

(1927) 05 CAL CK 0040
In the Calcutta High Court

Levy Brothers and Knowles Ltd.

APPELLANT

Vs

Subodh Kumar Day and Another

RESPONDENT

Date of Decision : 09-05-1927

Acts Referred:

Companies Act, 1956 — Section 215

Citation : AIR 1927 Cal 689 : 103 Ind. Cas. 659

Hon'ble Judges : Rankin, C.J.; Mukerji, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is an appeal in connexion with the voluntary winding-up of a company called Bhagat Brothers, Limited, and the appellants are Liverpool merchants called Levy Brothers and Knowles, Limited, and the main controversy is between the appellants and Mr. Ram Kumar Bhagat who was the managing director of the company in liquidation.

2. It appears that the appellant company acted in connexion with certain consignments of jute shipped from Calcutta to England, It would appear that certain consignees had refused to accept the goods or meet the drafts, and that the appellants endeavoured to sell some of the jute which was thus rejected, and made certain advances to the company which is now in liquidation in that connexion. At all events, by April 1921, the appellants were claiming that in the end Bhagat Brothers, Limited, owed them some nine or ten thousand pounds upon that transaction.

3. On the 6th of June 1921, a resolution for voluntary liquidation was duly passed. A Mr. S.K. Day was nominated liquidator at that meeting. It appears that at a meeting of the creditors a Mr. Platt Allen was suggested as a joint liquidator with Mr. Day, but as no proper steps had been taken to appoint him joint liquidator he in fact never became a liquidator and the only liquidator of the company was Mr. S.K. Day.

4. A proper form of verified proof was tendered by the appellants to the

liquidator. They sent certain vouchers and in the end it would appear that the liquidator was satisfied that their claim to be creditors was sufficiently proved. But Mr. Earn Kumar Bhagat was apparently not satisfied. Mr. Earn Kumar Bhagat is a gentleman who had entered into a contract with the approval of the Court whereby he undertook to purchase the whole of the property of the company for a sum equal to ten per cent.

on all claims admitted by you to rank for dividend. In addition to this I will pay the whole costs of the liquidation including such sum as may be agreed between us as your remuneration.

5. Mr. Bhagat under that contract had to pay for the assets a sum which varied according as the claim of the creditors should turn out to be proved or not.

6. The correspondence between the parties need not be set out in this judgment at any length; but what happened in the end was that the liquidators could, neither give to the appellant company any intelligible account of the reason why their claim was being refused or the criticisms that were being made upon it nor could they induce Mr. Bhagat to give up his opposition to the claim being admitted.

7. The only intimation that was given for a very long time was one that the company was supposed to have some counter claim against the appellants. It turns out now that it is said that the company in the matter of selling and disposing of the jute acted negligently or contrary to their duty in not effecting sales in time and that in certain other particulars they had not done what they should have done.

8. Now, these particulars have only come into existence at a very late stage indeed of the litigation and for several years it does not appear that either the liquidators or the appellants were able to get any intelligible account of Mr. Bhagat's objections.

9. From an application which the liquidators (in all good faith no doubt) made to the learned Judge in the company's winding-up cm. the 26th of January 1925 it is quite clear that the liquidators had got somewhat tired of going on, and were neither able to decide the matter nor able to give any intelligent reason why it should not be decided. So on the 26th of January they applied to the Court u/s 215 of the Indian Companies Act asking that they might be at liberty to admit the claim of the appellants. The appellants were no parties to that application, but it is quite true that the liquidators were doing their best for them.

10. Mr. Bhagat was made a respondent to the application and the result of the application is an order which has given rise to all this trouble, because the learned Judge not only did not make an order directing the liquidators to admit the claim, he also did not make an order giving liberty to the liquidators to admit the claim, he did not dismiss the application; instead of that he made an order to the effect that the liquidators were not to admit the claim unless the appellants

brought a regular suit, in other words, he decided that these appellants were deprived of all rights to have their claim ascertained in the winding-up proceedings and the liquidator's hands were tied so that they could not, whatever they thought, admit the claim until the matter came before the Court in the form of a suit. It has been pointed out that that might be a very disadvantageous order from the point of view of the absent appellants. They were in this position that while at the time of the winding-up their claim was in no way statute-barred, it had in the intervening years become statute-barred for the purposes of a suit u/s 3 of the Limitation Act of 1908. At all events, whether or not they had acknowledgments which would save them from the bar imposed by the Limitation Act, the order that they were to be relegated to a suit and not allowed to follow the ordinary course of a creditor's proof of debt against the company in the winding-up was one which put them to considerable trouble and risk. That order having been made the solicitors for the appellants endeavoured first of all to settle the matter. A good deal of comment has been made, that a very long time was occupied in an unsuccessful endeavour to get a move forward in this matter. Finally what happened was that the appellant company made up their mind to move the learned Judge in the company's winding-up for relief.

11. The summons asked for a great many forms of relief; it asked that certain matters be disclosed, that funds be held to pay the dividend due on applicant's claim, that a sufficient sum be retained to meet the dividend, that the appellant's claim might be admitted and so on and so forth. It appears that at the hearing of the motion, learned Counsel also asked to add a claim, if necessary, to discharge the ex-parte order of Mr. Justice C.C. Ghose.

12. Mr. Justice Gregory after reviewing the whole matter came to the conclusion that he would not interfere with the order of Mr. Justice C.C. Ghose, in other words, though he was asked to give this matter a decision in the company's winding-up, he took the view in deference to Mr. Justice Ghose's order that he would do nothing one way or another to have it determined in the winding-up but would leave it under Mr. Justice C.C. Ghose's order to be tried by a suit and only by a suit.

13. Upon this appeal I have come to the conclusion that the order made by Mr. Justice Ghosa was wrong. I can see no reason why a person, who has a claim which he has long ago put in the form of a proof of debt against a Company, and which the liquidators were willing to admit, should not be allowed the benefit of the Company's winding-up proceedings. If the liquidators admit a proof of debt and any person having an interest disputes the debt, it is always open to him in the Company's winding-up u/s 215 of the Indian Companies Act, just as it would be open to him in insolvency proceedings, to take the matter to a Judge and get the liquidators' decision overruled. I can in no way understand why because Mr. Bhagat objects, the appellant Company should be obliged to sue the insolvent Company. It seems to me that some arrangement would be more reasonable according to which Mr. Bhagat should oppose this proof at his own risk as to

costs.

14. But the main difficulty which I find in dealing with the present appeal is the question whether the order made by Mr. Justice Gregory is a judgment. In my judgment the order in the form of a direction to the liquidators made in a proceeding to which the appellants were not parties should not be binding on the appellants. It was quite open to them to give notice in the winding-up and to go to the learned Judge and get another order according to their true rights.

15. In my judgment the correct position is this that these are creditors desirous of taking proper proceedings in the winding-up to establish their right and they were told that they would not be heard. In my judgment this order is an order which deprives the appellants of a substantial and important right and I am not prepared to hold that this order is not appealable by reason that it is not a judgment under Clause 15 of the Letters Patent.

16. In my opinion it only remains for us to make the ordinary order as regards the proof of debt in dispute reversing the judgment of Mr. Justice Gregory. We direct the liquidator within a month from the drawing up of this order to admit or reject the formal proof of debt which has already been tendered on behalf of the appellant Company. If he admits it, and if Mr. Bhagat thinks that he has any grievance over the admission of the proof of debt, then, at his own risk as to costs in the ordinary way, he should go to the Judge u/s 215 to have the proof rejected or varied or for such other order as he thinks necessary. If he succeeds, no doubt he will recover his costs from the appellants. If he fails, then the costs of that will come out of his own pocket. On the other hand, if the liquidator objects to the claim, it will be open to the appellants to take proceedings u/s 215 in the ordinary way and ask the Judge to reverse the decision of the liquidator and to admit the claim. There again, if the learned Judge thinks it necessary, he may allow Mr. Bhagat also to take part in that proceeding. What is necessary is that the ordinary procedure to determine the debt in the voluntary winding-up shall be applied.

17. This appeal is allowed with costs both here and before Mr. Justice Gregory as against the respondent Bhagat. Mr. Page's costs will in this Court and in the Court below, come out of the assets.

Mukerji, J.

18. I agree.