
(1961) 01 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No's. 24 to 27 of 1960

Jaini Ali

APPELLANT

Vs

Narayana Pillai and Others

RESPONDENT

Date of Decision : 20-01-1961

Acts Referred:

Companies Act, 1956 — Section 391
Provincial Insolvency Act, 1920 — Section 13(1)(d), 23, 5

Citation : (1961) KLJ 430

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker in O.P. 24/60, S. Bhoothalinga Iyer in O.P. 26/60 and George Vadakkal in O. P. 27/60, for the Appellant; K.P. Pathrose, M.V. Abraham for 3rd Respondent in O.P. 24/60, T.V. George, Cleribal Joseph for 6th Respondent in O.P. 24/60, K.V. Kuriakose for Petitioner in O.P. 25/60, P.J. Varghese, C.S. Venkiteswara Iyer, D. Narayanan Potti, K.K. Abdurahiman, P.E.S. Kartha, P. Balagangadhara Menon, Public Prosecutor John, V.G. Sankaranarayana Pillai for Respondents in O. P. 25/60 and M.K. Abdulla for 4th Respondent in O.P. 27/60, for the Respondent

Judgement

P.T. Raman Nayar, J.—These petitions have been heard together on a common question of jurisdiction. All of them are by debtors-two, O. Ps. 24 and 26 of 1960, under the insolvency law seeking an order of adjudication and the remaining two, O. Ps. 25 and 27 of 1960, seeking an analogous relief u/s 15 of Kerala Act 31 of 1958. With regard to none of them would this Court ordinarily have jurisdiction, but it is said that it has-and exclusive jurisdiction at that-by virtue of section 45B of the Banking Companies Act, since, among the party creditors, are certain banking companies in liquidation. In fact, the two insolvency petitions which were originally presented to the courts having jurisdiction under the insolvency law, have been returned by those courts for presentation to this Court on the ground stated above. Section 45B of the Banking Companies Act runs as follows:

45B. The High Court shall, save as otherwise expressly provided in S. 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under S. 391 of the Companies Act, 1956, by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953.

The short question is whether these petitions can be regarded as claims made by or against the banking companies that are being wound up, or as involving any question which may relate to or arise in the course of their winding up.

2. Taking first the case of the insolvency petitions, although the word, "claim", is a word of very wide import, I do not think that it can be said that a debtor presenting an insolvency petition makes any claim against his creditors even though they be parties to the petition. He only petitions that his status as an insolvent be determined and declared and, although this might affect the realization of their debts by his creditors, he makes no claim whatsoever against them. It might be that, after the adjudication, claims arise by or against the estate, and if such claims, being disputed or for other reasons, require to be entertained and decided by a court, then doubtless Section 45B would operate to vest exclusive jurisdiction in this Court, if the claim is by or against a banking company in liquidation. It might also be that, even before adjudication, the debtor claims relief u/s 23 of the Provincial Insolvency Act (the law actually applicable in this area is the Kerala Insolvency Act, but I shall for convenience refer to the identical provisions of the Provincial Insolvency Act), or for interim protection (in the behalf that Section 5 of the Provincial Insolvency Act provides for this) and, if these reliefs are claimed against a banking company in liquidation, I think they would be claims coming within the scope of Section 45B of the Banking Companies Act. But, as I have said before, I do not think it can be said that a debtor's petition in insolvency by itself makes any claim against his creditors. It is true that u/s 13(1)(d) of the Provincial Insolvency Act, the debtor has to name all his creditors in his petition. Under sections 19 and 24, the creditors are entitled to notice of the hearing and have the right to appear and be heard, while u/s 75 they have a right of appeal. There can be little doubt therefore that they are parties to the petition even if not shown as such—they usually are and, in the present petitions, have been shown as counter-petitioners—but it does, not necessarily follow that there is any claim against them. It seems to me that the claim, if any, in a debtor's insolvency petition is a claim in rem.

3. The sole question involved in the insolvency petitions is whether the debtor should be adjudicated, and I find it difficult to understand how that question can

be described as a question "which may relate to or arise in the course of the winding up" of a creditor banking company. It seems to me fairly plain that it does not arise in the course of the winding up, and this much seems to have been recognised in *H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das*, wherein it was held that the combined effect of Sections 45A and 45B of the Banking Companies Act as it stood before amendment by Act 52 of 1953-these sections now stand combined in the shape of Section 45B with explicit mention made of claims by or against a banking company, and the slight difference in language, "arising out of" of Section 45 A and "arise in the course of" of Section 45B, reconciled-was to oust the jurisdiction of the ordinary courts in a case like the present and vest it exclusively in the High Court. And, with great respect, I am inclined to think that the proposition stated in *Jadunath Roy and Others Vs. Bank of Calcutta Ltd.*, , Special Bench) that all proceedings taken during the winding up of a banking company to which the Liquidator becomes a party (strictly speaking I should think, the company-the liquidator only represents the company) arise in the course of the winding up of the company, is too widely stated.

4. It is true that, as pointed out in *Associated Banking Corporation of India Ltd. and Others Vs. Nazaralli Kassambhai and Co. and Others*, and in the Orissa decision already referred to, the words, "may relate to" are of wider import than the words "arise in the course of". But, even so, I am unable to bring myself to say that the question whether a debtor should be adjudicated as an insolvent is a question which relates to the winding up of a creditor banking company. The Supreme Court has no doubt pointed out in *Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In Liquidation)*, and *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, that the language of Section 45B is very wide and comprehensive, but, putting the widest construction on the language of the section, it seems to me that, as observed in *Discount Bank of India Ltd. Vs. A.N. Misra*, , the relation must be something direct and intimate. Claims by or against a banking company in liquidation have an intimate and direct bearing on its winding up and on the functions of its liquidator, and it is well to remember that it was at a time when the statute did not expressly commit such claims to the exclusive jurisdiction of the High Court, although that was obviously within its intendment, that the wide range of the words, "relating to" had to be relied upon to give effect to the intention. It might be that the adjudication to the debtor affects in one way or other the realization of its dues by the company but that can scarcely make the question whether the debtor should be adjudication or not a question related to the winding up of the company. If that were so even proceedings between a third party and a debtor of a banking company in liquidation might have to come to this Court, for, on the failure or success of those proceedings might depend the realization of the debt due. As I have observed before, it is possible that, in the course of the insolvency proceedings questions are raised or claims made for decision by the court and that these come within the scope of Section 45B. But I am of the view that the question

whether a debtor should or should not be adjudicated on his own application - the position would be different if the company were the applicant-is not a question or claim coming within the scope of the section.

5. The only decision directly in point brought to my notice is the Orissa case already referred to, namely, *H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das*, . With great respect, I am, for the reasons already stated, unable to agree, and I might add that the correctness of that decision, a Single Judge decision, was doubted by a Single Judge of the Madras High Court in *In re Agricultural and Industrial Bank Ltd.*, (XXIX Company Cases 175). And, although I am not sure that the application considered in that latter case, namely, an application for partition of a property mortgaged to a banking company in liquidation, free of the mortgage so far as the share claimed by the applicants was concerned, cannot be regarded as a claim against the banking company, I am in respectful agreement with the reasons given therein for doubting the correctness of the former decision. In particular, I might observe that, leaving aside the wording of Section 45B for the moment, and going to its object as disclosed by the heading of the chapter in which it appears, "Special Provisions for Speedy Disposal of Winding up Proceedings", that object, far from being achieved would be defeated if such a wide interpretation is given to the section as to make it applicable to all proceedings having the remotest connection with the winding up so much so that the High Court has to entertain not merely claims (most of them normally within the jurisdiction of a Small Cause Court) by or against the company in liquidation, but also insolvency proceedings relating to the company's debtors and creditors and other litigations in which these persons may happen to be involved. That would make an octopus of the section with more octopuses in its train, dragging to this Court a volume of litigation sufficient to smother it.

6. Proceedings under Sections 15 to 18 of Kerala Act 31 of 1958 are akin to insolvency proceedings and, although there are important differences, I do not think that the petitions u/s 15 lie within the mischief of Section 45B of the Banking Companies Act. The scheme of the statute is that a person who is an agriculturist as defined therein can secure a full settlement of his debts by leaving his entire estate in the control of the court which thereupon makes over 1/4th of the assets not exceeding Rs. 4,000/- in value to the debtor free of the debts, and distributes the remainder of the assets among the creditors. The functions of the court are largely administrative, but adjudication might become necessary at two stages, the first to determine the status of the debtor as an agriculturist entitled to make the petition, and the second if any dispute arises with regard to claims by or against the debtor. If any such claim is by or against a banking company in liquidation, doubtless Section 45B would step in to prevent any court other than this Court from deciding that claim, but that can be no reason why the petition u/s 15 itself should be heard by this Court. As to the debtor's competency to bring the application, that is really a matter of status and, although it might be that, unlike an adjudication in insolvency, the decision is not one in rem and might have to be obtained against each creditor, I doubt if

it can be said that a prayer by a debtor that his assets should be distributed among his creditors in the manner contemplated by Sections 15 to 18 of the Act can properly be described as claims against them. Nor, for the reasons which I have already given, can it be said that merely because the creditors are parties to the petition (the form prescribed in the rules shows that all creditors have to be made parties) and, among the party creditors there happens to be a banking company in liquidation, the administration of the debtor's assets by the court in the manner contemplated by the statute raises a question related to or arising in the course of the winding up of the company. All the four petitions will be returned for presentation to the proper court.