

(1936) 12 CAL CK 0020
In the Calcutta High Court

In Re: Jalpaiguri Banking and Trading Corporation Ltd.

Date of Decision : 14-12-1936

Acts Referred:

Companies Act, 1956 — Section 153

Citation : AIR 1937 Cal 401

Hon'ble Judges : Lort-Williams, J; Lord Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—The applicant in this case is the holder of a decree against the Jalpaiguri Banking and Trading Corporation Ltd. He had a current account with the company and instituted a suit upon failure of the company to honour his cheque for Rs. 16,421. A consent decree was passed on 20th July 1933 and it was agreed that this amount was to be paid by instalments. Subsequently on 17th December 1934 the company proposed a scheme of arrangement u/s 153, Companies Act, and an order of this Court was obtained to convene a meeting of the unsecured creditors of the company to sanction the scheme. The notice of the meeting stated that Cunliffe, J. had directed a meeting of the unsecured creditors of the company to be held on 24th February 1935, for the purpose of considering and forthwith approving a scheme of arrangement proposed to be made between the company and its unsecured creditors and the unsecured creditors were requested to attend. They were asked to produce their pass books or deposit receipts in respect of their deposits with the company for verification. A copy of the scheme of arrangement was annexed to the notice and was entitled: "The scheme of arrangement proposed between the Jalpaiguri Banking and Trading Co. Ltd., and its unsecured creditors u/s 153, Companies Act 1913". It provided that the scheme should remain in force for a period of 10 years but that if the debts of the creditors were satisfied by an earlier date, the scheme should thereupon come to an end. Further it provided that the term "creditor" should include a depositor and vice versa and should also include creditors who had recovered decrees for their debts. At a meeting on 24th February 1934, those present adopted the scheme of arrangement. Thereafter it came before Cunliffe, J. who sanctioned it on 21st March 1935, and it was declared to be

binding on the unsecured creditors of the company.

2. The applicant argues that for the purpose of Section 153, Companies Act, a decree-holder is not of the same class of creditors as unsecured creditors of the company who have not obtained decrees. That as no separate meeting of decree-holders was held, they are not affected, and that the sanction granted was ultra vires and a nullity and does not bind such creditors, and that the Court had no jurisdiction to sanction such a scheme so as to affect him or other decree-holders. It appears that he is the only decree-holder of this company. Cunliffe, J. has found that notice of this meeting was served upon the applicant, though there is some doubt whether he attended it, and he says that he did not. He did not appeal against Cunliffe, J.'s judgment, but he seeks to get behind that judgment aliunde by asking me to declare that the scheme then sanctioned is not binding on the decree-holders of the company, and that the order of 21st March 1935 is a nullity. He also asks that the words in the scheme "which include decree-holders" be expunged.

3. It is clear therefore that he is asking me to set aside the judgment of Cunliffe, J. which is reported in *In re Jalpaiguri Banking and Trading Corporation Ltd.* (1935) 39 C W N 875, and in which he decided that unsecured creditors of a company who have obtained decrees and such unsecured creditors as have not obtained decrees do not constitute different classes of creditors so as to entitle either to have a separate meeting u/s 153, Companies Act. Learned counsel for the applicant has advanced the somewhat unusual contention that, though there was no appeal, the position in this case has been altered since Cunliffe, J. gave his judgment owing to the decision in another case namely *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104 at p. 1105. In that case it was decided that a depositor who had not obtained a decree and one who had could not be regarded as belonging to the same class for the purpose of Section 153, Companies Act, and that a notice sent to such decree-holder asking him to attend a meeting of depositors for the purpose of considering a scheme was not binding on him and he was not bound by anything decided at the meeting. Further, that the position was not altered when it appeared that there was set out in the schedule to the scheme of arrangement words to the effect that the expression "depositor" should include depositors who had filed suits and obtained decrees against the company, even though such provision was annexed to the notice of the meeting called to adopt the scheme. Some of the points which arise for decision on the present application were considered in *Sovereign Life Insurance Co. v. Dodd* (1892) 2 Q B 573, wherein it was held that insured persons whose policies had matured formed a distinct class of creditors from those whose policies had not matured, and that a separate meeting for such a class ought to have been held under the Act in order to make the arrangement binding upon the members of that class and that the arrangement did not therefore operate as a release by the defendant of his claim against the plaintiffs. Lord Esher, M.R. at p. 579 said:

The Act says that the persons to be summoned to the meeting (all of whom be it said in passing are creditors) are persons who can be divided into different classes-classes which the Act of Parliament recognises, though it does not define them. This, therefore, must be done: they must be divided into different classes. What is the reason for such a course? It is because the creditors composing the different classes have different interests; and therefore if we find a different state of facts existing among different creditors which may differently affect their minds and their judgment, they must be divided into different classes. In the present case the persons who had notice of the meeting were policy holders, that is to say policy holders whose policies had to be dealt with. But the defendant was not a policy holder at all; his policies had been fulfilled, and he was a creditor for the amount of the policies, and could have sued the company for money due; he had a vested cause of action, the policy holders had none; and it is obvious that he could not consider the matter with the same mind and from the same point of view as the policy holders who were summoned to the meeting. I do not say that, when there is nothing left to be done but the payment of the money, a person in the defendant's position may not be said properly to be in the same class as others who are creditors of the society; but at any rate, he cannot fall within the same class as those whose policies have not matured. The defendant, therefore, belongs to a different class from those persons who were summoned as policy holders, for his policies had not to be dealt with in any way they had already matured, he has therefore not been summoned to the meeting and what was done there does not bind him.

4. Bowen, L.J. at p. 583, said:

If we are to construe the section as it is suggested on behalf of the plaintiff it ought to be construed, we should be holding that a class of policy holders whose interests are uncertain may by a mere majority in value, override the interests of those who have nothing to do with futurity, and whose rights have already been ascertained. It is obvious that these two sets of interests are inconsistent, and that those whose policies are still current are deeply interested in sacrificing the interests of those whose policies have matured. They are bound by no community of interest, and their claims are not capable of being ascertained by any common system of valuation.... It seems plain that we must give such a meaning to the term "class" as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. If that be so in considering the deed of arrangement made with the company which took over the business of the Sovereign, we must so construe it as not to include in one class those whose policies had already ripened into debts and those whose policies might not ripen into debts for years to come.

5. That case and those reasons were considered by both Cunliffe, J. and the Judges sitting in appeal in the case to which I have referred and Cunliffe, J.

applying that test, came to the conclusion that the interests or the right of an unsecured creditor with a decree behind him were not so dissimilar from the interests of an unsecured creditor without a decree behind him, that it was impossible for them to consult together in common interest in the company and to bring about a prolongation of its life. Applying the same test, the Court sitting in appeal held that the interests of decree-holder and depositors were so dissimilar that they must be regarded as belonging to separate classes of creditors. In that case however it is to be observed that the scheme of arrangement was not between the company and its creditors but the company and its depositors. The terms "creditors" and "unsecured creditors" are obviously wider terms than the term "depositor." I am inclined to agree with, the opinion of Cunliffe, J. that as between a decree-holder and an unsecured creditor, their interests are not so dissimilar as to make it necessary to place them in different classes.

6. The position in the present case is different from that which existed in the case of Rajshahi Banking Corporation *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104. Whereas in the present case the decree-holder is undoubtedly an unsecured creditor and therefore prima facie would be bound by notice sent to unsecured creditors. In *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104, the Court held that the debt arising out of the deposit having merged in the decree, the decree-holder had ceased to be a depositor and had passed from the class of depositors into the class of decree-holders. It might have been argued in that case that the decree-holder had never received any notice of the meeting, because the notices were sent only to depositors, of which class he had ceased altogether to be one, by reason of the decree which he had obtained. Similarly, in the *Sovereign Life Insurance Company's case Sovereign Life Insurance Co. v. Dodd* (1892) 2 Q B 573 Lord Esher makes a point of the fact that the defendant had ceased to be a policy holder altogether, and the notice in that case was sent to policy holders. His policies had been fulfilled, and he was a creditor for the amount of the policies. Therefore he had ceased to be a member of the class with which the composition was made, and to the members of which notice had been sent. In *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104 Costello, J. in his judgment suggested that Cunliffe, J.'s judgment in the present case was inconsistent with his earlier decision in *In re Melanda Loan Office Ltd.* (1935) 39 C W N 690, and that he (Costello, J.) thought that the earlier decision was the more correct. This statement, however, was merely an expression of the learned Judge's opinion and was not part of the judgment of the Court. I must assume, therefore, that the Court when deciding the *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104 did not intend to overrule Cunliffe, J.'s judgment in the present case. It is clear, therefore, that so far as the question whether the present applicant ought to have been included in a separate class is concerned the matter has been decided by Cunliffe, J. and is res

judicata, yet I am invited to declare that the scheme, so far as it affects the applicant, is a nullity upon the ground that is the effect of the decision in the Rajshahi Banking Corporation case *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104.

7. In my opinion that is not the effect of that decision, and where one Judge of this Court has sanctioned a scheme it is clearly not within the power of another Judge exercising equal jurisdiction to declare in effect that the order sanctioning the scheme is, to the extent that it affects the present applicant, a nullity. The answer to the third part of the application, namely, the request that I should expunge from the scheme of arrangement the words "and shall also include creditors who have recovered decrees for their debts" and the words "or decree-holder" is that in my opinion the Court has no power to alter the terms of a scheme of arrangement, once those terms have been agreed upon by a meeting properly called and competent to approve the scheme. I am aware that Buckland, J. in *In Re: Dewangunj Bank and Industry Ltd.*, decided that the Court had power to modify the words of the scheme and expunge similar words from a similar scheme which had been approved by a meeting of a class of creditors to which the applicant did not belong. I am aware also that the Court in appeal in the Rajshahi Banking Corporation case *Rajshahi Banking Corporation v. Surebala Debi* (1936) 40 C W N 1104 upheld this part also of Buckland, J.'s decision and held that in similar circumstances it was proper for the Court to expunge such words which ought not to have been sanctioned by the Court in the first instance.

8. But in *Mihirendra Kishore Dutt and Others Vs. Brahmanbaria Loan Co. Ltd. and Another*, , this Court, also sitting in appeal, decided that when a compromise or an arrangement is agreed to in a meeting in accordance with Section 153, Companies Act, and such compromise or arrangement comes before the Court for sanction, it is not open to the Court, in the absence of the consent of the parties agreeing or of any authority from them to agree to any modification by the Court, to impose any modification or any condition by way of modification of the scheme. That decision which does not appear to have been considered by the Court in the Rajshahi Banking Corporation case *Sovereign Life Insurance Co. v. Dodd* (1892) 2 Q B 573, is equally binding upon me, and I prefer to follow it. As I have had occasion recently to consider this point in another case, which will subsequently be reported, it is not necessary for me to deal with the point at length upon the present application. However, I may say that it seems to me to be so obvious that it can hardly be the subject of serious argument, that when at a meeting of creditors a scheme has been approved, this Court cannot, either at the time of sanction or at any time thereafter, alter the terms of the scheme without consulting those who agreed to it and without their sanction. Their consent was obtained for a scheme containing certain terms. It may well be that a scheme without those terms would not have been accepted or passed by that meeting of creditors. It seems to me, therefore, clear that the Court has no power, either at the time of sanction or at any time thereafter, to expunge any part of the scheme or to modify it any way without consulting those who passed

it originally and without obtaining their consent. All the Court can do is to refuse to sanction the scheme, or possibly to withdraw the sanction which has already been given. The latter, however, would, in my opinion be a serious step to take unless taken within a very short time after sanction had originally been given, because, obviously, as time goes on the position of the parties interested is altered and any alteration of the scheme or withdrawal of sanction might seriously prejudice rights which had in the meantime accrued. For these various reasons this application must be dismissed with costs. Certified for counsel.