

(1936) 12 CAL CK 0018
In the Calcutta High Court
In Re: Mymensingh Loan Office Ltd.

Date of Decision : 22-12-1936

Acts Referred:

Companies Act, 1956 — Section 202

Citation : AIR 1937 Cal 667 : 175 Ind. Cas. 892

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

Bench : Division Bench

Judgement

Lort. Williams, J.—The points raised on this petition are the same as in the case of In Re: Natore Kamala Bank Ltd., decided by me on 25th May 1936. The facts are similar. The petitioner was a depositor of the Mymensingh Loan Office Limited, and obtained a decree in the Munsiff's Court at Jamalpur on 6th February 1932 for the amount of his deposit with interest and costs. Subsequently he received a notice dated 20th July 1933 intimating that by an order dated 17th July 1933 Ameer Ali, J. had directed a meeting of the depositors of the Company to be held on 20th August 1933 for the purpose of considering and approving the scheme of arrangement annexed thereto. The petitioner attended that meeting and after filing a written objection stating that he was a creditor and not bound by this scheme, he departed without taking any further part in the proceedings. At that meeting the scheme was modified by adding that "the depositors shall include those who have sued the Company and also those who have obtained decrees," and adopted by the necessary majority of those present. By an order dated 29th August 1933 the Court sanctioned the scheme so modified and adopted. Subsequently in 1933 the petitioner applied to the Munsiff's Court for execution of his decree. This was refused on the ground that the execution could not proceed for the present because the petitioner was included in the scheme sanctioned by the Court. He did not appeal against this decision but in 1936 he applied again for execution and his application was dismissed on the ground (as stated in his affidavit) that the previous order in execution was binding on him, and his application was therefore barred. He has preferred an appeal against this decision which is pending before the District Judge of Mymensingh. He now asks that the scheme sanctioned by the Court on

29th August 1933 be cancelled, or alternatively that it be modified by expunging the words "depositors shall include those who have sued the Company and also those who have obtained decrees".

2. For the reasons given in the case to which I have already referred, the Court has no power to modify or alter a scheme without the consent of those who agreed to it. The powers of the Court under the Companies Act are strictly limited to those given in specific sections such as Sections 12, 38, 77, 153 and 162. u/s 153 it may order a meeting to be held to consider a scheme of arrangement and may grant or withhold sanction of such scheme. It cannot modify or alter or expunge any part of it without the consent of those who have agreed to it. The decision of Buckland, Ag. C.J. to the contrary in *In re Dewanganje Bank and Industry Limited* 38 C W N 1171(5th March 1934) must be considered as overruled by the decision of the Court sitting in appeal in *Mihirendra Kishore Dutt and Others Vs. Brahmanbaria Loan Co. Ltd. and Another*, . It is true that Buckland, Ag. C.J.'s decision which was followed by Panckridge, J. was approved by the Court sitting in appeal in *Rajshahi Banking Corporation Limited v. Surabala Debi* (1936) 40 C W N 1104 but apparently the case in *Mihirendra Kishore Dutt and Others Vs. Brahmanbaria Loan Co. Ltd. and Another*, was not cited nor considered by that Court nor by Panckridge, J.

3. To hold that the Court has power to expunge part of a sanctioned scheme without the consent of those persons whose agreement to the scheme was essential before it could be sanctioned at all, would be in my opinion contrary to all principles of fairness and justice. It may well be, and probably is, the fact that the scheme would never have been agreed to unless the offending clause had been inserted. Moreover the petitioner had an appropriate remedy provided by law which he failed to pursue, because he could have applied to the Court for leave to appeal against the order sanctioning the scheme: Section 202, Companies Act; *In re Securities Insurance Co.* (1894) 2 Ch 410. The attention of the Court does not appear to have been drawn to the existence of this remedy, in either of the cases to which I have referred.

4. It is conceivable that the Court may have power to withdraw its sanction to any scheme, or may give leave to appeal against the order even though application for such leave has not been made within time: *In re Securities Insurance Co.* (1894) 2 Ch 410, but I apprehend that such serious steps will not be taken unless application for such withdrawal or leave is made promptly and before the position of those interested has been irretrievably altered as by the barring of claims or by the payment of dividends or by the acquirement of rights by any of the parties to an arrangement which has received the sanction of the Court. Upon this point, reference may be made to the observations of Lord Esher, M.R. and Cotton, L.J. in *Nicholl v. The Eberhardt Co.* (1890) 61 L T 489.

5. In the present case the scheme was sanctioned more than three years ago and there is no excuse which I am prepared to accept for the petitioner's delay in making this application. In such circumstances I refuse in my discretion to

cancel the scheme or withdraw the sanction already given, even if I have the power to do either after this lapse of time which is very doubtful. The petition therefore is dismissed with costs.