

(2003) 02 PAT CK 0040
In the Patna High Court
Case No : Company Appeal No. 1/2001

Manish Mohan Sharma and Others

APPELLANT

Vs

Ram Bahadur Thakur and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Citation : (2003) 02 PAT CK 0040

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Appellants have preferred this appeal u/s 10F of the Companies Act, aggrieved by the order, dated December 22, 2002, passed by the Principal Bench of the Company Law Board, New Delhi, in Company Petition No. 56 of 1996, whereby the application filed by the appellants u/s 634A of the Companies Act for enforcement of the order dated August 19, 1999 has been rejected.

2. Facts which are necessary for the decision of this appeal are hereinafter enumerated. Ram Bahadur Thakur Ltd., is a company incorporated and registered under the Companies Act (hereinafter referred to the Act) having its registered office at village Jitwarpur, District Samastipur in the State of Bihar. Ram Bahadur Thakur, Ltd. (hereinafter referred to as the company) had two groups of shareholders, namely the appellants together with their Associates hereinafter referred to as the "MMS Group" (named after the initials of late Madan Mohan Sharma) and respondents 2 to 4 together with their associates (hereinafter referred to as the "CBS Group" named after the initials of Sri Chaturbhuj Sharma). Each group holds 50 per cent share capital of the company. The activities of the company are in the field of plantation of tea, coffee, cardamom, black pepper etc., and it also owns and operates factories producing tea and Manganese Ore.

3. The MMS Group brought an action before the Company Law Board (hereinafter referred to as the CLB) under Sections 397 and 398 of the Act alleging that CBS Group managing the affairs of the Company were guilty of acts of oppression and

mismanagement. The CLB by its order dated January 9, 1997, removed Sri Chaturbhuj Sharma as Chairman and Managing Director of the company, and suspended its Board of Directors and appointed Justice Sri A. N. VERMA, a retired Judge of the Allahabad High Court as its Chairman and two representatives of each group as members. The CLB requested Justice Sri VERMA to bring amicable settlement between the two warring groups. In the meeting of the Board held on June 29, 1998 it was resolved that with effect from June 1, 1998, a proposal known as Joint Management Arrangement (hereinafter referred to as JMA) would come into effect and on account thereof MMS Group would manage independently five estates and the CBS Group four estates.

4. In order to resolve the dispute amicably two draft agreements consisting of Memorandum of Family Arrangement and Transfer Document relating to the assets of the company were prepared but the same were not signed finally for quite some time for various reasons and CLB intervened in the matter from time to time and ultimately on August 19, 1999, the two groups presented before the CLB the final documents of amicable settlement, i.e., Memorandum of Family Arrangement and Transfer Document. The CLB took on record the aforesaid documents by its order, dated August 19, 1999 and directed the two groups to take necessary steps to implement the settlement by September 30, 1999. The CLB further observed that in the event of any difficulty in the implementation of the order, the groups may apply to the CLB for implementation of the order.

5. The settlement between the parties broadly contemplates that the MMS Group would purchase from the Company five estates defined as "Sale Estates" described in Schedule 9 of the transfer document free from all encumbrances. Along with the Sale Estates the MMS Group was required to take the entire work force employed therein. All the liabilities in respect of the employees including the liabilities which had accrued up to May 31, 1998 were exclusively to the account of the CBS Group and the liabilities accruing thereafter were exclusively to the account of MMS Group. The CBS Group was also to obtain requisite documents for release of the sale estates which were mortgaged to the Syndicate Bank as also the personal guarantee of the MMS Group to the said bank. The parties also agreed that there will be no fresh creation of any charge or interest in respect of any of the properties which form a part of the assets. The consideration money fixed for the sale was Rs. 7.25 crores representing the gross sale price less the various heads of the liabilities specified in Clause 4 of the Transfer Document. The first four sub-clauses of Clause 4 comprise of quantified amount and remaining sub-clauses dealt with the heads of the liabilities without quantifying them. Same reads as follows:

"4. Purchase price

4.1.1. The purchase price payable by the Purchaser to the vendor on completion shall be the sum of Rs. 7,24,67,708.90 (Rupees Seven Crores Twenty-Four Lakhs Sixty-Seven Thousand Seven Hundred and Eight and Ninety paise) (being their agreed share of the liabilities of the vendor), less the following amount:

4.1.1.1. Rs. 1,85,86,065.00 (Rupees One Crore Eighty-Five Lakhs Eighty-Six Thousand and Sixty-Five) in respect of the arrears of provident fund dues accrued up to June 1, 1988, in respect of the Sale Estates.

4.1.1.2. Rs. 10,12,011.00 (Rupees Ten Lakhs Twelve Thousand and Eleven) in respect of the arrears in payment of electricity charges accrued up to June 1, 1998, in respect of the electricity supplies to the sale estates.

4.1.1.3. Rs. 3,53,518.00 (Rupees Three Lakhs Fifty-Three Thousand Five Hundred and Eighteen) in respect of accruals of Land Tax. The Kerala Labour Welfare Fund, Panchayat Building Tax, Panchayat Land Cess, Panchayat Library Cess, and Plantation Tax accrued up to June 1, 1998, in respect of the sale estates.

4.1.1.4. Rs. 93,62,939.00 (Rupees Ninety Three Lakhs Sixty- Two Thousand Nine Hundred and Thirty-Nine) in respect of arrears of Gratuity Payments accrued up to June 1, 1998 in connection with the sale estates.

4.1.1.5. Rs. 71,46,254.89 (Rupees Seventy-One Lakhs Forty-Six Thousand Two hundred and Fifty-Four and Eighty-nine paise) in respect of sums outstanding from the vendor to the MMS Group and its associates as on June 1, 1998.

4.1.1.6. Any monies standing to the credit of account number CA No. 6138 at Canara Bank of India, Kochi, that are maintained by the vendor less any cheques that have been drawn but not presented at the completion date.

4.1.1.7. Any outstanding "Group 1 Advance Monies" less any outstanding "Group 2 Advance Monies" as such terms are defined in the joint management arrangement together with any accrued interest thereon.

4.1.1.8. An amount representing the sale proceeds of any produce of the sale estates which have been sold but for which payment has not yet been received, less any outstanding advances made by the tea brokers used by the vendor against the produce of the sale estates after June 1, 1998.

4. 1.1.9. An amount representing the value, to be mutually agreed between the parties, of all stocks of produce from the sale estates that have not been sold at the date of -completion.

4.1.1.10. Provided always that any deductions pursuant to Clauses 4.1.1.6 to 4.1.1.9 may only be made after the repayment or any outstanding borrowing and the payment of all outstanding trade liabilities incurred in connection with the sale estates during the interim period.

4.1.1.11. Any statutory dues or dues in respect of labour and executives employed at the sale estates accrued up to May 31, 1998.

4. 1.1.12. The figures mentioned in Clauses 4.1.1.1 to 4.1.1.5 shall be subject to verification by the independent auditor appointed by the Company Law Board. In the event that the figures determined by the auditor establish that an over

deduction has been made the purchasers shall refund to the vendor the net amount of such over deduction. In the event that the figures determined by the auditor establish that an under deduction has been made the vendors shall pay the net amount of such under deduction to the purchasers. Any such payments shall be made within 30 days of the receipt of the auditors report. Nothing contained herein shall in any way affect or be construed as a waiver of any of the obligations and liabilities of the vendor or each member of the CBS Group pursuant to Clause 9 (including all sub- clauses thereto)

and Schedule 10 hereto."

6. As per Clause 2.1.9 of the transfer document the completion date fixed was September 30, 1999 or such earlier date as may be mutually agreed in writing between the parties. In terms of the transfer document the CBS Group had to serve a notice to the MMS Group conveying their readiness to proceed with the transaction. The CLB granted extension up to January 16, 2000 for service of notice. Under Clause 7.2 of the transfer document this notice was to be inter alia accompanied by copy of relevant document evidencing the agreement of the Syndicate Bank to provide the documents required from the said bank at completion. Same reads as follows:

" 7.2 The vendor and the CBS Group shall give notice in writing to the purchaser and MMS Group seven working days prior to the Completion date confirming that all permissions, consents, agreements and clearances required to complete the transaction contemplated by this document have been obtained from the relevant authorities, individuals and/or organisation. Without prejudice to the generality of the foregoing the vendor and the CBS Group shall give notice in writing to the purchaser and the MMS Group fifteen days prior to the completion date confirming that all necessary consents and agreements required from Syndicate Bank to complete the transaction contemplated by this document have been obtained and shall provide the purchasers and the MMS Group with copies of all relevant documents evidencing the agreement of Syndicate Bank to provide the documents required from the said bank at completion as specified herein. In the event that the vendor has not obtained any of the necessary consents, agreement and clearances at the time of giving notice the vendor may still give the notice as above and the notice may be accepted by the purchasers at its sole and absolute discretion by agreeing to waive the requirement of notice in respect of the particular consent, agreement or clearance."

7. The CBS Group served a notice on MMS Group on January 17, 2000 which was rejected by the latter inter alia on the ground that notice dated January 17, 2000, was late and beyond the time granted by CLB. Further grounds projected to hold the notice as invalid were that the CBS Group did not provide documentary evidence from the Syndicate Bank as provided under Clause 7.2 of the transfer document. MMS Group highlighted that the CBS Group is not in a position to deliver the assets for simultaneous completion of purchase on the ground that various documents to be obtained from the Syndicate Bank have not

been obtained, respondents were not in a position to transfer the properties without encumbrances particularly with reference to premises at Bhikaji Cama place and finally the quantum of money computed by the CBS group to be paid by the MMS group is erroneous. It was contended by the MMS group that they do not have to pay any amount to the CBS group and in fact latter had to pay to the former in terms of the agreement.

8. The MMS Group ultimately filed Company Application No. 35 of 2000 before the CLB u/s 634A of the Companies Act seeking enforcement of the order dated August 19, 1999. The CBS Group in turn also filed Company Application No. 207 of 2000 before the CLB inter alia praying for recall, cancellation and/or setting aside all the earlier orders and settlement measures, viz., the joint management arrangement and transfer document and prayed for taking the company petition itself for final hearing. The CLB by its : order, dated December 22, 2000, dismissed both the applications. MMS Group has preferred, this appeal against the said order.

9. The CLB considered the pleas raised by the MMS Group and rejected its plea that the notice dated January 17, 2000, was invalid on account of delay. It observed that the notice as issued on January 17, 2000, 16th being a Sunday. As regards Bhikaji Cama premises the CLB observed that both the sides had taken an unreasonable stand and it also found that the issue no longer survives as the CBS Group had ultimately cleared their dues. The CLB also held that gratuity dues of the employees of the Sale Estate up to May 31, 1998 had to be deducted from the purchase price and MMS group is legally right in claiming that amount but there was no meeting of minds of the parties in regard to the items to be covered in Clause -4.1.1.11 and there is bonafide dispute in regard to the interpretation of that Clause. Ultimately the CLB observed that both the parties desire to work out the consent terms but are unable to do so due to bonafide dispute on the terms of the agreements. Accordingly CLB held that in the absence of any undisputed agreement the same cannot be executed.

10. Sri Parag Tripathi, senior advocate appearing on behalf of the MMS group submits that the CLB misconstrued its submission that the validity of the completion notice dated January 17, 2000, was mainly challenged on the ground that it was issued after the specified date of January 16, 2000. He points out that in fact the validity of the completion notice was challenged on the ground that preconditions required to be satisfied before the issuance of such completion notice were not satisfied. He points out that the specified pre-condition included the document for the release of the Sale Estate from the mortgage of the Syndicate Bank and the personal guarantees of MMS group to the Syndicate Bank but the CBS group did not fulfil this condition and hence the CLB ought to have held that the specified condition for valid completion notice was not complete.

11. Sri Chitranjan Sinha, senior advocate appearing on behalf of the CBS group however contends that the Syndicate Bank had itself written letter, dated

February 4, 2000, wherein it had expressed its willingness to release the property from its mortgage and to release the personal guarantees of MMS group provided that a sum of Rs. 4 crores be paid by CBS Group to it. Sri Sinha submits that had this amount been paid by MMS group to the bank, the sale estate would have been released from the mortgage and the personal guarantees could also have been released. Sri Tirpathi contends that this aspect of the matter has not at all been considered by the CLB which vitiates its order.

12. It seems that the CLB did not go into this question in detail on account of the stand taken by the MMS group that they are not required to pay any amount to the CBS group and in fact the CBS group had to pay the amount to them in terms of the agreement. As stated earlier, the CLB had held that while the MMS group are legally right in claiming the amount of gratuity due, the CBS group were justified that the same was not in contemplation of the parties and there is bonafide dispute in terms of the agreement. In that view of the matter, I am of the opinion that the CLB did not err in not going into this question as on primary question it held that although both the parties desire to work out the consent terms but are unable to do so due to bonafide dispute on the terms of the agreement.

13. Sri Tirpathi contends that the view taken by the CLB that the gratuity dues were not in contemplation of the parties is erroneous which would be evident from the fact that while fixing the purchase price under Clause 4.1.1. of the transfer document it contemplates that same would be less than the various amounts including "any statutory dues" or dues in respect of labour or executive employed at the Sale Estate accrued up to May 31, 1998. He submits that the CLB is right in holding that the gratuity dues in respect of the employees have become due and therefore to be deducted from the purchase price.

14. Sri Tirpathi highlights that gratuity accrues from year to year during employment and is payable only on termination of employment, He emphasises that there is distinction between accrual payability of the gratuity and its payability and in fact, CBS group accepts this position which would be evident from the balance sheet of the company which shows an amount of Rs. 6.04 Crores as accrued gratuity on March 31, 1995. According to him Clause 4.1.1.4 deals with arrear of accrued gratuity payable for those employees whose services were terminated prior to June 1, 1998 and Clause 4.1.1.11 refers to gratuity which has accrued but had not become payable on account of continuance of the employees after June 1, 1998 and employed thereafter.

15. Alternative submission of Sri Tirpathi is that even if the liability of accrued gratuity does not fall within Clause 4.1.1.11 but it shall be certainly covered under Clause 9 dealing with Warranty read with Schedule 10 of the 2 transfer document. In this connection Sri Tirpathi has drawn my attention to Clause D of Schedule 10 and points out that the same makes it clear that all the statutory dues and liabilities of the Sale Estate up to 31 May 1998 are payable by the CBS group and Clause A under the heading employee of the said Schedule makes

it abundantly clear that no "past or present employee" of the company shall have any claim against the MMS group relating or arising in any way out of employment in the company. The natural corollary of the same, according to Sri Tirpathi, would be that the employees cannot have any claim of accrued gratuity upto May 31, 1998 against the MMS group and therefore the claim is qua the CBS group.

16. In support of the submission learned counsel has placed reliance on a judgment of the Supreme Court in the case of M/S. W.T. Suren and Co. Ltd. Vs. The Commissioner of Income Tax, Bombay, and my attention has been drawn to the following passage of the said judgment, which reads as follows:

"..... The scheme of gratuity as applicable to the members of the staff of the assessee provided as to how much gratuity would become due and payable to an employee for each year of service except to one who is dismissed for misconduct, etc. Gratuity is thus payable on the termination of employment of the employee on any account except dismissal and calculated on the basis of number of years of service and at the rate prescribed in the scheme. In the present case, the amount of gratuity which was paid to Rallis India Ltd., on behalf of the employees was not on account of transfer of the distribution unit of the assessee but on account of stopping of that business and the employees working in that unit becoming surplus resulting in termination of their services. Other business of the assessee, as held by the Tribunal continued payment of gratuity amount to Rallis India Ltd., was not made by the assessee on its own but at the instance and on behalf of the employees whose services though terminated in the assessee Company were taken over by Rallis India Ltd., with the promise of continuity of service in Rallis India Ltd. As far as the assessee is concerned, it was bound to make payment of gratuity to the employees whose services were terminated and, in fact, as noticed above, the employees who did not join Rallis India Ltd., were directly paid gratuity. The assessee was obliged to pay gratuity to those employees who had joined Rallis India Ltd. Instead of those employees getting the gratuity amount directly, the assessee got that amount paid to Rallis India Ltd., who put that amount in trust in a separate account for the exclusive use of the transferred employees and payable to them after their services in Rallis India Ltd., terminated including the gratuity due on account of service rendered in Rallis India Ltd., as per the scheme of the assessee and it was not an ex gratia or some isolated payment. It was never disputed and in fact, no question raised if the services of the employees of the assessee were not terminated and that being the position, the obligation of the assessee to make payment of gratuity to its employees was an obligation in praesentia. Payment of gratuity amount to Rallis India was with the consent of the employees transferred there. We are, thus, of the view that payment of gratuity awarded by the assessee to Rallis India Ltd., in the circumstances of the case was an expenditure wholly laid or expended for the purpose of the business of the assessee and was an allowable deduction. It cannot certainly be said that it was an expenditure incurred much ahead of time as the services of the employees

with the assessee were terminated....."

17. Sri Tirpathi submits that the conclusion arrived at by the CLB that gratuity liability was not in contemplation of the parties when they entered into agreement is erroneous. In this connection he has drawn my attention to the letters, dated May 14, 1999, of Shailesh Mohan Sharma, a member of CBS group and contends that it has been articulated and dealt with by the parties. According to him both the groups recognised the distinction between "arrears of gratuity accrued" and "statutory dues" up to May 31, 1998, which would be evident from Clauses 4.1.1.4 and 4.1.1.11 of the transfer document.

18. Sri Chitranjan Sinha however submits that the gratuity becomes payable only on cessation of employment and in that view of the matter the CLB erred in upholding the contention of MMS group that they are right in their contention about their liability to pay the gratuity for past services when the same becomes payable in future. Sri Sinha further submits that the expression dues as used in Clause 4.1.1.11 refers to the existence of the employees' enforceable right which is fixed and determined and is enforceable as claim. He points out that the statutory dues cannot be said to have accrued until the person entitled has the legal right to get that. He submits that the payment of gratuity is dependant on many factors and is not indefeasible right under the scheme of the Payment of Gratuity Act itself. Accordingly, he submits that the view taken by the CLB that the gratuity had become due also in respect of those employees who are otherwise entitled to have that on May 31, 1998 and their services have not been terminated is erroneous. Reliance has been placed on a decision of a Full Bench of this Court in the case of Agent Muridhar Colliery of Bharat Coking Coal Ltd. Vs. Sital Chandra Pathak and Others, and my attention has been drawn to the following passage of the judgment which reads as follows:

" It is plain from the above that the eligibility for gratuity does not arise till the completion of five years of continuous service. What, however, is more significant is the fact that gratuity becomes payable to an employee on the termination of his employment (and not earlier) by way of superannuation, retirement, resignation or death or disablement due to accident or disease. Equally worthy of notice is the fact that the claim to gratuity is not an indefeasible right and may be defeated either wholly or partially for reasons specified in the aforequoted Sub-section (6) of Section 4. Therefore, the right to the payment of gratuity arises only on the fulfilment of statutory conditions and termination of the employment in any one of the five modes indicated above. It is only at the end of the period of his service that a workman can *stricto sensu* claim that he has now become entitled to the payment of gratuity. Thus, it is obvious that the right to gratuity accrues only and coterminously with the satisfactory conclusion of his employment by the employee. Both the right to gratuity and the corresponding liability of the employer to pay the same would thus arise at that point of time."

19. Having appreciated the rival submission I do not find any force in the submission of Sri Tripathy. In my opinion the expression dues as used in Clause

4.1.1.11 shall mean the gratuity amount which is payable. In this connection it is useful to refer to Section 4 of the Payment of Gratuity Act, which reads as follows:

Payment of gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five, years-

(a) on his superannuation; or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

xxx xxx xxx

(6) Notwithstanding any thing contained in Sub-section (1)-

(a) the gratuity of an employee whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

20. A plain reading of Section 4 of the Payment of Gratuity Act clearly shows that the gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than five years but the gratuity of such employee shall be forfeited/partially forfeited in case the service of the employee has been terminated on certain grounds. Thus in my view the gratuity amount would only become due when the same is payable. In the case of W. T. Suren (supra), relied on by Sri Tirpathi, Supreme Court has clearly held that gratuity is payable on termination of employment of the employee on any account except dismissal. Right to gratuity accrues only with the satisfactory conclusion of the employment. Any other view would make the term of agreement in question uncertain. If any amount of the statutory dues has to be deducted from the purchase price the amount has to be certain. It is well settled that the Court would not lean to a construction which would make the term of settlement uncertain.

21. Now referring to the submission of Sri Tirpathi that in view of Clause 9 of Schedule 10 of the transfer document, the liability accrued up to May 31, 1998 was that of CBS group alone. I am of the opinion that the same has no substance. Clause D of Schedule 10 and Clause A under the heading employee

reads as follows:

"Schedule 10

The vendor and each member of the CBS Group jointly and severally warrant to the purchasers and each member of the MMS group that"

xxx xxx xxx

(D) Any and all statutory dues and liabilities in respect of the assets accrued up to May 31, 1998 other than those specifically being taken over by the Purchasers under Clauses 4.1.1.1 to 4.1.1.11 of this agreement will be paid by the Vendor. The vendor and the CBS group hereby indemnify the purchasers and the MMS Group against all statutory dues or dues to any Government agency in relation to any of the assets being transferred pursuant to this document.

xxx xxx xxx Employees

(A) No past or present employee of the vendor will have any claim of any nature whatsoever against the purchaser or any member of the MMS group or Sri Birendra Mohan Sharma which relates or arises in any way out of the employment of such employees by the vendor."

22. From its plain reading it is evident that the vendor and each member of the CBS group had jointly and severally gave warranty to the purchaser and each member of the MMS group that any and all statutory dues and liabilities in respect of the assets accrued up to May 31, 1998 other than those specifically being taken over by the MMS group under Clauses 4.1.1.1 to 4.1.1.11 shall be paid by the CBS group and the vendor and the CBS group had indemnified the purchaser of the MMS group against all statutory dues. It has also been pointed out in the warranty that no past or present employee of the vendor will have any claim of any nature whatsoever against the purchaser or any member of the MMS group or Sri Birendra Mohan Sharma which relates or arises in any way out of the employment of such employees by the vendor. Clause D of Schedule 10 talks of dues and liabilities in respect of the Assets and Asset has been defined under Clause 2.12 to mean the properties, the equipment, the lease assets, the sale estate, the records and the pacific rights and in that view of the matter does not cover liability in respect of gratuity. In view of my answer to the question of gratuity dues the warranty in respect of past or present employee of the vendor in respect of claim in no way advances the case of MMS group.

23. Further, I am in total agreement with the conclusion of the CLB that this was not in contemplation of the parties that the amount of gratuity in respect of those employees in employment on May 31, 1998 and whose employment had not come to an end, to be paid by the CBS group. Had it been so, the purchase price will be in negative and instead of the MMS group paying to the CBS group for purchase of the sale estate, the CBS group will have to pay to the MMS group. It is further relevant here to state that Clauses 4.1.1.1 to 4.1.1.5 provided for deduction of quantified liabilities, and 4.1.1.6 to 4.1.1.11 where

liabilities yet to be quantified. In case the interpretation put forth by the MMS group is accepted this amount would have also been quantified but has not been done so and: therefore, it is obvious that the same was not in contemplation of the parties. It is further relevant here to state that in the balance sheet the amount of gratuity due has been indicated and, therefore, the gratuity amount was quantified but the same has not been incorporated in the agreement also leads to an inference that the same was not in contemplation of the parties. Letter dated May 114, 1999, relied on by Sri Tirpathi to submit that the gratuity amount was in contemplation of the party, I am of the opinion that the same in no way advances the case of the appellants. It is relevant here to state that Clause 4.1.1.4 refers specifically to arrears of gratuity payment whereas 4.1.1.11 refers to statutory dues of the employees. Clause 4.1.1.4 had quantified the arrears of gratuity and the letter under reference, refers to that clause and requested for reduction of arrears of gratuity. This has no bearing on the issue in question. From the discussion aforesaid, it is evident that the finding recorded by the CLB on this issue is wholly justified.

24. It is relevant here to state that in the midst of hearing of this appeal an application has been filed for intervention by one Smt. Renuka Sharma. According to her there was a firm namely Ram Bahadur Thakur and Company in which her late husband Sri Ram Binod Sharma was a partner, which according to her was illegally and dishonestly dissolved on July 1, 1979. Soon thereafter Ram Binod Sharma died on January 30, 1980 and according to her the fact of illegal dissolution when came to her notice in April, 1980 she filed Title Suit No. 303 of 1980 for setting aside the dissolution and for other reliefs and pursuant to a compromise before the Supreme Court the suit was withdrawn on May 20, 1987. Her prayer is to implead her as a party "to enforce her right with regard to Ram Bahadur Thakur and Company Ltd., in accordance with both civil suit and criminal case."

25. Sri Basudeo Prasad, senior advocate appears in support of this application and submits that she may be impleaded as a party. This has been vehemently opposed by Sri Tirpathy appearing on behalf of the appellant. It is not the case of the intervenor that she did not know about this proceeding earlier. According to her she had knowledge about illegal dissolution of the company in the year 1979 and if that be so nothing prevented her to appear before the CLB for her impleadment. She had not chosen to do the same and for the first time made an application for intervention during the hearing in this appeal. On this ground alone, I am not inclined to allow her to intervene in the appeal and dismiss her application.

26. In the result, I do not find any merit in the appeal and it is dismissed accordingly.