

(1964) 04 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 215 of 1961

Munilal Peshawaria and Others	Vs	APPELLANT
Balwant Rai Kumar and Others		RESPONDENT

Date of Decision : 03-04-1964

Acts Referred:

Companies Act, 1956 — Section 647(2)

Citation : (1964) 2 ILR (P&H) 415 : (1964) 66 PLR 749

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; Rup Chand and Daulat Ram Manchanda, for the Respondent

Judgement

Falshaw, C.J.—A company M/s. Ram Rakha Mal & Sons (P) Ltd. went into voluntary liquidation 25 years ago on the 15th of January 1939 and the present petitioners, Muni Lal Peshawaria and Jai Kishan Das Monga, were appointed Voluntary Liquidators, in which capacity they took, charge of all the assets of the company. According to the opposite party they did not perform their duties properly and committed various acts of, misfeasance and non-feasance with the result that an attempt was made to have them removed in the High Court at Lahore. That matter was decided on the 12th of February 1946 by Abdul Rashid C.J. and Achhru Ram J. who while commenting adversely on the performance of their duties by the Voluntary Liquidators, allowed them to continue to act in that capacity on their assurance; of more satisfactory conduct.

2. A suit was instituted in the Court at Amritsar, where the registered office of the company is situated, in June 1960 in the name of the company and Balwant Rai Kumar, describing himself as Chairman of the Board of Directors. These facts were mentioned in the plaint; and it was further alleged that although all the creditors of the company had been paid off 10 or 12 years before, the Voluntary Liquidators had never finished the liquidation or distributed, the surplus assets among share holders of whom remaining five were impleaded as defendants

along with the Voluntary Liquidators. The prayer, was in effect for rendition by accounts by the Voluntary Liquidators and the distribution, of the surplus assets among the shareholders.

3. The contesting defendants, the present petitioners raised the preliminary objection that the ordinary civil, Courts had no jurisdiction to entertain the suit and that the only Court which could adjudicate on the conduct of the Voluntary Liquidators and grant the relief sought by the plaintiffs was the Court under the Companies Act. This objection was overruled by the lower Court and the orders challenged in the present revision petition.

4. On behalf of the petitioners it has been pointed out that in view of the provisions of section 647 (2) of the Companies Act of 1956 the winding up proceedings in the case of this company are to be governed by the provisions of the Act of 1913. The provisions relating to members' voluntary winding up are contained in sections 208 and 208A, 208B, 208C, 208D and 208E and the provisions of sections 210 to 220 apply to both members' and creditors' voluntary winding up. These sections specify the powers and duties of liquidators and empower the Court to remove the liquidator and appoint another liquidator. Section 216 empowers the liquidator or any contributory or creditor to apply to the Court to determine questions arising in the winding up and confers on the Court all the powers in relation to voluntary winding up which it possesses in the case of a winding up by the Court,

5. There is in fact no doubt that the relief's which are sought in the present suit could properly have been applied for and obtained from this Court under the provisions of the Companies Act, but the question is whether this is the only remedy open to the plaintiffs, and it must be stated at once that, unlike some statutes the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil Courts in matters covered by the provisions of the Act. There is also no doubt that the ordinary civil Courts can and do decide the rights of parties on many matters arising out of the provisions of the Act. There is no doubt about the general principle, which is that the jurisdiction of the ordinary Courts is only barren where this is expressed in a statute or necessarily implied, and while there are no doubt instances of cases being tried by the ordinary civil Courts for the determination of rights or obligations created by the provisions of the Act there is not, so far as I am aware, any precedent for matters relating to the winding up of a company, even a voluntary winding up, being decided by the ordinary Courts. In my opinion there is a good deal to be said for the argument of the learned counsel for the petitioners that even in a case of a voluntary winding up it is necessarily implied that proceedings by shareholders against liquidators in respect of the conduct of winding up proceedings are intended to be dealt with by the Court under the Act i.e. the High Court particularly in case where allegations of misfeasance and nonfeasance are being made against the liquidators, as in the present case. Section 235 of the Act of 1913 confers on the Court the power to assess and award damages against

delinquent company officers or liquidators, and one of the prayers in the present suit is that the contesting defendants should be debited with damages for acts of misfeasance and nonfeasance. This is a very special provision which I think can only be exercised by the Court under the Act and not by an ordinary civil Court. The position is summed up in the well known dictum of Willes J. in *Wolverhampton New Waterworks Company v. Hawkesford* 6 C B N S. 336 at p 356, as under:

There are three classes of cases in which a liability may be established founded upon a statute, ne is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class viz. where a liability not existing at common law is created by a statute, which at the same time gives a special and particular remedy for enforcing it,...The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class.

Here, the liquidators are creations of the Companies Act and their liability along with officers of the company for damages for misfeasance or nonfeasance is created by section 285 of the Act of 1913, and I consider that any share holder who claims this remedy must go to the Court under the Act in order to obtain it. I am therefore of the opinion that the lower Court wrongly held that it had jurisdiction to entertain the suit and I accordingly accept the revision petition and direct that the plaint be returned to the plaintiffs. The parties will bear their own costs.