

(1906) 08 MAD CK 0015
In the Madras High Court

Kesavaloo Naidu

APPELLANT

Vs

Murugappa Mudali and Another

RESPONDENT

Date of Decision : 28-08-1906

Acts Referred:

Companies Act, 1956 — Section 124, 189

Citation : (1907) ILR (Mad) 22 : (1906) 16 MLJ 537

Judgement

1. This is an appeal from an order of the District Judge rejecting a petition presented under Section 189 of the Indian Companies Act by a creditor

of a company now in voluntary liquidation praying that the winding up may be continued under the supervision of the Court. A preliminary

objection has been taken that u/s 169 appeals only lie from* orders or decisions made or given in the matter of the winding up of a Company by

the Court, and that an order refusing to make a supervision order u/s 191 is not an order made in the matter of the winding up of the, Company by

the Court. We are, however, of opinion that this construction of the section is erroneous, and that an appeal is given from any order or decision

made by the Court in the matter of the winding up of a Company whether the winding up be compulsory, voluntary or under supervision. The

language of the first part of Section 169 is taken from Section 124 of the Companies Act of 1862, substituting the "words ""by the Court,"" for ""by

any Court having jurisdiction under this Act."" The right of appeal conferred by Section 124 clearly extends to all orders or decisions in the matter

of the winding up of a Company and the substitution of the more compendious words ""by the Court"" was not in our opinion intended to cut down

the right of appeal to cases in which a company is being wound up compulsorily by the Court. We may further observe that the scope of the other

sections in this part of the Act beginning with Section 166 is general, and that there does not seem to be any reason why the legislature should have denied to restrict appeals in the manner contended for.

2. Coming now to the merits, it is necessary to recapitulate briefly the exceedingly irregular proceedings in the voluntary, winding up which have led to this appeal. The present petitioner was one of the two liquidators originally appointed in 1900 and acted for some years in the winding up with his colleague. They then quarrelled and eventually in 1904 referred the matter in dispute between them to two arbitrators. The terms of the reference are disputed and it is unnecessary to determine them. The arbitrators then took on themselves to make final arrangements for the winding up of the company and purported to remove the old liquidators and appoint the present counter-petitioners as liquidators and their proceedings are said to have been approved first at a meeting of the Directors in June 1904 and then by, a general meeting of the company in August 1st, 1904. In our opinion all these proceedings of the arbitrators, the directors and the company were ultra vires and illegal. The original liquidators were appointed by the company as required by Section 177(b) for the "purpose of winding up the affairs of the company and distributing its assets and were bound Section 177(2) to pay the debts of the company and to adjust the rights of the contributors among themselves. These statutory duties they could not delegate to arbitrators or any one else. Once, appointed they could not be removed by the company but only by the Court u/s 185 on due cause shown. In the discharge of their duties they were not subject to the control of the company except in so far as the sanction of an extraordinary resolution of the company is required in the case of arrangements with, the creditors or debtors of the company made by the liquidators under the supervision of the Court in a voluntary winding up under Sections 201 and 202 as to which there is no question here. Under these circumstances the proceedings of the arbitrators, directors and the Company were ultra vires and illegal, and the Registrar of Joint Stock Companies was well warranted in refusing to recognise their proceedings or the new liquidators appointed by them. The new liquidators thereupon presented a petition to the Court dated the 19th September 1904 praying that the winding up might be completed under the supervision of the

Court and that they might be appointed or confirmed as liquidators. The present petitioner presented a counter petition dated the 2nd December

1904 questioning the validity of all that had been done since the appointment of the arbitrators including the appointment of the new liquidators, and

the Court, after convening a meeting to ascertain the wishes of the shareholders and creditors refused to make a supervision order, but confirmed

the new liquidators. The petitioner did not appeal from this order, and he does not in his petition question the validity of the appointment of the new

liquidators. We therefore think that it must be taken to have been properly made by the Court u/s 185. Assuming, however, that the new

liquidators, the respondents here, were validly appointed, the petitioner contends that their subsequent action has, been prejudicial to his rights as a

creditor and has been such as call for the passing of, a supervision order. On their appointment by the Court the new liquidators were bound to

take up the winding up at the point where the old liquidators had left off ignoring all that the arbitrators had done ultra vires. It appears, however,

from the counter petition filed by the new liquidators in the present case that they entirely misconceived their duties and instead of proceeding to

deal themselves with the questions arising in the winding up they called a meeting of the company to consider what further steps should be taken in

the matter of winding up. The general meeting, they state, was dead against re-opening the arrangements made by the directors and confirmed by a

general meeting of the company, referring apparently to the meetings held in June and August 1904, and they are, therefore, unable to yield to the

selfish request of the petitioner that his case should be re-opened.

3. The proceedings of the arbitrators, directors and the general meeting in 1904, were, as already pointed out, illegal and ultra-vires and cannot be

relied on by the present liquidators as a reason for refusing to deal with the present petitioner's claim as a creditor on its legal merits and the

District Judge was wrong in refusing the present petition for a supervision order on the ground that the proceedings of the arbitrators had been

approved by a general meeting, as the general meeting had no legal competency in the matter without expressing any opinion as to the petitioner's

claim. We think that the refusal of the liquidators to consider it and deal with it on the merits coupled with the great irregularities and disregard of

statutory provisions which have characterized this voluntary winding up made it desirable that a supervision order should be made and we reverse

the order of the lower Court and direct that the winding up of the company shall be continued under the supervision of the Court. We accordingly

allow the appeal with costs but as the new liquidators in the action which they took were guided by the wishes of the company we direct that the

appellant's and respondent's costs in both courts be paid out of the company's funds.