
(1959) 07 GAU CK 0008
In the Gauhati High Court
Case No : M.A. (F) No. 19 of 1958

J.N. Bowri

APPELLANT

Vs

The Official Liquidator S.N.K. Bhattacharjee and Sons
(Private) Ltd. and Another

RESPONDENT

Date of Decision : 31-07-1959

Acts Referred:

Companies Act, 1956 — Section 202, 483

Citation : (1959) 07 GAU CK 0008

Hon'ble Judges : C.P. Sinha, C.J.;H. Deka, J

Bench : Division Bench

Advocate : S.K. Ghose, P. Chandhuri, N. Sharma and J.P. Bhattacharjee, for the Appellant; S.W. Lahiri, P.L. Shome, D.N. Medhi and N.W. Lahiri, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sinha, C.J.—This appeal has been filed by the Appellant against an order, dated 4-9-58, passed by Mr. Justice, Mehrotra, the Company Judge, in the course of a winding up proceeding of the company known as M/s. N.K. Bhattacharjee and Sons (Private) Limited. This winding up proceeding was started at the instance of a creditor. In pursuance of an order of this Court, dated 27-6-57, the official liquidator wanted to sell the immovable properties of the company at Shillong, and he was given the necessary directions by this Court on 6-12-57.

In pursuance of those directions, the matter was advertised in papers and two persons, namely, the Appellant J.N. Bowri and the Respondent, M/s. Hanuman Bux Inderchand, offered to purchase the property. The Appellant had offered at first a sum of Rs. 80,000 which he later increased to Rs. 94,251. The other side, M/s. Hanuman Bux Inderchand, gave an offer of Rs. 91,000, which they later increased to Rs. 1,03,001. This later offer of the Respondent M/s. Hanuman Bux Inderchand was accepted by the official liquidator after approval by the Court.

This approval was conveyed to the Respondent by a letter of the official

liquidator, dated 10th June, 1958, and, by a letter, dated the 13th June, 1958, the Respondent acknowledged acceptance of his offer and enclosed a cheque for Rs. 10,000 towards part-payment of the consideration. An application was filed by the Appellant on 12-6-58, for reconsideration of the matter and for an order that the property may be sold to the Appellant for a sum of Rs. 1,05,000. This application was heard and orders were passed on 4-9-58, and the Court held that it saw no reason to modify its Order of 6th June, 1958, and, as I have said, it is against this order that the appeal has been filed.

2-3. The learned Counsel appearing on behalf of the Respondents has taken a preliminary objection to the maintainability of the appeal on three grounds:

(i) that no appeal lies for the reason that the Appellant was not a party to the proceeding, namely, the proceeding for winding up;

(ii) that the order is not at all appealable; and

(iii) that no appeal having been preferred against the order, dated 6-6-58, even if an appeal lay and if the present appeal be taken to have been an appeal against the original order, dated 6-6-58, it has long been time-barred.

4. The relevant provision of the Indian Companies Act is Section 483 which provides for appeal in the following terms:

Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court, shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

The same provision was contained in the old Section 202 and it was considered in several cases. In the matter of East India Cotton Mills Ltd. 52 Cal WN 534 : AIR 1949 Cal 69, Mr. Justice S.R. Das, (as he then was) had considered the matter at great length, and after referring to a large number of decisions, he held that u/s 202, no appeal lies by a person who is not a party to the proceeding. The present case is much stronger than the case which was before his Lordship.

In that case, the Appellants were two of the creditors and they had been served with due notice, but they had not appeared and it was held that because they had not appeared in the proceeding for winding up, they were not parties to the proceeding, and, therefore, they were not entitled to file an appeal. To the like effect is the case of Motilal Kanji and Co. Vs. Natvarlal M. Jhaveri,

In that case also, it was held that a person who was not a party to the winding up proceeding but who was merely the propounder of certain scheme, was not entitled to appeal. On the other hand, Mr. Ghose the learned Counsel on behalf of the Appellant, has referred to a case reported as Bachharaj Factories Ltd. Vs. Hirjee Mills Ltd., but with great respect to the learned Counsel, it must be said that in that case the appeal was filed by a person who was very much a party to

the proceeding inasmuch as it was at his instance that the winding up proceeding had been started.

In my judgment, therefore, that case is of little help to us so far as the present case is concerned. In this view of the matter, it must be held that the appeal is incompetent on the ground that the Appellant was not a party to the proceeding. Apart, therefore, from other points taken by the learned Advocate General, it must be held that the Appellant had no right to come up in appeal.

5. In view of our decision on this first question, the other questions need not be tackled. The appeal, therefore, fails and it must be dismissed with costs.

H. Deka, J.

6. I agree.