

(1935) 11 CAL CK 0014
In the Calcutta High Court

In Re: Jalpaiguri Banking and Trading Corporation Ltd.

Date of Decision : 25-11-1935

Acts Referred:

Companies Act, 1956 — Section 153

Citation : AIR 1936 Cal 662 : 165 Ind. Cas. 655

Hon'ble Judges : McNair, J

Bench : Division Bench

Judgement

McNair, J.—This is an application by the company that certain execution proceedings that have been undertaken by Rai Bahadur Kalipada Banerji in the Court of the Subordinate Judge of Jalpaiguri be stayed, so long as the scheme passed by this Court, remains in force. Kalipada Banerji obtained a decree against the Jalpaiguri Banking and Trading Corporation Limited in July 1934. Various payments were made under that decree and on 17th December 1934 the Company applied u/s 153, Companies Act, for the sanction of a scheme postponing payment of all unsecured creditors including decree-holders. A meeting was held and the scheme was passed in February of this year. In March there was an application by Kalipada Banerji to this Court in which he submitted that the scheme was not binding on him. That application was heard by my learned brother Cunliffe, J., who decided in a judgment reported in In Re: Jalpaiguri Banking & Trading Co. Ltd. (1935) 39 0 W N 875, that the creditor Kalipada Banerji was not entitled as a decree-holder to be considered separately as a "class" of creditor. The scheme was sanctioned as I have said, and in view of this judgment of the learned Judge in this particular matter the creditor Kalipada Banerji is bound by that scheme and the compromise which was being entered into between the Company and its creditors. Kalipada Banerji however was not satisfied and has attempted to nullify the orders of the Court by getting his decree transferred to the Court of the Subordinate Judge of Jalpaiguri and attempting to execute it against the assets of the Company.

2. The main ground of opposition to the present application is that this Court has no jurisdiction to stay the proceedings in the Jalpaiguri Court because no such jurisdiction is vested in the Court under the Companies Act except u/s 169.

Section 169 merely provides, it is argued, a stay of proceedings after presentation of a winding up petition and in no other circumstances is a stay of proceedings possible. Reliance is placed on the case in *Both v. Walkden Spinning & Manufacturing Co. Ltd.* (1909) 2 K B 368. But that case is in many respects different to the present. There an order had been made that meetings of the creditors and of the members of the Company should be summoned to consider whether a scheme should be come to between the Company and its creditors and members. Before the order had been made summoning the meetings a creditor obtained judgment and the application in that case was by the Company for stay of execution of that judgment. In his judgment Darling, J. states the question which the Court was called on to decide, and says:

I am far from saying that, if the meetings of the creditors and of the shareholders of the Company had been held, and if the proposed scheme of arrangement had been agreed to at those meetings and had been sanctioned by the Court, a stay of execution on a judgment obtained against the Company might not be ordered. It is however not necessary to decide that point for that stage has not yet been reached in this case. All that has happened here is that the Judge has made an order for the summoning of meetings of creditors and shareholders, and until those meetings have been held it is impossible for anyone to say whether the scheme will or will not be agreed to.

3. Stress is laid on the same point by Jelf, J. in his judgment in the same case. He points out that the scheme had only been proposed and that it was impossible to say what would be the outcome of the meetings which were being convened for approving the Scheme. Section 153, Companies Act, which is similar to Section 120 of the English Act, on which the case to which I have just referred was based, provides that if a majority of three-fourths in value of the creditors agree to a compromise or arrangement, such compromise or arrangement shall, if sanctioned by the Court, be binding on all such creditors, as also on the Company, or, in the case of a Company in the course of being wound up, on the liquidator and contributories of the Company.

4. There is no doubt that Section 153 contemplates the type of arrangement which has been come to in this case and not merely a compromise or arrangement come to in or after a winding up order has been passed and it provides in clear language that when such compromise has been sanctioned by the Court, such compromise shall be binding on the creditors. Mr. Banerji has already had one decree of this Court given against his contention that he was not bound by the compromise and he is now endeavouring to set that decree at naught by starting execution proceedings in the mofussil. In my opinion, this Court has the power to stop such proceedings and there will be an injunction restraining him from proceeding further with the execution of the proceedings of the decree in this suit dated 20th July 1934 now pending in the Court of the Subordinate Judge of Jalpaiguri. The injunction will remain so long as the scheme is in operation. The application is allowed with costs.