(1949) 03 CAL CK 0012

In the Calcutta High Court

In Re: Delta Provident Insurance Company Ltd.

Date of Decision : 28-03-1949

Acts Referred:

Citation : (1949) 03 CAL CK 0012

Final Decision : Dismissed

Judgement

Sarkar, J.—This is an application for review of an order of the learned Taxing Officer. The costs taxed by the Taxing Officer relate, to an application to this Court for winding-up the Provident Society The learned Taxing Officer has held that the Provident Society being a company incorporated under the Companies Act, its winding-up (sic) governed by the rules framed by this Court under the Act and under such rules the application for winding-up must be treated as having been made to a Judge in Chambers and the costs of such application must be taxed accordingly.

2. In this case the application for winding-up the society had been made by the Superintendent of Insurance on the ground that his investigations showed that the society was insolvent. It will at once be noticed that the Companies Act does not provide for an order for winding-up, being made on such an application. Mr. Roy appearing in support of this application has, therefore, argued that this is not a winding-up under the Companies Act at all but under the Insurance Act and hence, the Company Rules had no application. He contended that there were no rules in respect of an application for winding-up under the Insurance let and that being so, it had to be moved in Court and his client vas, therefore, entitled to the costs of this application as of a notion.

3. Section 88, Sub-sections (1) and (2) of the Insurance Act are in the following terms:

(1) The court may order the winding-up of a provident society being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby and the provisions of the Indian Companies Act, 1913, shall, subject to the provisions of this Part, apply accordingly.

(2) In addition to the grounds on which such an order may be based, the court may order the winding-up of a provident society if the Superintendent of Insurance, who is hereby authorised to do so, applies in this behalf to the court on any of the following grounds, namely:

(a) that the registration of the society has been cancelled under Sub-section (4) of Section 70;

(b) that it appears from the returns furnished under the provisions of this Act or as the result of an inquiry made u/s 87 that the society is insolvent;

(c) that the continuance of the society is prejudicial to the interests of the policy, holders.

4. It is clear that Sub-section (1) provides for the winding-up of an incorporated provident society. It does not, however, mention the grounds on which the court can order the winding-up or contain any provision relating to such winding-up. Ordinarily, the society, being an incorporated body, one would look to the Companies Act for such grounds and provisions. Sub-section (1), however, removes all possible doubts about this by providing that the Companies Act would apply to all orders made under it subject to certain provisions of the Insurance Act with the result that the entire proceedings contemplated by Sub-section (2) are left to be governed by the Companies Act subject to the said provisions of the Insurance Act. These provisions of the Insurance Act are contained in Sections 89 to 94 and they do not provide for any procedure or affect the rules framed by this Court u/s 246 of the Companies Act. So far, therefore, as a provident society is sought to be wound-up under this sub-section, it is a winding-up under the Companies Act to which the said rules apply with full force.

5. Now, I turn to Sub-section (2). The application for winding-up in this case was made on the second ground mentioned in this sub-section. The question is whether a winding-up under this sub-section, that is to say, a winding-up ordered on any of the grounds mentioned in it, is a winding-up under the Companies Act. I think it is. The words "such an order" in Sub-section (2) clearly refer to an order made under Sub-section (7). As has been already seen, an order under Sub-section (2) is an order under the Companies Act and the proceedings, on which such an order is made, are completely governed by the said rules. It follows that the proceedings on which an order tinder Sub-section (2) is made are likewise governed by the same rules. It is, therefore incorrect to say that a winding-up based on any of the ground specified in this sub-section is a winding-up wholly under the Insurance Act to which the provisions of the Companies Act ant the said rules have no application. Again, the words "In addition to the grounds" with which Sub-section (2) open lead to the same conclusion. The word "grounds" can only refer to the grounds for winding-up laid down in the Companies Act Sub-section (2) only lays down certain further grounds on which an incorporated provident society may be wound-up by court

tinder the Companies Act besides those specified in that Act, The winding-up remains, whatever the ground may be, (sic) winding-up governed by the Companies Act and the rules framed thereunder. Indeed, it is difficult to see how an incorporated body can be wound-up without any reference to the incorporating Act.

6. The scheme of the winding-up provisions in the Insurance Act also makes this conclusion perfectly clear. The expression "winding-up" under the Insurance Act occurs only in Sub-section (4) of Section 88, which deals with the winding-up of an unincorporated provident society. The expression finds no place in Sub-section (2), as it would have if the intention was that a winding-up under this sub-section would be one under the Insurance Act only. With regard to an unincorporated provident society there can be no winding-up under the Companies Act and indeed there is no law providing for its winding-up, though there might be a dissolution under the Partnership Act. Hence special provision has been made for its winding-up and that provision has been given the name "winding up under the Insurance Act".

7. For the reasons above mentioned, I have formed the view that the winding-up contemplated u/s 88(2) is a winding-up under the Companies Act. In this view of the matter, the rules framed by this Court u/s 246 of the Companies Act would apply when a petition is presented for winding-up a provident (society on any of the grounds mentioned in Section 88(2). That being so, the application for winding-up in the case under the said rules had to be made in Chambers and not in Court. I have nothing before me to show that the rules were not followed. I, therefore, hold that in this case the application should have been moved before a Judge in Chambers and was actually so moved.

8. This application is, therefore, dismissed.