

**(1967) 11 PAT CK 0011**

**In the Patna High Court**

**Case No :** Company Act Case No. 1 of 1958

**In Re: Chotanagpur Banking Association Ltd.**

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**Date of Decision :** 20-11-1967

**Acts Referred:**

Banking Companies Act, 1949 — Section 45A, 45B

**Citation :** AIR 1969 Patna 184 : (1969) 17 BLJR 334

**Hon'ble Judges :** N.L. Untwalia, J

**Bench :** Single Bench

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## **Judgement**

N.L. Untwalia, J.—On the above report of the Official Liquidator, I directed by Order No. 233(3) dated 24-4-1967 notice to issue to Shantilal Jain and Bhuralal Jain of Messrs. Dalsukh Sualal Hazaribagh, who have respectively filed insolvency cases 2 and 3 of 1966 in the court of the District Judge, Hazaribagh, to show cause why the hearing of those cases be not stayed or the cases themselves be not transferred to this Court for hearing. Nobody on their behalf has appeared to make any submission to oppose the prayer made on behalf of the Official Liquidator to pass an order either in terms as Indicated in my order No. 233 (3) or such other order as may be deemed fit and proper. Mr. Shreenath Singh learned Advocate for the Official Liquidator, has been heard at length, and for the reasons stated hereafter in my order, my considered view is that the District Judge, Hazaribagh, has no jurisdiction to entertain the two insolvency cases aforesaid at the instance of either of the petitioners as they are Directors of the firm Messrs. Dalsukh Sualal which is on the settled list of debtors of the Chotanagpur Banking Association Ltd. in liquidation, hereinafter to be called the Bank.

2. A decree was obtained by the Bank against the mortgagor debtor u/s 45D of the Banking Companies Act, 1949 (Act 10 of 1949) hereinafter called the Act. It was put under execution u/s 45T(3) of the Act before the Certificate Officer, Hazaribagh, and the certificate case is pending. In the meantime, two of the proprietors of the debtor firm have filed the insolvency cases in the Court of the District Judge, Hazaribagh. The Official Liquidator received notices issued in the insolvency cases by the Court of the District Judge of Hazaribagh and then he

directed his officer in charge at Hazaribagh to file a petition in the Court of the District Judge to the effect that this Bank was ordered to be wound up by the Patna High Court on 21-8-1958 and that under sections 45A and 45B of the Act the insolvency petitions could only be entertained by the High Court and no other court had any jurisdiction to entertain any such application in which the Official Liquidator or a Banking company in liquidation is a party. Copies of such petitions filed in the Court of the District Judge have annexed as annexures A-1 and A-2 to the report of the Official Liquidator.

The District Judge had fixed 28-4-1967 as the date for hearing on the question of maintainability of the two insolvency cases, as appears from memo No. 50 dated 1-4-1967 of the Registrar, Civil Court Hazaribagh, to the Official Liquidator, a copy of which is annexure B to the report. On receipt of the said memo, the Official Liquidator filed this report on the 18th April, 1967 praying to the Court to pass necessary order in this connection in order to avoid unnecessary cost of appointing a lawyer at Hazaribagh to argue the matter of maintainability before the learned District Judge. As stated above, a notice was issued to the debtors, but, nobody has appeared on their behalf to give any assistance to the Court in the matter.

3. With the object of avoiding distress to a large number of depositors of a banking company in liquidation, many of whom may be men of ordinary means, special provisions for speedy disposal of winding up proceedings of a banking company were made by introduction of Sections 45A to 45H in Part IIIA of the Act by an Ordinance promulgated in 1949 followed and replaced by Act 20 of 1950. Sections 45A and 45B were introduced to give exclusive jurisdiction to the High Court notwithstanding anything inconsistent therewith contained in the Companies Act or the CPC or the Code of Criminal Procedure or any other law for the time being in force or any instrument having effect by virtue of any such law to entertain and decide any claim made by or against, a banking company which is being wound up or any application made under certain provisions of the Companies Act by, or in respect of a banking company or any question of priority or any other question whatsoever whether of law or fact which may relate to, or arise in the course of, the winding up of banking company. With reference to Section 11 of the amending Act of 1950, it was pointed out by a Special Bench of the Calcutta High Court in *Jadunath Roy and Others Vs. Bank of Calcutta Ltd.*, "all proceedings in the suit" in which the banking company in Liquidation is a party "subsequent to the winding up arise in the course" of winding up. The test seems 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." Sections 45A and 45B as originally introduced by Act 20 of 1950 were found to be not quite tight and coercive to exclude the jurisdiction of other Courts so that the proceedings for winding up of a banking company may not be delayed. The Act was further amended in 1953 by Act 52 of 1953. Some amendment was brought about by Act 95 of 1956 also, which is not very relevant. The two sections -- Sections 45A and 45B -- as they read after amendment are as follows:--

"45A. The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1956 or the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 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.

45B. The High Court shall, save as otherwise expressly provided in Section 45C, 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 u/s 391 of the Companies Act, 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."

4. Even though the language before amendment was not so rigid. Narasimham J., as he then was, took the view in *H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das*, that "the question as to whether a debtor of a banking company under liquidation should be adjudged an insolvent and should get the protection of the insolvency law is a matter relating to the winding up of the banking company and consequently, this Court" meaning thereby the High Court "alone has exclusive jurisdiction under Sections 45A and 45B (1) to decide this question and all other questions arising out of the same. The District Judge of Mayurbhanj as an insolvency Court has no jurisdiction to entertain the petition on the judgment-debtor", with reference to some different facts a similar view was taken by the Bombay High Court in *Associated Banking Corporation of India Ltd. and Others Vs. Nazaralli Kassambhai and Co. and Others*, The Calcutta and the Bombay cases were followed by the Orissa High Court in the cases referred to above. After these cases, the Supreme Court in *Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In Liquidation)*, expressed the view --

". . . .Where the liquidator has to approach the Court u/s 45B for relief in respect of matters legitimately falling within the scope thereof, elaborate proceedings by way of a suit involving time and expense, to the detriment of the ultimate interests of the company under Liquidation, were not contemplated."

5. A point of considerable difficulty arose before the Supreme Court in the case of *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, . Section 3 of the Displaced Persons (Debts Adjustment) Act, 1951 provided --

"Overriding effect of Act, Rules and Orders :-- Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made

thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a Court, or in any contract between the parties."

A question arose as to which provision would prevail--whether Sections 45-A and 45-B of the Act or the said third Section of the Displaced Persons (Debts Adjustment) Act, 1951. As the provision made in both the Acts was almost identical, which was to exclude which? The Supreme Court answered this question at page 624-

"Having regard to all the above considerations and the wide and comprehensive language of Sections 45-A and 45-B of the Banking Companies Act, we are clear that proceeding to execute the decree obtained by the appellant from the Tribunal against the Bank in case No. 1 of 1952 and all other incidental matters arising therefrom such an attachment and so forth, are matters within the exclusive jurisdiction of the Punjab High Court subject to the provisions of section 45-C of the Banking Companies Act as regards pending matters."

6. Following the decision of the various High Courts and the Supreme Court referred to above, Ramaswami J., of the Madras High Court took the view in *Thangia v. Hanuman Bank Ltd.* AIR 1958 Mad 403 that when the banking company in liquidation happens to be one of the creditors of a debtor for adjudging whom as insolvent an application has been made, it can be only made to the High Court which is in seisin of the liquidation proceeding and to no other Court; no other court has got jurisdiction to entertain such an application. Ramchandra Iyer, J., as he then was, had to deal with a similar question in a different context in *V. R. Shenoy v. Raghunath Shenoy* ILR (1959) Mad 715. There he expressed a contrary view and held that the provisions contained in Sections 45A and 45B of the Act are not so comprehensive and compelling as to exclude the jurisdiction of other courts in suits or proceedings in which the Official Liquidator may be a necessary party. A Bench of the Madras High Court had the occasion to consider in "In the matter of, In the matter of: A.R. Sivaramakrishna Chettiar, as to which of the two views expressed by the learned single Judges of the Madras High Court was correct. Their Lordships accepted the view expressed by Ramchandra Iyer, J., as correct and overruled the view expressed by Ramaswami, J., in AIR 1958 Mad 403. The main reason which seems to have weighed with their Lordships forming the Division Bench was that the last phrase in Section 45B of the Act, namely, 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"--

". . . . 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 relate to the winding up or proceeding as affecting any of the assets held by the banking company in liquidation."

They have further said--

"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."

I respectfully differ from this view. There is no reason to read the last clause occurring in Section 45B of the Act in the colour or context of the first 3 clauses. The last clause, in my opinion, has been purposely incorporated in Section 45B so as to cover all sorts of questions of fact or law which may not only arise in the course of a winding up of a banking company but relate to the winding up--a phrase which has been universally accepted to be a much wider phrase than the one, namely, "arise in the course of winding up." On reference to some of the provisions of the Provincial Insolvency Act, 1920 (Act 5 of 1920), it would be noticed that u/s 4(1) the insolvency court, subject to the provisions of that Act, "shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case". u/s 28(2), the effect of an order of an adjudication is --

"On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose."

Then Section 29 of Act 5 of 1920 provides --

"Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, either stay the proceeding, or allow it to continue on such terms as such Court may impose."

7. It would thus be seen that the liquidator of a banking company in liquidation will have to subject himself to the jurisdiction of the insolvency court if that company happens to be a creditor of the debtor, for adjudication of whose insolvency the proceeding has been initiated. The debt due to the banking company may be scaled down by the insolvency court, the liquidator may be prevented from proceeding with the execution" or the certificate case as the case may be, and thus the winding up proceeding may be delayed for long. Undoubtedly, therefore, the matter of adjudging the debtor of a banking company an insolvent is one which relates to the winding up of the banking company. It cannot be said to be not related to such a proceeding. Giving a

simple grammatical meaning to Section 45-B, therefore, such a proceeding can only be entertained and questions of fact and law arising in such a proceeding can be determined only by the High Court where the liquidation proceeding of the banking company is pending and by no other Court, as the said High Court has got the exclusive jurisdiction to the exclusion of the jurisdiction of all courts throughout the territory of India to deal with such a matter.

8. The same view has been taken by the Andhra Pradesh High Court in *K.V. Lakshminarayana Sastry Vs. Vijaya Commercial Bank Ltd. and Others*, and by a Bench of the Bombay High Court in *Exchange Bank of India and Africa Ltd. Vs. Laxmichand Kuverji Shah*, . I find myself in respectful agreement with the view expressed by the High Courts of Orissa, Andhra Pradesh and Bombay and not the solitary dissenting view of the Madras High Court.

9. I, therefore, hold that the court of the District Judge at Hazaribagh has no jurisdiction to entertain the two insolvency cases Nos. 2 and 3 of 1966 filed by the debtors of the Chotanagpur Banking Association Limited (in liquidation). That being so it is unnecessary to sanction any expense and allow" the Official Liquidator to engage any lawyer to argue this point in that Court. He is directed, however, to file a certified copy of my order in that court.