(1930) 11 CAL CK 0016

In the Calcutta High Court

Jyoti Prasad Singh APPELLANT

Vs

Patmohana Collieries Ltd. RESPONDENT

Date of Decision : 24-11-1930

Acts Referred:

Companies Act, 1956 — Section 207

Citation : AIR 1931 Cal 569

Judgement

1. This appeal is by the decree-holder against an order of the Additional Subordinate Judge of Asansol, dated 15th December 1928, staying the execution of a decree. The Patmohana Collieries Ltd. went into voluntary liquidation and appointed Mr. Charles Ernest Walker, Mr. Benjamin Stanley, and Edwin John Carter liquidators in September 1927. The appellant had obtained a decree against the company in 1924, and in 1928, on his application, certain immovable properties belonging to the company, were attached. On 17th November 1928, the liquidators filed an application before the Additional Subordinate Judge of Asansol for stay of execution of the decree and for vacating the order of attachment and the sale proclamation that had been published in connexion thereof. The learned Subordinate Judge, by his order dated 15th December 1928, dismissed the execution proceedings. The decree-holder appeals to this Court and it is contended on his behalf that the order of the Court below is without jurisdiction. The learned Subordinate Judge is of opinion that the assets of the company should be applied in satisfaction of its liabilities pari passu u/s 207, Companies Act; so he had no jurisdiction to continue the execution, and the decree-holder was not entitled to execute the decree against the assets of the company and to realize the full amount to the detriment of the other creditors. It is argued that the learned Subordinate Judge had no jurisdiction to pass an order like the one with which we are now dealing. We think that this contention is correct.

2. Under the Companies Act the winding up of a company may be attested in three ways: (1) by the Court, (2) by voluntary liquidation, (3) subject to the supervision of the Court. The provisions relating to these three modes of

liquidation are given in the Act under separate heads. In the case of winding-up by the Court Section 171 provides that when a winding-up order has been made, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

3. u/s 222 in the case of winding-up under the supervision of the Court, it is provided that when any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company after the commencement of the winding up shall be void. No such corresponding provision is to be found under the sub-head, "voluntary winding-up." Section 207, Clause (1), under that head, lays down that the assets of the company shall be applied in satisfaction of its liabilities pari passu. The learned Subordinate Judge thinks that because of this statutory provision that the assets of the company in voluntary liquidation must be distributed proportionately, he has no power to continue the execution in the ordinary way. The question is not exactly what " the Court" can do when the company has gone into voluntary liquidation, but the question is as to whether the learned Subordinate Judge has the power to make the order he has made. The Court" has been defined in Section 2 (3) of the Act as meaning the Court having jurisdiction under the Act. So that all orders to be passed under the Act must be passed by the Court which has jurisdiction under the Act and that is the High Court; and it is clear that the Court of the Subordinate Judge, Asansol, executing the decree is not a Court which had jurisdiction under the Companies Act, 1913. The provision that the assets of the company in voluntary liquidation shall be applied in satisfaction of its liabilities pari passu is intended for the guidance of the private liquidator. The legislature did not like to leave him with an unlimited power so as to enable him to give unfair or fraudulent preference to a particular creditor. No such procedure is to be found in the case of liquidation by the Court or liquidation under the supervision of the Court, where "the Court" is the proper authority to order distribution of the assets in such proportion as it thinks proper. If the liquidator is confronted with a decree which has to be satisfied out of the assets of the company before distribution of the assets among the creditors, the proper procedure is to approach the Court, meaning a Court having jurisdiction under the Act, u/s 215 for proper direction.

4. This point came up for consideration in Surajbhan v. Boot & Equipment Factory, Agra [1916] 38 All. 407 where under similar circumstances the execution was being proceeded with in the Court of the Subordinate Judge. The company having gone into private liquidation the liquidators applied to have the execution stayed by the Subordinate Judge who refused to stay execution. The District Judge on appeal ordered stay of execution. On second appeal to the High Court two of the learned Judges of the Allahabad High Court, Piggott and Walsh, JJ., who, it is presumed, were familiar with the procedure relating to company law held that

the District Judge had no jurisdiction to stay-execution and that Section 207, Companies Act is no bar by itself to the progress of execution unless and until an order has been obtained from a Court having jurisdiction under the Companies Act, either for winding up or for stay of proceedings.

5. A similar view was expressed in Oudh in the National Bank of Upper India Limited v. Sheo Mangal Bajpai AIR 1924 Oudh 406 where it was held by the Judicial Commissioner that a voluntary liquidation cannot have the effect ipso facto of putting an end to an attachment already in force under a decree passed prior to liquidation. The law in England is not different. See Halsbury, Vol. 5, para. 1006:

The passing of resolutions for voluntary winding up does not like an order for winding up or under supervision of the Court, stay any proceedings or invalidate executions or distresses or prevent actions or other proceedings being brought or continued against the company without the leave of the Court. On application however the Court has jurisdiction to stay any action, proceeding, attachment, distress or execution against the company or its estate or effects upon terms as it thinks fit.

6. Reported decisions upon this point are few because the wording of the section is so clear that little doubt can exist with regard to the power of the executing Court; but a contrary view was taken in Bank of Upper India Limited v. Shiv Ram AIR 1930 Lah. 299 decided by a single Judge of the Lahore High Court in which it appears that the previous decisions were not cited.

7. Mr. Mitter for the respondent has argued that there is no apparent distinction between the law relating to winding up by the Court, or under the supervision of the Court and voluntary liquidation. This cannot be correct because in. a case of voluntary liquidation there is no provision in the Act similar to Sections 171 and 232 relating to liquidation by the Court or by the supervision of the Court. In Currie v. Consolidated Kent Collieries Corporation Limited [1906] 1 K.B. 134 an action was brought against a company in voluntary liquidation for money alleged to be payable to the plaintiff in respect of services rendered by him to the company. The liquidators denied any liability and applied to the Court for stay of proceedings in the action. The application was refused on the ground that the liability of the company is a question which was prima facie properly determinable in the ordinary way by an action. In delivering the judgment of the Court Collins, M. E. observed:

It appears to me that the counsel for the liquidator sought in argument to put the case of a claim made against the company, where the company is in voluntary liquidation, on precisely the same footing as that of one made where the company is being compulsorily wound up which is what the legislature appears to have deliberately abstained from doing.

8. Mr. Mitter further argues that an executing Court has concurrent jurisdiction with the Court under the Companies Act. There is no authority for this

proposition and it must be rejected. He then refers to the English Act and argues that under the English law the executing Court is the proper Court to pass orders u/s 186, Companies Act 1908, corresponding to Section 207, Companies Act. This contention also is untenable. Section 140 of the English Act dealing with a case arising out of proceedings relating to winding-up of a company by the Court, says:

Where any action or proceeding against a company is pending in the High Court the company or any creditor may apply to that Court for the stay of proceedings in that Court; but where any other action or proceeding is pending against a company in any other Court it must apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding.

9. There is no corresponding section in the Indian Act, but the rule must be the same here.

10. It is lastly argued that u/s 207, Clause (4), the liquidator in private liquidation may exercise without the sanction of the Court all powers given by this Act to an official liquidator in a winding up by the Court. This matter does not touch the question with which we are concerned now. The question before us is whether the learned Subordinate Judge has the power to stay the execution proceedings. We do not mean to suggest that no Court has the power but we are decidedly of opinion that the learned Additional Subordinate Judge of Asansol has no power to stay the proceedings in execution of the decree obtained by the decree-holder appellant.

11. The result is that this appeal is allowed and the order of the Court below is set aside. The appellant is entitled to his costs which we assess at five gold mohurs.

