mr. Vasudevan in sustaining

his argument that the insolvency proceeding now before us either arises in the course of the winding up proceeding or is related to the winding up

proceedings of the Kannika Bank.

15. Mr. Vasudevan laid particular stress on the judgment of Ramaswami, J. in Thangiah v. Hanuman Bank AIR 1958 Mad. 403=71 L. W. 291

where that learned Judge had to deal with the question of interpretation of S. 45-

B and, in so doing, he accepted as correct two decisions of the Orissa High Court in *H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das, and H. Naik, Official Liquidator, Puri Bank Ltd. Vs. Kanhu Charan Das*, As was observed by Ramachandra Iyer, J. in *Shenoy v. Raghunath I. L. R. 1959 Mad. 715=72 L. W. 199*, the facts of the decision in *Thangiah v. Hanuman Bank AIR 1958 Mad. 403=71 L. W. 291* probably justified the view taken by that learned Judge (Ramaswami, J.) as it could be contended that the properties in respect of which pattas were claimed by the ryots in that litigation were properties owned by the Hanuman Bank in liquidation. It is however not clear from that decision whether such properties were acquired by the bank during the course of the winding up or even before the winding up order was made. Any way, the claim made by the ryots for patta would come under the category of a claim against the bank in respect of its assets. But, in construing S. 45-B, Ramaswami, J. approved of the two decisions of the Orissa High Court as laying down the correct rule.

16. We will therefore straightaway address ourselves to those decisions. But before we do so we may point out that one of the reasons which impelled Ramaswami, J. to take the view which he did was that the term "claim" occurring in S. 45-B was a word of very extensive signification embracing every species of legal demand. According to the learned Judge, it was one of the largest words of law and included "demand" and "debt", and also signified a demand made up of a right or supposed right, a calling of another to pay² something due or supposed to be due, as a claim for wages or services. In our opinion, the wide significance of that term ought not to be given undue importance in interpreting the language of S. 45-B by reference to the object of the legislation. It is an accepted principle of interpretation that every general term occurring in a statute should be construed with reference to its context. In our opinion the word "claim" should therefore be construed in a restricted sense with reference to the context in which it occurs in S. 45-B.

17. We shall now examine the reasoning of the learned Judge (Narasimham, J. as he then was) in *H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das*, . There a judgment debtor of a banking company in liquidation filed a petition before the District Judge of Mayurbhanj for being adjudged

insolvent. He also filed an application before the Orissa High Court for granting him permission to proceed with that insolvency petition. The question for consideration was, where a banking company under liquidation was a decree-holder, whether its judgment debtor was entitled to prosecute his petition for insolvency before the District Court with the permission of the High Court, or whether the High Court alone had jurisdiction to entertain such a petition. After noticing that the provisions of the Provincial Insolvency Act must give way before the provisions of the Banking Companies Act the learned Judge held that the proposed insolvency petition before the District Court was a proceeding which related to the winding up of the banking company and consequently the High Court alone had exclusive jurisdiction to entertain the insolvency petition. The learned Judge relied upon *Jadunath Roy and Others Vs. Bank of Calcutta Ltd.*, for holding that the insolvency proceeding related to the winding up of the bank. We have already examined that decision and pointed out that the facts of that case do not justify the inference that the rule laid down therein applied to a case where exclusive jurisdiction is conferred on the High Court merely by reason of the proceeding in question being related to the winding up of the banking company. On the other hand, that decision laid down that the proceeding in question there arose "" in the course of or during the winding up proceeding.

18. It is true the expression ""relating to the winding up "" is much wider and more extensive than the expression "" arising out of the winding up."" But even so one has to examine whether a claim for adjudication as an insolvent by a debtor of the banking company would relate to the winding up proceeding. At the highest it can be said that there is a distinct connection between the insolvency proceeding and the winding up proceeding since the adjudication of the debtor as an insolvent might affect the prospect of early realisation of the debt due to the banking company from its debtor. Even this statement must be a qualified statement because it is common knowledge that even without a person being adjudged insolvent he may not have sufficient resources to pay up the entire debt due by him to the banking company under liquidation and consequently early collection of debt due by him to the banking company would be a problematical affair.

19. It will be pertinent for us in this connection to examine the scope of a

proceeding by a debtor for being adjudged insolvent. The social object or purpose of bankruptcy law is not to enable creditors to realise their debts due by insolvent debtors. Its object is as much the promotion of trade and the protection of the community against the continued activities of citizens who are insolvent by borrowing monies even after they became insolvent and the protection of the insolvent himself and his rehabilitation. As an ancillary to the carrying out of these objects various provisions are found in the bankruptcy law prohibiting undischarged insolvents from borrowing moneys and for the realisation of the assets of the insolvents and distribution of the proceeds among the creditors. Incidentally we may notice that the bankruptcy law affects the status of the insolvent who is deprived of many of the legal rights possessed by the citizens of the country in the matter of ability to enter into contracts, for dealing with his properties and for borrowing monies on his being adjudged insolvent. To view the bankruptcy law as a device for the realisation of the assets of insolvent debtors and distribution of the proceeds among their creditors is, in our opinion, an erroneous assumption. Indeed, it is within our experience that in some insolvency cases though the person who is adjudged insolvent is not able to meet his liabilities as and when they fall due, on his being administered by the Receiver in bankruptcy sufficient money is realised and the entire debt due by him to the creditor gets paid up. The notion, therefore, that the adjudication of a person as an insolvent necessarily affects the rights which his creditors have in getting paid the entire money due to them by the insolvent may not be correct. It is true such adjudication alters the ordinary remedy which the creditors have in recovering their debts from the insolvent or from his estate. In that sense the banking company in liquidation could not pursue its ordinary remedy for recovering the debt from the insolvent debtor but must apply to the receiver in insolvency for payment of the debt. True there may be some delay in the realisation of the assets of the insolvent and the creditors being paid dividends. This aspect has been stressed by the learned Judge (Narasimham J.) as one of the main reasons why an application for adjudication of a debtor of a banking company in liquidation should be held to relate to the winding up of the company.

20. With all respect to the learned Judge, we are unable to see how this purpose

behind the legislation (S. 45-B of the Banking Companies Act)

could affect the interpretation of the language of the enactment. As was pointed out by Ramachandra Aiyar, J. in *Shenoy v. Raghunath I. L. R.*

1959 Mad. 715-72 L. W. 199 the interest which a banking company has over a security in the shape of a mortgage of immoveable property

belonging to one of its debtors is in the nature of a commercial interest. No higher could be the interest of a bank in the question whether one of its

debtors should be adjudged insolvent or not. The facts of the case show that in respect of the property for which partition was sought in the

application before the learned Judge (Ramachandra Iyer, J.), the banking company held a mortgage from the manager of the joint family to which

the applicants belonged and it had no interest at all in the property except in its character as a mortgagee. The banking company itself was not the

owner of the property and consequently, as was pointed out by Ramachandra Iyer, J., it could not be said that the claim for partition of that

property was a claim against the bank. We are in respectful agreement with this view of Ramachandra Iyer, J., and, it follows, that the mere

possibility of a debt due to a banking company in liquidation being reduced by the adjudication of the debtor as an insolvent would not render the

proceeding for adjudication of the debtor a claim against the bank, or a claim relating to the winding up of the bank. Even this, as we have pointed

out earlier, is only a qualified possibility since in certain contingencies it may cease to exist when the receiver in bankruptcy is able to pay all the

debts in full from out of the assets realised by him. We may also contemplate another contingency in which the insolvency of a debtor of a banking

company in liquidation may have no relation at all to the winding up of that company. It is well known that under the provisions of the winding up of

companies the liquidator is given power with the sanction of the Court to sell outstandings due to the company outright instead of instituting

proceedings for the recovery of those outstandings. When such sale takes place and money is realised by the liquidator from the purchaser, the

banking company ceases to have any interest in the concerned outstanding. The result would be that on such sale taking place by the liquidator the

bank will have no more interest in the solvency or otherwise of its debtor.

21. If we accept Mr. Vasudevan's argument and hold that the High Court alone

has exclusive jurisdiction to entertain this insolvency petition and after the insolvency petition is entertained by the High Court the liquidator happens to sell outright the outstanding due to the bank by the petitioner in the insolvency proceeding, what would happen to the pending insolvency proceeding ? According to Mr. Vasudevan, after such outstanding is sold outright by the liquidator to a third party the company Court could transfer the insolvency proceedings to the Subordinate Judge of Dindigul who would have had jurisdiction to entertain the insolvency petition but for the provision of S. 45-B of the Act. The Official Assignee contested this position and argued that if the Subordinate Judge of Dindigul had no initial jurisdiction to entertain the insolvency application he would acquire no such jurisdiction merely because the debt due to the bank had ceased to be a debt of that character. It is not necessary to investigate the question further to find out if such transfer of a proceeding is permissible under the Companies Act in the case of a banking company under liquidation because the language of S. 45-B does not lend any support to the view that the vesting of exclusive jurisdiction in the High Court is conditional or could be displaced subsequently by the happening of any event like the one mentioned by us above.

22. The learned Judge (Narasimham, J.) thought that the question whether a debtor of a banking company should be adjudged insolvent and should get the protection of the insolvency law was a matter relating to the winding up of a banking company both because of the object of S. 45-B of the Act and of the repercussions which the adjudication of a debtor of a banking company as an insolvent would have upon the remedies which the liquidator of the banking company would otherwise have had in collecting the debts due to the banking company. In our opinion, these two reasons do not touch the crux of the question for our consideration, viz., the true interpretation of S. 45-B of the Act. The literal interpretation of the language of S. 45-B might afford some support to the argument of Mr. Vasudevan. But in our opinion this rule of interpretation of statutes is subject to a well-known exception. In *Alangavaram v. Municipal Council, Pollaehi* I. L. R. 1957 Mad. 1020, 1028=70 L.W. 517. Rajagopala Ayyangar, J. has referred to this matter. And, he has extracted the observations of Pollock, C. B. in *Waugh v. Middleton* (1853) 8 Ex. 352, 357 =

155 E. R. (Ex) 1383] and of Lord Selborne in *Caledonian Railway v. North British Railway Co.* (1886) 1-6 A. C. 114, 122. We reproduce the

observations of the learned Judges extracted in that decision;

However plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document that the

apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the

grammatical construction of a particular part of it [Pollock, C B. in *Waugh v. Middleton* (1853) 8 Ex. 352, 357 = 155 E. R. (Ex) 1383].

23. Lord Selborne said;

The mere literal construction of a statute ought not to prevail, if it is opposed to the intention of the legislature, as apparent by the statute; and, if the

words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated.

24. Having this rule in mind we shall now examine the language of S. 45-B. The object of the legislature in enacting this provision was to confer

exclusive jurisdiction upon the High Court engaged in the winding up of the banking company in respect of certain proceedings which but for such

provision could not be entertained by that Court. In indicating the class of such proceedings the legislature adopted the method of a classification

into four categories. The first two categories come under claims made by or against a banking company which is being wound up. The third

category relates to cases of priority arising during the winding up proceeding. Such question may be as between the banking company in its

capacity as a creditor and a third party. The last category relates to questions whether of law or of fact, which relate to or arise in the course of a

winding up of a banking company. In our view the only permissible course of construction of the last class is to read in juxtaposition with the three

other preceding classes of cases. Though the expression question of law or fact which may relate to the winding up of a banking company is very

wide in its signification, it must be understood with reference to its local colour or context. Read in this manner, the question of law or fact, which

could be said to relate to the winding up of a banking company must be a question in the nature of a claim made by a bank or against a bank, or in

the nature of a priority arising during the course of winding up or related to the

winding up proceeding as affecting any of the assets held by the banking company in liquidation. Viewed in this manner the only conclusion possible seems to be that a question relating to the insolvency of a debtor of a banking company in liquidation does not relate to the winding up of that company.

25. The learned Judge (Narasinham, J.,) in the next decision in *H. Naik, Official Liquidator, Puri Bank Ltd. Vs. Kanhu Charan Das*, , had to

consider the question whether the claim of a banking company under liquidation for payment of its dues out of the compensation money due to one

of its debtors under the Orissa Estates Abolition Act (1 of 1952) was a claim which fell within the ambit of S. 45-B of the Act. In answering this

question in the affirmative the learned Judge observed that the question whether the amount due to the banking company should be realised in one

lump sum or in instalments was a question of fact relating to the winding up of the banking company and would be thus within the exclusive

jurisdiction of the High Court, and, consequently S. 37(3) of the Orissa Act which provided for payment of the compensation in instalments should

give way before the jurisdiction of the High Court under S. 45-B of the Act and the High Court would have power to ignore the former provisions.

We can only say with respect to the learned Judge that the proposition thus stated appears to be too wide and not warranted by the language of S.

45-B.

26. Nothing which we have said so far should affect the question, or we should be deemed to have impliedly decided the question whether the

leave of the company Judge would be necessary for prosecuting the insolvency proceeding before the Subordinate Judge, Dindigul. With respect,

we dissent from the construction of S. 45-B accepted by Ramaswami, J., following the two decisions of the Orissa High Court mentioned above,

and we agree with Ramachandra Iyer, J., in the interpretation placed upon it by him in *Shenoy v. Raghunath I. L. R. 1959 Mad. 715-72 L. W.*

199.

27. The only other decision that remains to be noticed is that of the Andhra Pradesh High Court in *Vijaya Commercial Bank v.*

Sivaramakrishnayya (1961) 1 A.W.R. 291. In that case *Satyanarayana Raju, J.*, considered the very point which arises for our determination now.

The learned Judge accepted the view of Ramaswami, J., in *Thangiah v. Hanuman Bank* AIR 1958 Mad. 403 =71 L.W. 291, and, in support of

that view he has referred to the decisions of the Supreme Court and the various High Courts which have been already noticed by us and

distinguished. We do not find any other reason advanced by the learned Judge which requires special notice except the following observation of

Ramachandra Iyer J. in *Shenoy v. Raghunath I. L. R.* 1959 Mad 715=72 L. W. 199, quoted and relied on by him.

It is only those matters which will facilitate the winding up of the banking company, viz., the realisation of its assets and their distribution amongst

the various persons entitled to them, that can properly be the subject matter of an enquiry under S. 45-B.

Commenting on this quotation the learned Judge, Satyanarayana Raju J. observed:

For the purpose of this case, it is not necessary to consider the soundness of this view. The matter arising in this application is one relating to the

liquidation of the banking company, viz., the realisation of its assets and their distribution among the various persons entitled to them which, the

aforesaid decision itself points out, can be the subject-matter of an enquiry under S. 45-B.

28. With respect to the learned Judge, we consider that the observation of Ramachandra Iyer J. quoted by him does not bear the meaning which

has been attributed to it by him. Even otherwise, we have already pointed out that the adjudication of a debtor of a banking company as insolvent

does not affect the realisation of the assets of the banking company except by providing that instead of the liquidator filing a suit for realisation of

the debt or getting an order of the company Judge for payment of the debt he would have to apply to the receiver in bankruptcy for payment of the

debt or the dividend due upon that debt. In our opinion, by reason of this effect of adjudication of a debtor of a banking company that proceeding

could not be said to be related intrinsically to the realisation of the assets of the banking company.

29. We are, therefore, of the opinion that this Court, as having seizin of the winding up proceeding of the banking company, would have no

jurisdiction to entertain the insolvency petition of the petitioner. The matter will now go before the insolvency Judge for disposal.

(This petition coming on for hearing before Ganapatia Pillai J., on 17th April 1961, the Court made the following) :-

ORDER

The Bench has expressed the opinion that this Court having charge of the winding up of the Kannika Bank Ltd., cannot have jurisdiction in the

matter of this insolvency petition on a construction of S. 45-B of the Banking Companies Act, as amended in 1953. It follows that the Court of the

Subordinate Judge of Dindigul alone has jurisdiction to receive and entertain this insolvency petition. This petition will be returned to the Advocates

for the petitioner to be presented to the proper Court.