
(1965) 08 CAL CK 0025
In the Calcutta High Court
Case No : Civil Revn. No. 16 of 1962

Kalipada Sinha

APPELLANT

Vs

Mahalaxmi Bank Ltd.

RESPONDENT

Date of Decision : 25-08-1965

Acts Referred:

Banking Companies Act, 1949 — Section 45B, 45D(6), 49D(6)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, Order 21 Rule 17, 151, 153
Companies Act, 1956 — Section 21, 22, 23, 23(3), 391

Citation : AIR 1966 Cal 585

Hon'ble Judges : S.A. Masud, J; D.N. Sinha, J

Bench : Division Bench

Advocate : Sudhangsu Bhusan Sen, Pravas Kumar Sen and Gurudas Ghose, for the Appellant; Salil Kumar Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an application u/s 115 of the CPC combined with Article 227 of the Constitution of India.

2. The facts are shortly as follows: There was a Bank in Calcutta called the Mahalaxmi Bank Ltd, which had its head office at 135 Canning Street, Calcutta. Sometime before November, 1948 the said Bank suspended its business and went into moratorium under the provisions of Section 277N of the Indian Companies Act, 1956, read with Section 153 of the Indian Companies Act, 1913. On the 10th March, 1949 the Banking Companies Act, 1949, (Act X of 1949) (hereinafter referred to as the "said Act") came into force. Originally, the said Act did not contain any provisions as to the settlement of the list of debtors as is done in winding up proceedings. On or about the 30th December, 1953 the Banking Companies Amendment Act 1953 (Act LII of 1953) came into force and provisions as to settlement of the list of debtors were introduced in the said Act. Presently, I shall deal with the relevant provisions. On the 7th Tuna, 1954 the said Bank filed an application in this High Court u/s 45M(b) read with Section

45D(6) of the said Act for settlement of the list of debtors. On the 6th of August, 1956 an order was made in favour of the Bank settling the list of debtors under the provisions above-mentioned, and Messrs. Orient Plastics of which the petitioner Sri Kalipada Sinha is the proprietor was included in the list and was shown as a debtor for the sum of Rs. 21,804 together with interest at 6 per cent. per annum. There was an appeal against that order but subsequently the order has been upheld. The Bank thereafter transmitted the certificate, which had the force of a decree u/s 45D(6) of the said Act, to the Alipore Court for execution. The judgment-debtor filed an objection u/s 47 of the CPC and the execution proceeding is pending. In the meanwhile, what had happened was that the Bank had made an application to the Central Government u/s 21 of the Indian Companies Act 1956 for change of its name from "Mahalaxmi Bank Ltd." to Mahalaxmi Loan and Trading Co. Ltd." On or about the 25th November, 1960 the Bank received approval of the Central Government for this change and on the 22nd December, 1960 the Registrar of Joint Stock Companies, Calcutta, issued a certificate of incorporation in the new name u/s 23 of the Companies Act 1956. Thereupon, on the 3rd March, 1961 the Bank made an application before the Executing Court at Alipore for amendment of the petition for execution by altering the Bank's name to the new name in which it had been incorporated as above mentioned. The judgment-debtor filed an objection and on the 7th September, 1961 the learned Subordinate Judge, Alipore overruled the objection of the judgment-debtor and granted the amendment by substituting the altered name in the place and stead of the old name of the Bank. In December, 1961 this application was made for a revision of that order.

3. In the Court below, the point taken was that under the CPC no such amendment could be allowed. Here before us, a new point was taken for the first time, viz., that under the said Act it was the High Court which had the exclusive jurisdiction to execute the so-called decree and therefore the Alipore Court had no jurisdiction, either to execute the decree or to allow any amendment of the execution petition. This new point was allowed to be taken, on terms and has now been argued before us.

4. It will be convenient to dispose of the point which was already taken in the Court below, viz., that no such amendment could be made by the Executing Court. What has been argued is that the Executing Court can only grant the amendment that is provided under Order 21, Rule 16 or Rule 17. Obviously, the amendment asked for does not come within those provisions. In my opinion, the whole approach is defective. The argument proceeds on the tooting that an application for execution was pending and in course thereof there had been a transfer of the interest of the decree-holder to another new body altogether and that it was a case of substitution in execution proceedings. This is belied by the provisions of Sections 21 and 23 of the Companies Act 1956. Section 21 enables a company to change its name by a given method, viz., by a special resolution and with the approval of the Central Government signified in writing. It does not provide for altering the entity but only the name. This is also, made quite clear

by the provisions of Section 23. Subsection (1) or Section 23 states that where a company changes its name in pursuance of Section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein and the change of name shall be complete and effective only on the issue of such a certificate. It would be observed that the emphasis is on the expression, "change of name". Sub-section (3) lays down that the change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name. This makes it abundantly clear that as the alteration is only in the name and not in the identity and that the statute itself grants the right to continue an existing proceeding by the old company in its new name. That being so, what is the position when an execution proceeding is pending and there has been an alteration of the name? The decree-holder has changed its name according to law and under the provisions of law has a right to continue the proceeding in the new name. Therefore, all that it has to do is to inform the Executing Court of the fact of its alteration in name and in my opinion the Executing Court is bound to record the alteration. To such an operation, the complications of an application for amendment should not be applied. But in any event, even if it is considered to be an amendment like any other amendment, there is ample power in the Executing Court to grant such an amendment.

5. Mr. Sen on behalf of the applicant has taken us through various provisions of the CPC and has argued that execution proceedings are separate proceedings from a suit and neither Order 21, Rule 16 nor Section 151 or 153 of the CPC applies. The matter is set at rest by a Bench decision of this Court in, *Rohini Kumar Roy v. Krishna Prasad Roy* 39 C WN 1144. In that case, the question arose about the power of the court to amend an execution application. The very same objections were made, viz., that no such power existed in the Executing Court since the amendment could only be done under Order 21, Rule 16 or 17 and under no other provisions of law. The objections were overruled and it was held that the Court had inherent power u/s 151 and Section 153 of the CPC to allow amendment of the petition for execution of the decree in the interest of justice. In our opinion, it would be a strange proposition that Section 23 of the Companies Act, 1956 should enable a company in its new name to continue any legal proceeding but that the executing court should be without any power to allow it to do so, in the case of execution proceedings which were pending. In our opinion, this point has no substance and has been rightly rejected.

6. I now come to the second point which, as I said, was broached before us for the first time. The point briefly is that, under the provisions of the said Act, it is the High Court which has exclusive jurisdiction to execute a decree which has been passed under the provisions of Section 45D(6) of the said Act. The relevant provisions to be considered are as follows: Section 45M provides for the

settlement of the list of debtors in the case of a company working under a scheme. The provisions of Section 45M are important and are set out below:

"Where any compromise or arrangement sanctioned in respect of a banking company u/s 391 of the Companies Act, 1956 is being worked at the commencement of the Banking Companies (Amendment) Act, 1953, the High Court may, if it so thinks fit, on the application of such banking company.

(a) excuse any delay in carrying out "any of the provisions of the compromise or arrangement; or

(b) allow the banking company to settle the list of its debtors in accordance with the provisions of Section 45D and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were in order for the winding up of the banking company."

It is important for us to consider Clause (b). This provision allows a banking company to settle the list of its debtors in accordance with the provisions of Section 45D and in such a case, it is enacted that the provisions of the said section shall, as far as may be, apply to the banking company as they apply to banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company. The point may be explained as follows:

7. Ordinarily, a banking company which is working under a scheme could not avoid the filing of suits or legal actions against its debtors and have the advantage of the summary proceedings, viz., settlement of the list of debtors by Court, as is provided for in winding up proceedings. The Banking Companies Act also originally did not contain these provisions. By the amending Act of 1953, however, this section was introduced and a banking company was given the advantage of settling its list of debtors just as in winding up proceedings. But this advantage is a limited one. In other words, it is only for the purposes of Section 45D that we should imagine as if the banking company was being wound up by Court. Let us now turn to Section 45D. Sub-section (1) provides for the settlement of a list of debtors in winding up proceedings. Sub-sections (2), (3) and (4) lay down the procedure by which the settlement shall be effected and sub-section (5) lays down the effect of settlement of the list. Sub-section (6) is important and is set out below:

"In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution."

It would be observed that the certificate given by the Court where a list of debtors was settled, is to be deemed to be a certified copy of the decree for all purposes including execution. In other words, it will be deemed to be a decree for the purposes of execution. The question is as to whether the subsequent proceedings, viz., execution proceedings are brought within the exclusive jurisdiction of the High Court in such a case.

Where there is an ordinary winding up proceeding, in which there is a settlement of the list of debtors, there are authorities to show that even in execution proceedings the High Court has exclusive jurisdiction. So far as the said Act is concerned, the question of exclusive jurisdiction is governed by Section 45B. It runs as follows:

"The High Court shall, save as otherwise expressly provided in Section 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 "Section 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."

For the purpose of this application it is necessary to interpret this section. It appears to me that exclusive jurisdiction is conferred upon the High Court in the following cases;

1. 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).
2. Any application made u/s 391 of the Companies Act, 1956. by or in respect of a banking company. Even where it 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.
3. 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 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.
8. It would be observed that exclusive jurisdiction, according to the above analysis, relates to an application u/s 391 of the Companies Act, 1956, and not to questions and claims arising in connection therewith as has been expressly mentioned in connection with winding up applications. Mr. Sen argues that we should introduce a "comma" after the word "arise" in the 10th line. The real

object of the argument is to make the provisions relating to winding up and an application u/s 391 of the Companies Act, identical. In other words. Mr. Sen's argument is that u/s 45B, all claims made by or against a banking company and all questions whatsoever which arise in respect thereof even in respect of an application u/s 391 of the Companies Act, 1956, would come within the exclusive jurisdiction of the High Court as conferred by Section 45B. We are unable to accept this argument. In Section 45B, there is a distinction made between winding up proceedings simpliciter and an application made u/s 391 of the Companies Act. It is only in respect of the former that all claims, questions etc. are brought under the exclusive jurisdiction of the High Court. But such is not the case where an application u/s 391 of the Companies Act is concerned. Thus it appears that all that Section 45M contemplates is that in the case of a company working under a scheme, the list of debtors can be summarily settled and when it is so settled, the certificate of the Court would operate as a decree which could be executed in the normal way. There is no provision that the execution of such a decree will also be made by the High Court or come within the exclusive jurisdiction of this Court. In fact, even though the decree was transferred for execution to the Alipore Court, the judgment-debtor did not take this point to the Court below and himself made as objection u/s 47. This point is a belated one and is an attempt to defeat the execution proceedings which are pending in the Alipore Court. For the reasons aforesaid, we think that there is no substance in this point and that the Alipore Court has ample jurisdiction to deal with the execution proceedings.

9. The result is that no ground has been shown in this application for our interference and the application should be dismissed and the Rule discharged.

10. There will be no order as to costs.

Masud, J.

11. I agree.

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