

(1980) 02 CAL CK 0010
In the Calcutta High Court
Case No : Suit No. 1842 of 1961

International Shipping Ltd.

APPELLANT

Vs

Chandpur Jute Co. Ltd.

RESPONDENT

Date of Decision : 20-02-1980

Acts Referred:

Calcutta High Court Rules, 1914 — Rule 35
Companies (Court) Rules, 1959 — Rule 233
Companies Act, 1956 — Section 456

Citation : (1982) 52 CompCas 121

Hon'ble Judges : Salil K. Roy Chowdhury, J

Bench : Single Bench

Advocate : Jayanta Mitra and Ranjan Deb, for the Respondent

Judgement

Salil K. Roy Chowdhury, J.—It appears that the suit was filed by the company against the defendant-company. It also appears that before the winding-up order was made in respect of the plaintiff-company, i. e., on 4th July, 1975, the suit was filed by the company in 1961, against the defendant-company, which filed its written statement on the 3rd September, 1962. Strangely enough it appears, thereafter, nothing was done in respect of the said suit. However, the suit appeared in the special list and directions were given for filing affidavit of documents. It appears that on 12th August, 1966, the affidavit of documents; was filed by the plaintiff and thereafter, on the 4th July, 1975, the plaintiff-company was directed to be wound up and the official liquidator was directed to take possession of the assets of the company and to file a report. The official liquidator on going to the company's registered office found only the name plate of the company at the main entrance of the registered office but the said company was not traceable. Thereafter, on investigation made by the official liquidator by his officer into the affairs of the plaintiff-company he came to know for the first time that the entire paid up capital including its reserves were lent out and advanced by the plaintiff-company to the defendant as the defendant is a concern of Soorajmull Nagarmull group of industries and the plaintiff at all

material times was also managed by M/s. Soorajmull Nagarmull as managing agents, secretary and treasurer till 14th August, 1965. It also appears from the balance-sheets between 31st March, 1962, and 31st March, 1967, that the plaintiff-company has not realised any interest from the defendant-company in respect of the said advances. It appears that the official liquidator took the opinion of the senior counsel who advised the official liquidator to make searches from the records of this court as to the fate of the said suit. Thereafter, the official liquidator wrote to M/s. Jalan & Co., advocate on record of the said plaintiff-company, for the purpose of ascertaining the present position of the suit and accordingly on the 18th December, 1979, Jalan & Co., intimated to the official liquidator, representing the company, for the first time that on or about 12th August, 1977, the suit was dismissed in the special list by A.K. Basu J. It is obvious that the official liquidator had no knowledge of the said suit until it was intimated by Jalan & Co., who appears to have been the solicitor of the company in the winding-up proceedings in which the winding-up order was made on the 4th July, 1975. It is very strange how Jalan & Co., knowing the position in law that after winding up it is only the official liquidator who is entitled to represent the company and in spite of the same they represented before the court and submitted to a dismissal of the said suit which followed without apprising the court about the fact of the plaintiff-company being wound up in the meantime.

2. I caused the minute of the order dated 12th August, 1977, to be produced before me and it appears that Mr. T.C. Dutt of Jalan & Company appeared and submitted before the court and; thereafter, the court dismissed the suit on the special list. It further appears that the requisition for the said order of dismissal was put by Jalan & Co., and the order was drawn up and completed and signed on the 28th September, 1977, and it was filed on 3rd October, 1977. It further appears that M/s. Jalan & Co. also addressed two letters dated 17th March, 1977, and 23rd March, 1977, to the plaintiff-company and its ex-director, Mr. B. K. Jalan, even after the winding-up order was passed. But at no point of time M/s. Jalan & Company was appearing in the winding-up proceedings against the company, though they must be aware of the winding-up order made on the 4th July, 1975, by this court in the company petition filed before this court and it is elementary that after the company is wound up it is only the official liquidator who becomes the custodian and all the assets and properties of the company come into the custody of the court u/s 456 of the Companies Act, 1956, read with Rule 233 of the Companies (Court) Rules, 1959. In law and in fact nobody else has the right to represent the company save and except the official liquidator. Therefore, the proceedings taken by Jalan & Company after the winding-up order was made on the 4th July, 1975, must be held to be a nullity and have no legal effect whatsoever as it contravenes all the provisions of the Companies Act and, therefore, the order of dismissal of the suit on the submission of Jalan & Co., on behalf of the plaintiff, by the order dated 12th August, 1977, is a nullity and has no effect whatsoever and, consequently, all proceedings of dismissal and filing of the said order as hereinbefore stated are

also a nullity and have no effect and are without any jurisdiction. The warrant in favour of Jalan & Co. stood discharged on the winding-up order being made and it is nobodys case that the official liquidator ever knew about the suit or issued any fresh warrant in favour of Jalan & Co., to represent the company in any proceedings whatsoever. On the other hand it appears that everything was suppressed both from the court and the official liquidator as to the fact of the winding up (and the suit) of the plaintiff-company and, therefore, all the proceedings and orders passed thereunder (in the suit) must be held to be a nullity and can have no legal effect whatsoever.

3. Mr. Jayanta Mitra, appearing with Mr. Ranjan Deb, for the defendant-company, submitted that no order can be made as the suit is dismissed and a vested right has accrued to the defendants on such dismissal. In my view, if an order is a nullity, no right can flow to anybody either to the plaintiff or to the defendant. The order seems to be obtained on complete suppression of material facts from the court, as, after the company went into liquidation without notice to the official liquidator, no suit can be dismissed under the special list or any other list and the court has no jurisdiction to dismiss the same without giving notice to the parties. The rule itself provides for serving such notice and it is admitted that no notice was served on the company which was wound up by the order dated 4th July, 1975, and the official liquidator was the-only person who can represent the company in liquidation and no notice was ever served on the official liquidator. That is an admitted position both in fact and in law. I have looked into the minutes of the order dated 12th August, 1977, and the suit was dismissed in the said list and it appears that M/s. Jalan & Co. appeared through Mr. T. C. Dutt who submitted before the court and, thereafter, the suit was dismissed. Therefore, no notice was served on the official liquidator, i. e., the plaintiff-company, at any point of time. Chapter 10, Rule 35 itself provides that the suit should be placed in the special list on notice to the parties or their attorneys. In this case no such notice was served on the official liquidator or his attorney as that could not have been done as there was no attorney of the official liquidator appointed in this suit and at no point of time before the official liquidator came to know about this suit before investigation or had any knowledge of the suit, far less the order of dismissal of the suit.

4. Therefore, the said order is a nullity as the court had no jurisdiction to dismiss the said suit and it appears that M/s. Jalan & Co. acted under a mistake or misapprehension as to the correct legal position and the jurisdiction of the court, in spite of dealing with the suit filed by the company, which has subsequently been wound up by an order.

5. In that view of the matter, the order being a nullity, it has no effect and the suit is still alive and it appears that in the suit everything is complete as directions were given for filing affidavit of documents after the filing of the written statement and the suit appears to be ripe for hearing. I direct the suit to appear in the list for hearing Friday week. The official liquidator to retain the

costs of this application out of the funds in his hands which are assessed at 20 G.Ms. I accept the apology tendered by Mr. P. C. Sen appearing with Mr. A. C. Law on behalf of Jalan & Co., who under a mistake or misapprehension appeared before the court even after the company was wound up and by oversight or mistake they failed to intimate the official liquidator or the court about the winding-up of the company and the termination of their warrant of attorney issued in their favour by the plaintiff-company before it was wound up.

6. Although it is an unfortunate position, but mistake is human, and faking the entire matter in its proper perspective, I cannot but hold that it was sheer negligence and oversight on the part of Jalan & Co., not to inform the court or the official liquidator about the said suit of the plaintiff-company ; in that event, the said order dated 12th August, 1977, which is a nullity, would not have come into existence.

7. The official liquidator is directed to take immediate steps in the matter and Jalan & Co. is also directed to make over all cause papers, documents and other relevant papers in respect of the said suit to the advocate on record of the official liquidator in this application, Mr. P. S. Bose, forthwith subject to their lien, if any, which will be decided subsequently, in proper proceedings.

8. Jalan & Company, the official liquidator and all parties to act on a signed copy of the minute.