

(1927) 11 AHC CK 0030
In the Allahabad High Court

In Re: Dehra-Dun-Mussoorie Electric Tramway Co.

Date of Decision : 25-11-1927

Acts Referred:

Citation : AIR 1928 All 272

Hon'ble Judges : Ashworth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashworth, J.—In this case Rai Bahadur Panna Lal objects to an order of the official liquidators contained in their report dated 10th November 1927, that his name shall be on the list of contributories as a person liable to contribute to the assets of the company with respect to the shares purchased by him and for which his name still stands in the books of the company. Those shares are 500 in number.

2. On behalf of Rai Bahadur Panna Lal, Mr. Panna Lal, advocate, appears. He has put in, on 21st November 1927, a statement of his objections containing four paragraphs. He has, however, admitted that he is not in a position to contend that this Court cannot go behind the compromise decree of the year 1924 in view of recent decisions of this Court on the matter. He, therefore, confines the objections to two grounds. The first ground is that his client, even if entered as a contributory, should only be entered as one in respect of 250 shares. His argument is that more than three years have elapsed since the call of 50 per cent. of the shares subscribed to by his client, and that the company and the official liquidators are barred by the law of limitation from now calling up this 50 per cent. This argument appears to me to be settled by various decisions both of the English Courts and of the Indian Courts. I need only refer to a two-Bench decision of this Court, Jagannath Prasad v. U.P. Flour and Oil Mills Co., Ltd. [1916] 38 All 347. It was there held that a member of a company is liable in respect of unpaid calls even though as against the company the realization of such calls may have become barred by limitation.

3. The second point taken is that the putting of Mr. Panna Lal's name on the list

of contributories or the retention of his name on that list amounts in effect to the enforcement of the claim for subscription of half the 500 shares, and it is urged that this claim is barred under the law of *res judicata*. It is said that the compromise decree of 1924 referred to above was arrived in pursuance of a suit by the company against Mr. Panna Lal. The argument is that if this Court can go behind the compromise decree, it must be deemed that this suit was withdrawn without any liberty to bring another suit. The answer to this is that it is not the company which is now claiming contribution by Mr. Panna Lal but the official liquidators. Liquidation gives the official liquidators a cause of action which the company may not itself have possessed. Just as a claim, if brought by the company, might be held to be barred by limitation, but not, if brought by the official liquidators, in the same manner a claim which might be held to be barred by the CPC if brought by the company, can be preferred by the official liquidators under the provisions of the Companies Act. Apart from this, however, I am not prepared to admit that the fact that in law the liquidators or the Court can go behind a decree can be deemed to produce the same effect as if the suit in the course of which the decree was obtained had been withdrawn. This appears to me an impossible fiction. The suit was not withdrawn but was decided, but the Court and the liquidators can ignore the decision. The nearest analogy would be a case that was still pending. It is impossible to suggest that a pending case can operate in any way to preclude the decision of a matter by another tribunal provided that other tribunal has power to decide the matter notwithstanding its having been raised in the other Court.

4. For the above reasons, I dismiss this objection and affirm the action of the official liquidators in placing the name of Rai Bahadur Panna Lal on the list of contributories and in showing against his name 500 shares. Costs of this application or objection, whichever it be called, will be borne by Rai Bahadur Panna Lal, objector, according to, the ordinary scale in civil cases. The counsel for the official liquidators asks that they may be given special remuneration for the labour performed by them in shifting this claim out of Court. I am of the opinion that *prima facie* this remuneration cannot be required to be paid by Mr. Panna Lal. I am told that there are instances where this has been done, but, in the absence of authority or proof of practice, I am unable to decree such remuneration as costs. It appears to me that it would be opening a very wide question if costs could be obtained by the official liquidators in respect of out of Court proceedings, I make no order, therefore, as to this remuneration, but the official liquidators can apply in the ordinary way for special remuneration from the company's assets.

5. By an order of the Company Judge, dated 23rd/24th May 1927, the application of the official liquidators, praying that a balance order for payment be made against Mr. Panna Lal as a contributory, was held over pending consideration of his objection. That objection having now been decided against him, the application which appears from the endorsement on the back of it to have been presented on 8th April 1927 is allowed, and Mr. Panna Lal is now

ordered to pay the balance of the amount due from him as described in the list accompanying the said application, namely, Rs. 4,600 along with interest up-to-date at 9 per cent.