(1943) 07 BOM CK 0004

In the Bombay High Court

Case No : First Appeal No. 341 of 1941

Manilal Brijlal APPELLANT

Vs

Vandravandas C. Jadav RESPONDENT

Date of Decision : 16-07-1943

Acts Referred:
Companies Act, 1956 — Section 235

Citation : AIR 1944 Bom 193 : (1944) 46 BOMLR 391

Hon'ble Judges : Rajadhyaksha, J;John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from a decision of the District Judge of Surat, raising a question of practice.

2. The appellant is a creditor of the Surat Industrial Mills Co., Ltd., which is in liquidation, and two liquidators were appointed, one Jadav and the other T. J. Mehta. The appellant started proceedings under a 235 of the Indian Companies Act, 1913, to make the liquidators liable for certain alleged misfeasances. After the proceedings had been started, the liquidator T. J. Mehta died, and an application was made to the Court for leave to bring on record his widow and son as the persons liable to discharge his debts. The learned Judge dismissed the application, and, in my opinion, he was right in doing so.

3. Section 235 of the Indian Companies Act is a procedural section, which is copied from the English Act, and it confers a right on, amongst other persons, a creditor of the company, to apply to the Court to examine into the conduct of various officers, including a liquidator, and compel him to repay or restore money or property of the company which he has misapplied. Although the section is a procedural section in the sense that it does not confer any right to recover moneys or properties which could not otherwise be recovered, it does confer a special right on the creditors and other classes named. Apart from that section it

would not be open to the appellant as a creditor to file a suit against the liquidator asking him to make good misfeasances committed against the company, though it would be open to the company itself, with leave of the Court, to recover monies of the company misappropriated.

4. Now, the question is whether that section can be applied against a personal representative of a deceased liquidator, and it is clear on the language of the section that no right is expressly given to enquire into the conduct, or proceed against the estate, of a deceased person. In England, on the language of the section from which Section 235 of the Indian Companies Act is copied, it has been held in two cases that the section cannot be applied against the personal representatives of a deceased liquidator. These cases are : Feltom''s Executors Case (1865) L.R. 1 Eq. Cas. 219 and In re British Guardian Life Assurance Company (1880) 14 Ch. D. 335. Those cases proceed rather on the strict language of the section. As I have said, this section has been copied into the Indian Act, and, prima facie, I think the same construction should be put upon the words of the Indian Act, though, no doubt, the position in India is not precisely the same. In England the only personal representatives of a liquidator, who would be recognized by the Court, would be his executors or administrators, and if the personal representatives did not admit the existence of assets of the testator, the Court could only make an order for administration of the estate so far as necessary in order to ascertain the existence of assets, and it would be very difficult to administer the estate of a liquidator on a misfeasance summons. In India other representatives are recognized, and in this case the widow and son are sought to be made liable, but they might raise various defences. They might deny that there was any separate estate of the liquidator which had come to their hands and for which they were accountable. That would involve an enquiry outside the scope of such an application as is contemplated in Section 235. Or, again, if the liquidator had been a member of a joint family, his son might dispute his liability to pay on the ground that the debt was avyavaharika. That, again, would involve an enquiry quite foreign to the purpose of Section 235. Section 235 is concerned only with an enquiry into the conduct of the officers of the company in relation to the company''s property, and, in my opinion, it was never intended to involve the Court on an application under that section in an enquiry relating to the estate of a deceased person.

5. The English cases have been followed in this country in Billimoria v. Mrs. De SouzaI.L.R. (1926) Lah. 549. I have no doubt that on the authority of the English cases, and on the strict wording of the section, and on a consideration of the general scope of the section, it would be wrong to allow proceedings to be taken against the personal representative of a deceased liquidator u/s 235. Whether the representative can be made liable in a suit at the instance of the company is, of course, a matter with which we are not concerned.

6. The appeal, therefore, will be dismissed with costs.

Rajadhyaksha, J.

7. I agree.

