

(1937) 12 CAL CK 0018
In the Calcutta High Court

Krishna Nath Sen, Secy. and Treasurer, Dinajpur Arya
"Pustakagar" Library

APPELLANT

Vs

Dinajpur Loan Office Ltd.

RESPONDENT

Date of Decision : 09-12-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Companies Act, 1956 — Section 153

Citation : AIR 1938 Cal 337

Hon'ble Judges : Derbyshire, C.J.; B.K. Mukherjea, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—This is an appeal from an order of the District Judge of Dinajpur dated 31st January 1936, wherein he upheld on appeal a decision of a Munsif to the effect that the decree-holder, the present appellant, was debarred from proceeding with execution against the present respondent, the Dinajpur Loan Office Limited. The learned Munsif upheld an objection raised u/s 47, Civil P.C., by the judgment-debtor, the Dinajpur Loan Office, which objection was that the decree could not be executed against them inasmuch as they and the decree-holder were bound by the terms of a scheme of arrangement or compromise sanctioned by the Court u/s 153, Companies Act. The appellant was a depositor of money with the Dinajpur Loan Office and the latter had got into financial difficulties. On 21st July 1933, a notice was served on the appellant by the company in respect of a meeting which was proposed to be held u/s 153, with a view to some arrangement or compromise being entered into. On 7th August 1933, the appellant obtained a decree against the respondents for the amount of his deposit.

2. We are told that on 20th August 1933, there was a joint meeting of depositors and shareholders under the orders of the High Court of Calcutta. On 23rd August, the respondents paid the appellant Rs. 50 in part satisfaction of the decree. On 29th August 1933, a scheme was filed pursuant to the provisions of the Companies Act. On 16th September a further sum of Rs. 50 in further part

satisfaction of the decree was paid by the respondents to the appellant. On 19th March 1934, a scheme to which I will refer in one moment was sanctioned by the High Court. On 16th September 1935, the appellant applied to the Munsif to execute the decree for the balance outstanding against the respondents and, as I have stated above, the Munsif refused the; application on the ground that the appellant and the respondents were bound by the arrangement or compromise which had been sanctioned by the Court. The appellant alleges that he is not bound by the arrangement because he, although originally a depositor, had before the scheme was agreed to or sanctioned, obtained a decree against the respondents and so passed from the class of depositor into the class of decree-holder; that he was never invited or summoned to a meeting of that class of depositors who had become decree-holders, but was merely invited or summoned to a meeting of the depositors; that by reason of a number of decisions which have been given on Section 153, he ought to have been summoned to a meeting of decree-holders: and not to a meeting of depositors; that the case of such decree-holders should have been considered separately, as it never was, and therefore that the order of the High Court made u/s 153 does not bind him as a decree-holder and he is at liberty to execute his decree notwithstanding the scheme of arrangement or compromise.

3. A great many cases have been cited to us with regard to the appellant's contentions. However interesting those cases are, in my view, this appeal is a comparatively short; matter. The relevant words of the order of this Court made on 19th March 1934 are; as follows:

It is ordered that this Court doth hereby sanction the scheme of arrangement as modified by the depositors at their meeting held on the 27th day of October last and as set forth in the annexure B to the said petition a copy whereof is hereunder written and doth hereby declare the same to be binding on the depositors of the Company having in deposit. Rupees ten or over and on the said Company.

4. In the schedule annexed to and part of the order it is stated:

1. That the depositors shall not be entitled to. demand payment of their dues within a period of seven years and shall be entitled to be paid only in terms of this scheme.

2. For the purpose of this scheme each depositor shall be deemed to be a creditor for the amount, shown to his credit in the books of the company as on 31st October 1933 irrespective of whether he or she has instituted or does institute any suit or has obtained or does obtain any decree in respect of his or her deposit including costs, if any, awarded to or to be awarded in the decree.

5. The High Court had undoubtedly jurisdiction to make that order. The order has never been set aside or modified. The appellant has never attempted to have it either set aside or modified in his own interest or in any other way. It seems to me clear that the appellant comes within the order. That order is binding on him

and upon any person who seeks to execute his (the appellant's) decree and it is an order which Courts of execution have to obey. A very similar case to this is that in Mahiganj Loan Office Ltd. Vs. Behari Lal Chaki, decided in December 1936 by a Division Bench of this Court consisting of Nasim Ali and R. C. Mitter JJ. That Court came to a conclusion similar to that I have come to and I should like to read a passage from that judgment. It relates to similar proceedings u/s 153 of the Act. At page 409, the judgment proceeds:

The substance of the second ground is that the Court would not have sanctioned the scheme so far as it related to depositor who had already filed suits and obtained decrees, if the Court had applied its mind to the fact that it had not ordered a separate meeting of this class of depositors to be held, and that the interest of this class was opposed to that of the other depositors who had not filed any suits or obtained decrees. There is nothing to show that the Court, while sanctioning the scheme, did not take into consideration these facts. If after taking into consideration these facts, this Court gave a wrong decision or made a wrong order or if the Court did not at all apply its mind to these facts, the decision or order would not be without jurisdiction and void. The objection to such a decision or order does not touch the question of the existence of the jurisdiction but relates only to the illegal or irregular exercise of the jurisdiction. Such a decision or order cannot be collaterally attacked and the proper remedy of the party who considers himself to be aggrieved by it would be to have it rectified according to law in an appropriate proceeding. So long as the order stands, it continues to be binding upon the party whom it purports to bind. We are therefore of opinion that the scheme which this Court has sanctioned, as it now stands, is binding on the decree-holder respondent.

6. For these reasons, I am of the opinion that this appeal must be dismissed with costs, the hearing-fee being assessed at three gold mohurs.

B.K. Mukherjea, J.

7. I agree with my Lord the Chief Justice in holding that this appeal should be dismissed. The only short point involved in this appeal is as to whether the appellant is still capable of executing his decree by reason of a scheme sanctioned by this Court u/s 153, Companies Act. The material facts are not in controversy. The respondent company being in financial difficulties embarked upon a scheme of arrangement and compromise with the depositors u/s 153, Companies Act. Notice was issued to the depositors on 15th July 1933 with a view to hold the preliminary meeting where these proposals for the scheme could be discussed and it is not disputed that a copy of this notice was served upon the appellant on 21st July 1933. On 23rd July 1933 a meeting was held, but no final decision was arrived at and the appellant who had already filed a suit against the company for recovery of his dues obtained a decree on 7th August 1933. On 20th August 1933, there was a joint meeting of the depositors and share-holders when a scheme was formulated and this was filed in this Court on 29th August 1933. The scheme was approved of by a majority at the meeting held in

pursuance of the order made by this Court, with certain modifications, and the scheme thus modified was finally sanctioned by this Court on 19th March 1934. Under the scheme, as it was sanctioned, no creditor could demand payment within a period of seven years from the date of the scheme and the depositor was held to be a creditor for purposes of the scheme irrespective of the fact as to whether or not a suit was already instituted by him against the company or a decree obtained.

8. The contention of the appellant decree-holder, in substance, was, that he was not a depositor at the time when the scheme was put forward or sanctioned, but had become a decree-holder, and there was no arrangement with the class of creditors to which he belonged, he was not hit by the scheme at all. The Courts below had negated this contention on the ground that the depositors who obtained decrees against the company did not form a separate class from the others who had not obtained decrees and the scheme adopted by the majority of the creditors of the company was binding upon the appellant. Reliance was placed for this view upon two decisions of this Court, viz. *Barisal Loan Office, Ltd. Vs. Sasthi Charan Bhattacharya and Another*, and *Serajgunj Loan Office, Ltd. Vs. Nil Kanta Lahiri*, .

9. I must say at the outset that the view taken by the Courts below, namely that the decree-holders do not form a separate class of creditors, is not correct. In *Barisal Loan Office, Ltd. Vs. Sasthi Charan Bhattacharya and Another*, , to which reference has been made by the lower Appellate Court Guha J. seems to have found, on facts, that the composition was applicable to all the creditors including those who had already obtained decrees. In the other case which was decided by my learned brother, E.O. Mitter J., it is expressly pointed out that as in Section 153 proceeding the sanction of the Court is a safeguard of the minority who do not agree, it is the duty of the Court when it is called upon to sanction a scheme to see not only that the scheme is reasonable, but that one class of creditors do not feast upon others and for this purpose it is necessary that separate meetings should be held by separate classes of creditors. Mitter J. held on the facts of that case that unsecured creditors who had already obtained decrees were of the same class as those who had not obtained decrees and their rights were not so very dissimilar as to make it impossible for them to consult together for purposes of securing their common benefit.

10. Here again the facts show that the company intended that the scheme should be binding on all the creditors including the decree-holders and the only question was whether amongst the unsecured creditors a distinction could be made between those who had obtained decrees and those who had not. On the other hand in the case in *In Re: Dewangunj Bank and Industry Ltd.*, , it was held by Buckland Ag. C. J. that the depositor who obtained a decree against a banking company before any scheme was embarked upon by the latter, ceased to be a depositor and became a decree-holder. Even if the depositors in their meeting included the decree-holders within the scope of its definition by extending the

meaning of the latter, it was not binding on the decree-holders even though they received notice of the meeting. In *In Re: Melanda Loan Office Ltd.* (1935) 164 IC 189 Cunliffe J., refused to sanction a scheme of composition as there was no separate meeting for the decree-holder creditors. The same view was taken by my Lord the Chief Justice sitting with Costello J. in *Rajshahi Banking Corporation v. Surabala Dobi* 40 CWN 1104. In the last-mentioned case it was set out in the schedule to the scheme of arrangement with the creditors that the expression "depositor" would include depositors who have filed suits or obtained decrees against the company. Yet their Lordships held that the decree-holder depositor was not hit by such a scheme even though the notice was served upon him and they affirmed the judgment of Panckridge J. who allowed a modification of the scheme by expunging from it certain words which prevented the decree-holder from executing his decree. In my opinion, the view taken in these cases is perfectly sound and I hold accordingly, that the depositors who have already obtained decrees do form a separate class from the ordinary depositors and it is necessary that there should be a separate meeting of such creditors before a scheme binding on them should be sanctioned by the Court. If the absence of any such separate meeting is brought to the notice of the Court which is invited to sanction the scheme binding on all the creditors, it should refuse to sanction it as was done by Cunliffe J. in *In Re: Melanda Loan Office Ltd.* (1935) 164 IC 189 : or the parties affected might apply for a modification of the scheme by expunging the clause which made the scheme binding on that class of creditors who had no opportunity of having a meeting of their own. Such relief though discretionary was given in the other two cases mentioned above and Buckland J. observed in the first of those cases

that when the scheme was sanctioned by the Court per incuriam or because the circumstances were not explained to the learned Judge, the appellant's only remedy was to come to this Court to have the scheme modified.

11. When however the question arises not in connexion with sanctioning or modifying the scheme under the Companies Act, but in execution proceedings and the scheme already sanctioned is set up as a bar by the company, the matter assumes a different complexion. We have two recent pronouncements on this point in *Mahiganj Loan Office Ltd. Vs. Behari Lal Chaki*, and *Mahiganj Loan Office Ltd. Vs. Behari Lal Chaki*, ; and it was held in both of these cases that when the matter comes before the executing Court it is not open to the decree-holder to urge against the sanctioned scheme, that there was any defect in the procedure or that there was no meeting of the particular class of creditors to which the decree-holder belonged. These decisions proceed upon the well-established principle that a scheme of arrangement which is sanctioned by the Court u/s 153, Companies Act, has the force of a judicial pronouncement and the executing Court cannot go behind it unless it is, shown that the order giving the sanction was without jurisdiction. So far as I am aware the only decision of a Division Bench in which this question was allowed to be raised before the executing Court is the case in *Manikganj Trading and Banking Co. Ltd. Vs.*

Madhabendra Kumar Shaha and Another, . The learned Judges there allowed the decree-holder to execute the decree in spite of the sanctioned scheme which apparently bound him and the reason was that there was no separate meeting of the decree-holder creditors which was necessary under law. This aspect of the question that the matter had already gone beyond the domain of contract and had become an order of the Court, was not at all taken into consideration by the learned Judges, and there was no decision upon the specific point that has been raised in the present case.

12. I agree with the view taken in Mahiganj Loan Office Ltd. Vs. Behari Lal Chaki, and Mahiganj Loan Office Ltd. Vs. Behari Lal Chaki, and hold that as the defects which have been pointed out by Dr. Sen Gupta do not take away the [foundation of the authority of the Court in granting a sanction u/s 153, Companies Act, they are at the most irregularities and do not render the sanctioned scheme a nullity in the eye of the law. In my opinion therefore this question cannot "be raised before the executing Court.

13. Dr. Sen Gupta has attempted to distinguish the present case from the other two cases which have been just mentioned by pointing out that in both of them the intention of the company was that the scheme would be binding on the entire body of creditors including the decree-holders and the only defects were that there was no proper service of notice upon the decree-holder or no separate meeting of the class of creditors to which the decree-holder belonged. In the present case, it is said, there was no arrangement or composition with the general body of creditors at all, but it was made with a particular class, namely the depositors and hence there was no arrangement so far as the decree-holders are concerned to which the Court might be deemed to have granted sanction u/s 153, Companies Act. In my opinion this contention is not really helpful to Dr. Sen Gupta's client. The proceedings in connexion with the scheme as they appear in the record do not go to show that the company only wanted to arrange matters with the depositors as a separate class of creditors and wanted to leave out those depositors who had already obtained decrees. In the notice which was issued on 15th July 1933 it was expressly stated that the company was in financial difficulties and that some of the depositors had already filed suits or were going to enter into adjustments with certain debtors of the company and it was necessary that these things should be discussed in a properly convened meeting of the depositors. The meeting that actually formulated the scheme was attended by depositors and share-holders alike and to the notice convening this meeting, the draft scheme was annexed which clearly indicated that the scheme was meant to be binding on all depositors including those who had already obtained decrees. The defect as I have already pointed out was that the decree-holder depositors were not separately consulted, but they were lumped together with those who had not obtained decrees. But this was a matter which it was open to the decree-holders to point out at the time when the scheme was sanctioned by the Court and it was open to him also, as has been held in some of the cases mentioned above, to attempt to have it modified by a subsequent

application to this Court. In my opinion it is not a matter which takes away the jurisdiction of the Court to sanction the scheme and it is not competent for the executing Court to entertain the application. For these reasons, I agree with my Lord the Chief Justice that this appeal should be dismissed.

d