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**(1958) 05 PAT CK 0001**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No"s. 13 and 14 of 1957

Nand Prasad and Others

APPELLANT

Vs

Arjun Prasad and Another

RESPONDENT

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**Date of Decision :** 16-05-1958

**Acts Referred:**

Companies (Court) Rules, 1959 — Rule 150  
Companies Act, 1913 — Section 153, 153(2), 246, 79, 80  
Companies Act, 1956 — Section 187, 391(2)

**Citation :** AIR 1959 Patna 293

**Hon'ble Judges :** K. Dayal, J;K. Ahmad, J

**Bench :** Division Bench

**Advocate :** S.N. Dutt, Ramnarain Bhagat and Sankat Haran Singh, for the Appellant; Ranadeb Chaudhary, Shreenath Singh, K.D. Chatterji and R.J. Bahadur, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K. Ahmad, J.—Both these appeals arise out of the same proceeding taken on 22-6-1952, u/s 153 of the Indian Companies Act 1913, by Sri Arjun Prasad, respondent No. 1 for the reconstruction of the Gaya Sugar Mills, Ltd., hereafter to be referred to as "the Mills Ltd.," which had already been directed to be wound up under an earlier order of this Court passed on 14-11-1951, and are directed against the common order, dated 24-9-1957. Letters Patent Appeal No. 14 of 1957 is on behalf of about seventy preference share-holders out of about one hundred and eighty and has been argued on their behalf by Mr. S. N. Dutt. The other appeals Letters Patent Appeal No. 13 of 1957 is on behalf of about twenty-five employees of the corporation who are represented before us by Mr. Sankat Haran Singh.

2. The aforesaid application for reconstruction, which was exclusively on behalf of Sri Arjun Prasad, respondent No. 1 had been admitted on 6-10-1953, along with the following directions:

"The petitioner is directed to arrange for holding separate meetings (a) of the debenture holders and of the other secured creditors of the Company, (b) of the unsecured creditors of the Company, (c) of the preference share-holders of the Company and (d) of the ordinary share-holders of the Company on 9-11-1953, at 10 a.m. and 4 P.M. and on 10-11-1953 at 10a.m. and 4 P.M. The meetings of item (a) will be held at 10 a.m., on 9-11-1953 of item (b) at 4 P.M., on the same date, of item (c) at 10 a.m., on the 10th November 1953 and of item (d) at 4 P.M. on the same date.

"Mr. S. N. Dutt, Barrister-at-law, if he does not consent to Mr. G. C. Banerji, an Advocate of this Court, is appointed to act as Chairman of the meetings with power to adjourn the same.

x x x x "The Chairman is directed to report the result of the meetings to the Court on or before 17-11-53."

Perhaps Mr. Dutt did not accept the Chairmanship. So the first two meetings fixed for 9-11-1953, namely those of the debenture holders and the other secured creditors and of the unsecured creditors as also the third meeting, namely, that of the preference share-holders fixed for 10-11-1953, were held under the Chairmanship of Mr. G. C. Banerji. Unfortunately, the fourth meeting, namely, that of the ordinary share-holders, could not be held on the date fixed and that was ultimately held some time in between 26-6-1955, and 28-6-1956.

Thereafter came the proposal for certain modification in the original scheme. But as the modification concerned only the share-holders and the preference share-holders so their meetings were held again on 4-3-1956. In the meantime Mr. G. C. Banerji, due to the uncertainty about the fourth meeting as directed by the Court, had already submitted his reports on 16-11-1953 of the three which had already been held under his Chairmanship on the 9th and 10th November, 1953, including the one that of the unsecured creditors and it is the report of this latter meeting held on 9-11-1953, which is the subject-matter of the controversy in these appeals.

3. It appears that the learned Company Judge on the submission of those reports by Mr. G. C. Banerjee had directed that they would be taken for consideration alone with the main application for reconstruction. Accordingly, these reports as to the various meetings ultimately, came up for consideration by the court for the first time on 22-7-1957. On that day in the course of the hearing a number of objections were raised against two of these reports, namely, the one relating to the meeting of the share-holders and preference share-holders held on 4-3-1956, and the other relating to the meeting of the unsecured creditors held on 9-11-1953.

The report as to the latter meeting was that four creditors representing a total value of Rs. 1,38,173/3/8 1/2 pies had objected to the resolution and others representing in all a total value of Rs. 6,97,790-6-9 had voted in favour of the scheme. In the group of the latter the value of Bhadani Brothers was Rs.

3,41,862-4-0 and that of Hindustan Coal Company was Rs. 10,258-0-3 both of whom in that meeting had been represented by respondent No. 1, Sri Arjun Prasad in person, The claim of Sri Arjun Prasad is that the Directors of these two companies had by their respective resolutions authorised respondent No. 1 to vote on their behalf in person. Accordingly he acted as such on their behalf and voted for them in person and not by proxy.

4. Now the objections, which are the subject-matter of these appeals against this report of Mr. G. C. Banerji are three-fold. The first is that the Chairman wrongly allowed Sri Arjun Pd. to represent the aforesaid two companies in person. The second objection is that Sri J. N. Mustafi was wrongly allowed by the Chairman to represent Bihar Sugar Mills Association, who were creditors to the extent of Rs. 2,833/12/- and the Indian Sugar Mills Association, who were creditors to the extent of Rs. 956/- on the basis of proxies executed in his favour inasmuch as the same had not been done in conformity with Rule 147 of the Patna High Court Rules. The third objection is relating to Sri N. N. Sahay and it is said that he too was wrongly allowed to represent the Standard Vacuum Oil Company, as in his case also the proxy submitted was not in order.

5. All these three objections have been decided against the appellants by the learned company Judge. Here, however, at the time of argument the last two objections have not been pressed either by Mr. S. N. Dutt or by Mr. Sankat Haran Singh. So the appeals are now confined to the first objection only, which as already stated, is based on the ground that the aforesaid two companies Bhadani Brothers and Hindustan Coal Company should not have been allowed to be represented in person by respondent No. 1 Sri Arjun Prasad; and in support of this objection two-fold contentions have been advanced. The first part of the contention in the words of the learned Company Judge is as follows :

"The most serious objection which Mr. Dutt has taken is that the Chairman wrongly allowed Arjun Prasad to represent these companies. He has pointed out that Section 80 of the Indian Companies Act 1913, provides for a company which is a member of another company and not for a company which is a creditor of another company to authorise any person to act as its representative! at a meeting of that other company. He has submitted that the law has been modified in this respect by the Companies Act, 1956, because Section 187 of that Act empowers not only a member company but also a creditor company to authorise any person to act as its representative at a meeting of the company, of which it is a member or creditor. He has contended that the only method by which a company which is a creditor of another company can be represented at a meeting of that company in cases like the present case where the Act of 1913 applies is as provided in Rule 150 of the Patna High Court Rules, so far as cases within the jurisdiction of this court are concerned."

While the other part of the contention, as stated in the order under appeal, is that:

"The resolutions of the two companies which were produced by Sri Arjun Prasad, should have contained copies of the signatures of the Chairman of those meetings in view of Sub-sections (2) and (3) of Section 83 of the Act, of 1913."

Mr. Choudhary appearing for respondent No. 1 has strongly persuaded us to hold that there is no substance in either of these two-fold contentions. His submission is that the personal representations of Bhadani Brothers and Hindustan Coal Company by respondent No. 1 were regular and valid in law. The main argument advanced by the learned Counsel in support of the order under appeal is based on two grounds.

The first ground is that the objections raised by the appellants are too belated and as such not now entertainable in law. The second ground is that Rule 150 of the Patna High Court Rules is not at all applicable to a proceeding under reconstruction inasmuch as that rule as also others framed by this Court under the Companies Act is exclusively meant for a proceeding in liquidation. In other words, the way in which a creditor corporation may vote at a meeting of the creditors held in the course of a reconstruction proceeding of a debtors' company is not controlled by Rule 150 of the Patna High Court Rules.

What Mr. Chaudhary contends is that provision of law, as laid down in Section 153 of the Indian Companies Act 1913 for the purpose of meetings held in the course of a reconstruction proceeding is an exhaustive code and as within the terms of that section the power given to the creditors to appear in person or by proxy is not subject to any qualification or limitation, there is no reason why in this respect any distinction or discrimination should be made between a creditor who is a natural person and one who is not so.

That means the rule of law, as provided in Section 153 of the Indian Companies Act 1913, for a creditor to vote in person or by proxy, is to be construed independent of any limitation that is to be found in the case of the provisions made in this regard under, Section 80 of the Indian Companies Act 1913. It is true, he submits, that that section while making provision for a corporation to vote in person speaks about a member corporation only and not in relation to a creditor corporation; that means, the right given thereunder is confined to a member corporation alone.

But that cannot be a ground for placing a similar restriction on what is provided in Section 153 of the Indian Companies Act, 1913. That, according to learned Counsel, is as to matters provided therein an exhaustive code. The learned company Judge has accepted both these contentions advanced by Mr. Choudhary and has accordingly held that the aforesaid two companies were rightly represented in person by respondent No. 1.

6. The finding given on the first point, namely, that of delay is in these words :

"I agree that, in addition to the likelihood of prejudice being caused to parties, proceedings are also likely to become unduly prolonged, if objections are allowed

to be raised at any stage even at the time of argument. I do not, therefore, think that the objections of Mr. Dutt about the unsecured creditors meeting should be entertained."

This finding, according to Mr. Dutt, may be said to be correct so far as it relates to an objection which is based purely on facts. But it cannot be said to be correct when the objection raised is one which is founded purely on law or what is apparent on the very face of the order without any further investigation into facts. In other words, in a case where all the necessary facts for and against an objection are already on the record, there can be no question of prejudice or delay in the disposal of the proceeding if the same is raised even at the final hearing.

I think there is sufficient force in this contention. After all, it is the duty of the court to see that the report submitted by the Chairman of the meeting and the decision arrived at therein is one that is not on a very face of it hit by any rule of law as laid down in Section 153 (2) of the Indian Companies Act 1913 or is otherwise contrary to any equitable consideration of the matter.

Therefore, if the court finds or the attention of the court is drawn to the fact that the report as submitted by the Chairman about the approval of the compromise or arrangement in the meeting is on the very face of it contrary to law as laid down in Section 153 (2) of the Companies Act 1913, the court has no option but to look into it and not to give any sanction to it unless that is disposed of. In other words, the sanction of the court, which is sine qua non for the compromise or arrangement being binding on all the parties concerned, is dependent on the fact that at least on the very face of it the report does not suffer from any non-compliance of the rule of law as laid down in Section 153 of the Companies Act 1913. On the question of sanction, Halsbury's Laws of England (Hailsham Edition) in Article 1354 of Vol. V at p. 794 while dealing with this subject says:

"The Court must be satisfied that the statutory provisions have been complied with, that the classes of creditors or members have been fairly represented by those who attended and that the statutory majority approving the scheme is acting bona fide in the interest of the class it professes to represent. The arrangement must also be such as a man of business would reasonably approve, and fair and reasonable as regards the different classes, if any."

7. Similar point came to be considered in *Re Alabama New Orleans, Texas and Pacific Junction Rly. Co.* (1891) 1 Ch. 213 where Lindley, L. J. observed :

"We have here to deal with companies registered under the Act of 1862 and 1867, to which I have alluded, and all that Parliament has thought it necessary to require is, that there shall be a meeting of the creditors, to be summoned in such manner as the court shall direct, and that there shall be a majority in number representing three fourths in value of such creditors present, either in person or by proxy at such meeting. Now, in 1870, I do not think that debentures payable to bearer, and share warrants payable to bearer, were

anything like so common as they are now. They were tolerably common but not so common as they are now; and it is quite usual that where, as here you have a huge debenture debt represented by debentures payable to bearer you may have comparatively small meeting answering the notices and summons convening it, because it is very difficult to give notice to persons who hold debentures payable to bearer. It is said that people do not look in the newspaper to see if there are any. advertisements with reference to the companies in which they are interested, and there must be a multitude of persons who have seen these advertisements at all. I think that is very likely, but, still, there is the statute, and what the court has to do is to see, first of all, that the provisions of that statute have been complied with; and secondly that the majority has been acting bona fide. The Court also has to see that the minority is not being overridden by a majority having interest of its own clashing with those of the minority who, they seek to coerce. Further than that, the court has to look at the scheme and see whether it is one as to which person acting honestly, and viewing the scheme laid before them in the interests of those whom they represent, take a view which can be reasonably taken by businessmen. The Court must look at the scheme, and see whether the Act has been complied with, whether the majority are acting bona fide, and whether they are coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that) any reasonable man might say that he could not approve of it."

Likewise in the case of *In Re English, Scottish and Australian Chartered Bank* (1893) 3 Ch 385, Lopes L. J. observed:

"Now, the mode in which this power is to be exercised has to my mind, been very well and correctly laid down in the *Alabama and C. Rly. Co.*'s case (1891) 1 Ch 213 which has already been referred to. What I understand to be decided by that case is this, that it is not sufficient for the court to ascertain that the statutory conditions have been complied with; the Court must go further than that, and be satisfied that the statutable majority which are to bind the dissentient minority have acted bona fide, that they have not acted adversely to those whom they professed to represent, & lastly, that the arrangement contemplated is a reasonable arrangement, such as that which a man of business would reasonably approve. With regard to the word "reasonably" it must always be borne in mind the word "reasonably" is a relative term: it means reasonably with regard to the particular circumstances of the case. What is reasonable in one case might be unreasonable in another. The reasonableness must be always regarded with reference to other alternatives. For instance, an arrangement giving a very small benefit to creditors, if the alternative were absolute ruin to the company and no benefit to the creditors, would I think be reasonable."

Again in *In re Dorman, Long and Co., In re South Durham Steel and Iron Co.* (1934) 1 Ch. 635, Maugham, J., while dealing with the very subject, stated:

"I will first state my view as to the function of the Court in determining whether the compromise or arrangement should be sanctioned by the Court. It is plain that the duties of the Court are two-fold. The first is to see that the resolutions are passed by the statutory majority in value and number, in accordance with Section 153, Sub-section 2, at a meeting or meetings duly convened and held. Upon that depends the jurisdiction of the Court to confirm the scheme. The other duty is in the nature of a discretionary power, and it has been the subject of two decisions in the Court of appeal, the first being the case of (1891) 1 Ch 213 and the second the case of (1893) 3 Ch 385....." The court must look at the scheme, and see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve of it". I think that those phrases, which were contained in a judgment which had not been reserved, do not represent exactly what the Lord Justice intended. I prefer as representing the view of the Court of Appeal, the language in the statement of Bowen L. J. that "A reasonable compromise must be a compromise which can, by reasonable people conversant with the subject, be regarded as beneficial to those on both sides who are making it," and he added, to explain that, "..... I have no doubt at all that it would be improper for the Court to allow an arrangement to be forced on any class of creditors, if the arrangement cannot reasonably be supposed by sensible business people to be for the benefit of that class as such .....". Fry L. J. said "..... the Court..... must be satisfied that the proposal was at least so far fair and reasonable, as that an intelligent and honest man, who is a member of that class, and acting alone in respect of his interest as such a member, might approve of it. In (1893) 3 Ch. 385, Lindley L. J. does not seem to have had his attention drawn to the fact that what he had said in (1891) 1 Ch. 213, was not quite the same as what Bowen and Fry L. JJ., had said; but he plainly approved of what Bowen and Fry L. JJ., had said, for he so stated, and he quoted what Fry L. J., had said. He also said this: "If the creditors are acting on sufficient information and with time to consider what they are about, and are acting honestly, they are, I apprehend, much better judges of what is to their commercial advantage than the Court can be.....while, therefore, I protest that we are not to register their decisions, but to see that they have been properly convened and have been properly consulted, and have considered the matter from a proper point of view, ..... the Court ought to be slow to differ from them".

In my opinion, then so far as this second duty is concerned, what I have to see is whether the proposal is such that an intelligent and honest man, a member of the class concerned acting in respect of his interest, might reasonably approve."

8. Then came the observation made in *Bengal Bank Ltd. Vs. Suresh Chakravartty and Others*, which reads:

"The scheme of course is not effective unless it is confirmed by the Court. But before the Court makes an order sanctioning the scheme, it is necessary in the first place to have the scheme or arrangement approved and accepted by the

requisite majority and if the scheme is sanctioned by the requisite majority then it is presented to the Court for confirmation. In other words, the Court can-not sanction a scheme until it has been approved by the majority in terms of Section 153(2) of the Indian Companies Act."

Therefore, these authorities firmly establish that one of the essential conditions to give jurisdiction to the Court to accord its sanction to a scheme is that it should have been passed by a majority as required u/s 153 (2) of the Companies Act 1913 and that the proxies filed at the meeting were valid in law. In other words, unless the Court is satisfied that the same has been approved by the statutory majority and in a manner provided by law, it is not open to the Court to give any sanction to it.

That being so, in cases where, as here a question is raised as to whether a scheme of reconstruction under consideration has been approved by the statutory majority or not, the Court cannot refuse to consider the same if on facts already on the record it is clear that it has not been so done though the position may vary, and that for good reasons where such an objection is not available on the very face of the report without some further investigation into facts.

In those cases no doubt the question like that of prejudice, laches and unnecessary protraction of the proceedings may arise for consideration before an objection to the validity of the report is allowed to be raised for the first time in the course of the final hearing of the matter. If that is so then here the objection as to the absence of signature on the copy of the resolutions, which respondent No. 1 had produced in proof of his authority before the chairman of the meeting held on 9-11-1953, has to be held as rather belated; for it is not denied that no such objection had ever been raised before Mr. G. C. Banerji nor was it ever mooted in any manner by the appellants before the learned Company Judge until the hearing of the report had already been taken up.

Therefore, on that technical ground alone this part of the argument has to fail. Further, I think that the right of a person to vote as the representative of a company under such circumstances depends essentially on the question whether he has been validly appointed or not and not upon evidence produced by him in support of that authority. And so far as the evidence is concerned, it is meant only to satisfy the chairman that he is the person duly authorised so that he may be in a position to admit the vote cast by such a representative which is generally done by the simple production of the copy of the authorised resolution. *Re Kelantan Coconut Estates Ltd.* (1920) WN 274 : 64 S. J. 700. Then on merits also I think there is no substance in this objection. It is quite understandable that in the meetings wherein those resolutions were passed, the chairman must have put the signature on the minutes not after each resolution but only once at the end of it, as is the common practice in matters like these. Perhaps it is for that reason that Section 83(2) of the Indian Companies Act 1913 speaks of signature only in a case where the entire minute is involved and not in relation to a case

where only a part of it is to be produced.

Therefore, in the absence of any evidence that there was no other resolution passed in that meeting, it is difficult to say that the chairman presiding over them had not put the signature on the proceeding of that day. That being so, the absence of signature can be very easily explained on the footing that the copy which was produced was not of the entire proceeding but only of a particular resolution.

Lastly, if in fact the matter was not so then I think it was the duty of the appellants, as already stated above, to draw the attention of the chairman of the meeting then and there so that the matter could be thrashed out at the spot before any action was taken on it or at least at any time before the hearing had begun for in that case also it was still possible for the respondents to meet that objection either by affidavit or other evidence.

Unfortunately the appellants did not take the trouble of agitating the matter at any of these stages. Therefore, it has to be held that the objection on the ground of absence of signature on the copy of the resolution produced by respondent No. 1 in support of his authority is too belated and cannot be now taken into consideration when raised for the first time at the final hearing of the matter.

9. The same, however, I think cannot be said about the other objection which relates to the invalidity of the representation of the aforesaid two companies in person through respondent No. 1. The decision on that point, as placed before us, depends exclusively on the interpretation of law and not on any fact which is not already on the record of the case. Therefore, though it is true that in regard to this objection also the position is the same, namely, that it was never raised either before the chairman Mr. G. C. Banerji in the meeting held on 9th November, 1953, or at any stage until the application u/s 153 of Indian Companies Act 1913 had been taken up for final hearing yet in view of the fact that it is founded purely on the interpretation of law, it cannot be thrown out on the simple ground of delay for delay in such a case is not likely to take others by surprise or to place them in any disadvantageous position.

The exact objection raised by Mr. Dutt appearing for the appellants in this connection is that the chairman should not have at the meeting of the unsecured creditors held on 9th November, 1953, allowed Sri Arjun Prasad to represent in person the said two companies Bhadani Brothers and Hindustan Coal Company and in the absence of any proxy having been filed on their behalf, their votes should not have been counted in calculating the requisite statutory majority for the approval of the scheme. This raises a question as to the mode in which a creditor corporation can exercise votes in a general meeting of the creditors held in the course of a proceeding u/s 153 of the Indian Companies Act 1913.

10. Now under common law votes at all meetings are taken by show of hands, and, it is only when a poll is taken that regard is to be had to voting power according to number of shares. That means, unless a poll is demanded, the

voting is to be done by numerical majority and it is this which we find laid down in Article 62 of Table A of the English Companies Act 1948 and in Regulation 60 of Table A of the Indian Companies Act 1913. Then the other principle which also is well-established is that the proxy shall not be entitled to vote, except on a poll unless the articles otherwise provide. This is the English Companies Act 1908 as enacted in Section 136 while in the Indian Companies Act 1913 in Section 79. And so far as the Articles of Association of the company, namely, Gaya Sugar Mills Ltd., are concerned, they speak about it in Article 78 which reads.

"No member not personally present shall be entitled to vote on a show of hands, unless such member is a company present by a representative only authorities (duly authorised?) u/s 80 of the Indian Companies Act, 1913, in which case such representative may vote On the show of hands as if he were a member of the Company."

The third relevant rule in this connection is that on a poll votes may be given either in person or by proxy. This is the English Companies Act 1948 as laid down in Article 67 of Table A while under the Indian Companies Act 1913 in Regulation 64 of Table A, and it is the implication of this regulation that is mainly the subject of controversy in this case; for it is not denied that though in terms Regulation 64 is applicable to a going concern alone but in substance the rule in this regard that votes may be given either in person or by proxy is the same, whether it be a case of a going concern or a concern that is in the process of reconstruction u/s 153 of the Indian Companies Act 1913, or one which is in the course of winding-up. The rule of reconstruction, as laid down u/s 153 (2) of the Indian Companies Act 1913, says :

"If a majority in number representing three-fourths in value of the creditors or class of creditors, or members as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of the members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company".

While the one relating to winding-up as laid down in Rule 144 framed by this Court in exercise of the powers given u/s 246 of the Indian Companies Act 1913 provides :

"A creditor or contributory may vote either in person or by proxy",

which substantially is the same as the opening part of Rule 146 of the English Companies (Winding-Up) Rules 1949. Therefore, it is manifest that on a poll, may it be in the case of a general meeting of share-holders of a going concern or may it be in the case of a general meeting of creditors or contributories and that too either when the concern is in the course of reconstruction u/s 153 or in the process of winding-up, the mode of voting at least in form is the same, namely, either in person or by proxy. "A proxy", as defined in Stroud's Judicial Dictionary,

"is a lawfully constituted Agent (per Smith L.J. (1893) 3 Ch. 385 : 62 LT Ch 825 : 69 LT 268 : 42 WR 4), an Agent properly appointed (per Lindley L. J.), and semble (from the judgments of the Court of Appeal in that case), he need not, in the absence of a contrary regulation, be appointed in writing. However, in the Court below, Williams, J., said, "Under the Companies Act, generally, there can be to my mind no doubt but that the authority of the proxy must be in writing" and referring to the phrase "Creditors present, either in person or by proxy", Section 2, 33 and 34 Vict. c. 104, he added, that "means a proxy authorised by an instrument in writing"; but referring to the same phrase Smith, L. J. said, it "means, either in person or by his lawfully constituted agent and not by the instrument of proxy, the proxy paper, if thus be an instrument of proxy and it is not absolutely necessary to produce it at the meeting for which it is to be used, unless there be some requirement to that effect."

In other words a proxy is a creature of law of agency," though with this difference that under the company law such an agent has to be appointed in a manner as provided thereunder. Therefore, so far as voting by proxy is concerned that can be done on behalf of any person, may it be natural or artificial, so long as that person is in a position to appoint a proxy as provided in law. But the position is different where voting is to be done in person. In that case it is necessary that the voter must possess a person within the ordinary meaning of that word, that is, physical person which a natural person is always possessed of but not a legal entity like a company or a corporation. Therefore, unless by some legal fiction a person is provided to a company or a corporation, it cannot do any act that law requires to be done in person, for example, a company cannot appear in person before a tribunal (*Tritonia Ltd. v. Equity and Law Life Assurance Society* (1943) AC 584) and that is the reason why originally law was not prepared to reconcile itself to the concept that a person like a corporation could vote at all in person.

That being so, in the early stages the provision made for a corporation to vote was confined to the system of voting by proxy alone. Subsequently, however, as and when the tide of company enterprise rose, the policy of the legislature had to change with the result that gradually the concept of a corporation voting in person crept into the statute. The first provision made to the effect in the English Companies Act was the one enacted in the year 1908 but even therein the right was confined to a member corporation only; that means, that right was not yet extended to a creditor corporation. That came to be provided for the first time in English law in the year 1929 and it is only since then that in English law in the matter of voting in person a corporation whether it be in the position of a member or a creditor has been placed on equal footing. But in the Indian system of law the position even thereafter remained the same as it was under the Act of 1913, and it was only recently that under the new Companies Act 1956 a similar provision has now been made in Section 187, which for all practical purposes in this respect is the same as what was provided in the English law so far back as 1929. Section 187 of our new Companies Act 1956 reads :

"(1) A body corporate (whether a company within the meaning of this Act or not) may -

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of my class of members of the company;

(b) if it is a creditor (including a holder of "ebentures) of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers, (including the right to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were a member, creditor or holder of debentures of the company."

But all the same the fact remains that here also this final stage has been achieved in two stages. The first was in the year 1913 when u/s 80 of that year"s Act the following provision was made :

"A company which is a member of another company may by resolution of the directors, authorise any or its officials or any other person to act as its representative at any meeting of that other company, and the person authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shard-holder of that other company."

And then it was for the first time in 1956 that it was developed into what is now provided in our present Section 187. But as the present case is admittedly one governed by the old Act of 1913 the contention advanced by Mr. Dutt is that, therefore, in any case, Section 80 of the Indian Companies Act 1913 cannot be an authority for the proposition that the action of Sri Arjun Prasad in voting in person on behalf of the aforesaid two companies at the general meeting of the unsecured creditors was valid in law and this much Mr. Choudhary also concedes. But the contention of Mr. Choudhary is that the matter does not end there; otherwise what is provided in Section 153 of the Indian Companies Act 1913 in regard to a creditor voting in person will have to stand practicality abrogated at least in relation to the voting right by an artificial entity like a corporation.

Therefore, his submission is that the provision of law as laid down in Section 153 of the Indian Companies Act 1913 is not to be read in the light of what is provided in Section 80 of the Indian Companies Act 1913 or what is provided in Rule 150 of the Patna High Court Rules; rather as an independent provision by itself. Mr. Chouldhary contends that a proceeding u/s 153 of the Indian Companies Act 1913 is a proceeding independent by itself and is not in any way

related to a proceeding which is one for a concern going or for a concern in liquidation.

And if that is so then Section 153 of the Indian Companies Act *ex proprio vigore* implies that a corporation creditor like any other creditor may vote not only by proxy but in person also, and if there is any lacuna in the section about the procedural part of it then that lacuna, according to learned Counsel, can be very conveniently removed with the help of the general provisions of company law and specially those provided in Regulations 71 and 91 of the Indian Companies Act 1913. In my opinion, this contention is not correct.

When properly analysed, this will be found to be based on the assumption that the word "person" as used in Section 153 of the Indian Companies Act 1913 means not only a natural person but also an artificial person like a corporation unlike its implication as used in Section 79 or Regulation 64 of the Indian Companies Act 1913 Or as used in Rule 144 of the Rules framed by this Court. But I think there can be no justification for such an assumption either in law or on fact. In the first place, the word "person" as understood in its ordinary sense generally implies a natural person and not a person artificial unless there is a provision made for it either expressly or by necessary implication.

Mr. Chatterji appearing for the liquidator has rightly in this connection drawn our attention to the decision in *Wills v. Tozer* (1904) 20 TLR 700. In that case the section to be interpreted was Section 36 of the Harbour Act 1853, which provided that the commissioners

"shall be elected by a majority of the votes of the persons present and entitled to vote at the respective meeting for the election, such votes to be given in writing under the hands of the respective voters, but a proxy not to be in any case admitted."

But in spite of the specific provision made in the supplementary Act, which had been incorporated into it to the effect that "a person included a corporation unless there was something in the subject or the context repugnant to such construction." Mr. Justice Farwell held that :

".. .. the decision he had come to was against his inclinations, but the words of the Act were too strong for him. Section 36 contained expressions which he could not reconcile with the construction that "person" included corporation."

Secondly I think that what is provided in Section 153 of the Indian Companies Act 1913, for voting in person in relation to a creditor is confined to such creditors only who are in a position to fulfil that condition and it cannot be denied that one of the essential conditions required u/s 153 of the Indian Companies Act 1913 for a creditor to vote is that he should be present either in person or by proxy. In the normal course a corporation being an impersonal entity cannot be present in person.

That being so, the condition which is binding for a person to vote in person is

normally absent in the case of a corporation. Therefore, that also lends support to the view that in a meeting held u/s 153 of the Companies Act 1913 a corporation cannot vote in person unless there is specific provision made for it. A similar question as the one before us came up for discussion in *Pharmaceutical Society v. London Provincial Supply Association Ltd.* (1880) 5 AC 857, where Lord Selborne observed :

""I think the principle laid down by the junior Counsel for the respondents was substantially right; that if a statute provides that no person shall do a particular act except on a particular condition, it is *prima facie*, natural and reasonable (unless there be something in the context or in the manifest object of the statute, or in the nature of the subject-matter, to exclude that construction) to understand the Legislature as intending such persons, as, by the use of proper means, may be able to fulfil the condition; and not those who, though called "person" in law, have no capacity to do so at any time, by any means, or under any circumstances, whatsoever.""

Thirdly it has to be remembered that this part of the provision for voting as is stated in Section 153 is much the same as the one provided for a winding-up concern in Rule 144 or the one provided for a going concern in Section 79(e) or in Regulation 64 of the Indian Companies Act 1913. And if it is to be accentuated that the phrase "a member or a creditor may vote either in person or by proxy", when read with regulations 71 and 91 of the Indian Companies Act 1913, provides an exhaustive code on the subject then I see no reason why the same phrase when used in Section 79(e) of the Indian Companies Act 1913 and Rule 144 of this Court could not have served that purpose when read in the context as stated above and why the legislature at all thought it necessary to make any special provision for a member company in Section 80 of the Indian Companies Act 1913 and for creditor company in sub-section (b) of Section 187 of the new Companies Act 1956.

Then lastly the very fact that section. 153 of the Indian Companies Act 1913 is silent on the point as to how a corporation can vote in person, if it may so vote at all, gives further strength to the view taken above and I must say that Mr. Choudhary was also well alive to this difficulty and that is why he has tried to meet it by contending that the lacuna, if any, in this respect, can be met with by supplementing Section 153 with the provision of law as laid down in regulations 71 and 91 of the Indian Companies Act 1913.

In my opinion, this view is not consistent with the import of these regulations as they stand. Regulations 71 and 91 lay down a procedure which is to control and guide the internal administration of a company and is never meant to be imposed by that company on any other company in case it happens to be a member or a creditor of the other. Thus, looked at from any point of view, there is no substance in the contention advanced by Mr. Choudhary that the word "person" includes an artificial person like a corporation or that Section 153 is a self contained code.

And so far as the references made in (1) Hals-bury's Laws of England (Simonds Edition), Column. 6 at page 765, foot-note (e) and at page 610, para 1200; (2) The Principles of Modern Company Law by L.C.B. Gower at pages 8, 126 and 524; (3) Handbook on Joint Stock Companies by Gore-Browne, Forty-first Edition, page 413 and (4) Buckley on the Companies Act, 12th Edition, at pages 328. 843 and 889 (Article 102) are concerned, they are not at all helpful in construing Section 153 of the Companies Act 1913; for it has to be noted that the discussion in all these references is in the background of Section 139 of the English Companies Act 1948, which makes a specific provision for a corporation to vote in person and that not only as a member corporation but also as a creditor corporation. Therefore, they cannot be of any assistance in interpreting Section 153 of the Indian Companies Act 1913 in the background of its section. 80 wherein the provision made for a corporation to vote in person is confined to its capacity as a member corporation only and is not in relation to its capacity as a creditor corporation.

That means, in the case of a proceeding like the one before us, which is controlled exclusively by the Act of 1913, a creditor corporation, as contemplated u/s 153 of that Act, can vote only by proxy and not in person. Further, as pointed out by Mr. Dutt, the only provision wherein a reference has been made in relation to the Indian Companies Act 1913 as to how a creditor corporation is to vote is to be found in Rule 150 alone which has been framed by this Court under the powers given to it thereunder. That rule provides:

"Where a corporation is a creditor, any person who is duly authorised in writing by the corporation to act generally on behalf of the corporation at meetings of creditors and contributories and to appoint himself or any other person to be the corporation's proxy, may fill in and sign the form of proxy on the corporation's behalf and appoint himself to be the corporation's proxy and a proxy so filled in and signed by. such a person shall be received and dealt with as the proxy of the corporation."

That means, under this rule also the mode of voting that is allowed in the case of a corporation creditor is one by proxy alone and not in person. Further it has to be noted that this rule falls under the heading "Proxies" in relation to general meetings of creditors and contributories as mentioned therein. And even then though the first rule under that heading, namely, Rule 144, opens with the general provision that a creditor may vote either in person or by proxy but when it comes to deal with the procedure as to how a creditor corporation is to vote, it confines that provision to the voting by proxy alone. Therefore, this also by analogy suggests that the mode of voting in the case of a creditor corporation as is contemplated under the Act is one by proxy alone.

It has, however, been argued by respondent No. 1 that on the language of those rules and in the context in which they have been framed, they are not at all applicable to a proceeding u/s 153 of the Indian Companies Act 1913. On the contrary, what they speak about is a proceeding under liquidation only.

Therefore, they are of no assistance to us in construing Section 153 of the Indian Companies Act 1913. Further to support this contention Mr. Shree Nath Singh, who appears along with Mr. Choudhary, has added that though in the year 1936 Section 246 of the Indian Companies Act was amended and as a result of that amendment its scope was widened inasmuch as the section, as it stands; empowers the High Court to frame rules not only for the mode of proceedings to be had for winding up of a company in such court or in courts subordinate to it but also amongst others for the holding of meetings of creditors and members in connection with the proceeding u/s 153 of the Indian Companies Act 1913 and that though thereafter the rules as originally framed under the old Section 246, were in the light of some of the amendments recast here and there, as is evident from the heading of the Rules, which reads--"Rules framed by the High Court of Judicature at Patna u/s 246 of the Indian Companies Act (Act VII of 1913) as amended by Act XXII of 1936" yet in spite of all these changes there is so far no provision made at least in terms for a meeting held u/s 153 of the Indian Companies Act 1913.

In my opinion, this want of clarity in these rules is there and Mr. Dutt also to that extent concedes. But his submission is that though strictly speaking it may be so and in the absence of any specific provision to that effect therein it may be difficult to hold that they as a rule apply to all proceedings u/s 153 of the Indian Companies Act 1913 yet that cannot be a ground for saying that they do not apply at least to the present proceeding and that for two reasons.

The first is that though Section 153 of the Indian Companies Act 1913 does provide that the meeting held thereunder shall be called, held and conducted in such manner as the court directs but in the present case there was no such direction ever made by the learned Company Judge. The second is that the present proceeding u/s 153 of the Indian Companies Act 1913 was after all one which was taken up while the company was already in the process of winding-up. Therefore, according to Mr. Dutt, in the absence of any other provision on the subject, this Rule 150 can alone be a proper guide for a proceeding like the one before us.

In my opinion, on principle this argument seems to be correct, and if that is so, which I think is so, then it has to be held that Rule 150 of this Court is applicable at least to a proceeding like the one before us and as that rule in the case of a creditor corporation speaks of voting by proxy alone and not in person, therefore, the contention of Mr. Choudhary contrary to it has to be rejected. Then a question has been raised as to why at all in the case of a creditor corporation special provision had to be made in Rule 150 if the right to vote by proxy was already provided there in Rule 144.

The simple answer to that question is that in the case of a creditor corporation perhaps it was through (thought?) advisable that it should not be made to suffer from those limitations which rules 147 and 148 impose in the case of creditors who are natural persons. That means, in the case of a creditor corporation the

proxy may be any person and not necessarily a creditor and that person may fill in and sign the form of proxy on the corporation's behalf and appoint himself to be the corporation's proxy. All that is needed by such a person is that he should have been authorised in writing by the corporation to act generally on behalf of the corporation at meetings of creditors and contributories and to appoint himself or any other persons to be the corporation's proxy.

11. The contention of Mr. Choudhary, however, in this connection is that a corporation or a company has as a rule three phases of life -- the one as the going concern, the other as one in the process of reconstruction and the third as one in the process of winding-up -- and these" phases, as contended by him, are in the nature of water-tight compartments. Therefore, the rules applicable in the case of one do not apply to the case of the other. I think this argument is not at all substantial. After all, a proceeding taken for reconstruction in a case, where winding-up order has already been passed, as in the case before us, is nothing but alternative mode of liquidation, which by operation of law relieves the company and its contributories from liability further than that which is contemplated or imposed by the scheme (Re: London Chartered Bank of Australia (1893) 3 Ch. 540 : Dane v, Mortgage Insurance Corporation (1894) 1 QB 54 : Finlay v. Mexican Investment Corporation (1897) 1 QB 517). Further Section 153 of the Indian Companies Act 1913, as is clear from the provisions made therein, is applicable both to a going concern as also to a concern which is already in the process of winding-up.

Therefore, to the extent to which it applies in a case where winding-up order has already been passed, there is a overlapping between a proceeding taken in the course of winding-up and one taken UD for reconstruction thereafter. Therefore, in the absence of any direction given in that behalf by the Court or so long as there is no specific provision made by this Court under the Rules framed by it for a meeting u/s 153 of the Indian Companies Act 1913, there is no reason why the Rules as framed ,by this Court cannot be held applicable at least mutatis mutandis to such a proceeding if taken after an order of liquidation has already been passed.

In the present case it is not claimed that Sri Arjun Prasad in voting on behalf of the aforesaid two companies acted as then proxy; rather the specific claim made on his behalf is that he acted on their behalf in person and that on the basis of the resolutions passed in his favour to that effect by those corporations. Therefore, in the absence of any proxy having been filed by Sri Arjun Prasad, the votes cast by him on behalf of the two corporations, namely Bhadani Brothers and Hindustan Coal Company, should not have been counted in calculating the result of the approval of the unsecured creditors in the meeting held on 9th November, 1953, as contemplated u/s 153 of the Indian Com-panies Act 1913.

12. Next in the alternative it has been argued that even if it be so, that means, even if the votes cast by Sri Arjun Prasad in person on behalf of the aforesaid two corporations be eliminated from consideration still there is sufficient margin

left to give the necessary statutory majority in support of the approval of the scheme provided the votes cast in the meeting held on 9th November, 1953, are properly calculated.

This contention, however, is essentially based on the grievance that the chairman at the meeting held on 9th November, 1953, should not have accepted the proxies filed by Mr. G.K. Verma on behalf of Sales Tax Department and Mr. P.K. Bose on behalf of Eastern Railway and it is said that if that had been done, the votes cast by them, which they exercised against the scheme, would not have been counted and thus the total value of votes cast against the scheme should have been much less than Rs. 1,38, 173-3-8 1/2 pies as reported by the chairman.

Now the facts on the record show that the value of votes cast by Mr. G.K. Verma on behalf of Sales Tax Department was Rs. 32, 098/- and that of the votes cast by Mr. P.K. Bose on behalf of the Eastern Railway was Rs. 26,551/-. Therefore, on this basis the case of respondent no. 1 is that if the total value of these votes, namely, Rs. 58,649/-, which were against the scheme be eliminated from the total of Rs. 1,38,173-3-8 1/2 then what is left is still less than one-third of the remainder which will be found after deducting the votes of Bhadani Brothers and Hindustan Coal Company from the total value of the votes which had been cast in favour of the scheme, namely, Rs. 6,97,790-6-9. Now the ground given in support of this claim for discarding the votes of these two creditors is that the proxies submitted by Mr. P.K. Bose and Mr. G.K. Verma suffered from the same defects which led to the rejection of the votes cast by Mr. J.P. Singh on behalf of Chini Mazdoor Sangh and Mr. G.G. Dubey on behalf of Pranalal Valji.

That being so, it is argued that if the chairman was of opinion that the proxies submitted on behalf of Chini Mazdoor Sangh and Mr. G.G. Dubey were not in accordance with law and as such not admissible then on the parity of reasoning Mr. P.K. Bose and Mr. G.K. Verma should also not have been allowed to take part in the voting. In my opinion this reasoning given in support of the alternative argument is rather too academic and is essentially based on the question as to whether the findings given by the learned Company Judge on the validity of the proxies filed by Mr. P.K. Bose and Mr. G.K. Verma are still open to be attacked in the manner and on the ground as it has been attempted to be done here.

In my opinion not and that for two reasons. First on the ground that the appeals before us on behalf of the appellants are directed against that specific part of the order whereby the learned Company Judge has dismissed their objection relating to some particular creditors who had voted in support of the scheme and not against any of that part of the order which deals with the votes cast against the scheme.

If the respondents were dissatisfied with the order passed by the learned Company Judge as to the votes cast by Mr. P. K. Bose on behalf of the Eastern Railway and by Mr. G. K. Verma on behalf of the Sales Tax Department, who had

voted against the scheme, the proper course open to them was to prefer an appeal against those particular orders and not to reopen the decisions by way of reply to the present appeals which relate to orders other than those. In the second place, though it is true that ultimately in the concluding portion of the judgment the learned Company Judge does observe :

"It is, therefore, unnecessary to consider whether the Chairman was right in allowing Shri G. K. Verma and Shri P. K. Bose to represent the Sales Tax Department and the Eastern Railway",

yet it appears that the learned Company Judge in the course of his discussion in those cases has taken into consideration some facts also which go a long way to show that the objection raised against the votes cast by these persons are not even on merit tenable. While dealing with the case of Mr. P. K. Bose, who voted for the Eastern Railway, the learned Company Judge has observed:

"Mr. Bose stated that his authority to appear on behalf of the Railway was challenged at the meeting, that he produced his authority which was in writing, and that all concerned, including the Chairman, were satisfied with that authority. He further stated that he took back the authority, and returned it to the Railway officials concerned. Similarly, and one else whose authority may have been challenged at the meeting may have produced sufficient materials to satisfy the Chairman and all those present at the meeting. Even if any objection had been raised after submission of the Chairman's report, the party concerned could have taken steps for the production of necessary materials to meet the objection."

And this is fully in conformity with the principle laid down in 55 Cal WN 206 : Bengal Bank Ltd. Vs. Suresh Chakravartty and Others, . Further, as already stated, the true test in such a case is whether the man voting had the necessary authority or not and not the fact whether the evidence necessary to prove the same was sufficient to satisfy the Chairman in proof of his authority. Furthermore, the facts brought on the record unambiguously establish that the necessary authority had been produced by Mr. Bose and that the chairman had satisfied himself about it.

Therefore, the objection now raised as against the votes cast by Mr. Bose on behalf of the Eastern Railway is not at all tenable. Similar is the position in regard to Mr. G. K. Verma. He represented the Sales Tax Department and the authority produced by him is included in the paper book at page 7. There is nothing therein to show that that authority was in any respect invalid. Therefore, the objection as against the votes cast by him on behalf of the Sales Tax Department also fails.

Lastly I may mention here that so far as the votes cast by Mr. J. P. Singh on behalf of Chini Mazdoor Sangh and Mr. G. G. Dubey on behalf of Pranalal Valji are concerned, they had been rejected on a ground entirely different and not on one which is now said to be applicable in the case of proxies filed by Mr. Rose and Mr.

G.K. Verma. In the case of Mr. J. P. Singh, who voted for Chini Mazdoor Sangh. there was no proxy received from that Sangh at all. It is true that the learned Company Judge has observed that -

"It is possible that some authority was submitted by Shri J. P. Singh before the Chairman, authorising him to represent the Chini Mazdoor Sangh."

But this observation on the very face of it is based on mere supposition; though as a matter of fact there is nothing on the record to show that. Chini Mazdoor Sangh had given proper authority to Mr. J. P. Singh to vote on its behalf. In the case of Mr. G. G. Dubey, the only objection raised was that the proxy form executed by Pranalal Valji had not been duly attested.

In answer thereto the learned Company Judge has held and I think rightly that in the absence of any specific direction by the court in regard to the form of proxy to be filed in this case, it was not necessary at all to get the proxy attested. In view of these reasons I think there is no substance in the contention advanced by Mr. Choudhary that the order passed by the learned Company Judge in regard to the votes cast by Mr. G. K. Verma and Mr. P. K. Bose is not sustainable in law.

13. This was all the discussion on the merits of the questions raised before us. Then Mr. Choudhary has also raised a contention as to the maintainability of these appeals. The main reason given for this latter contention is that the order under appeal is not a judgment within the meaning of Clause 10 of the Letters Patent of our Court, and in support of this contention reliance has been placed by the learned counsel on the decisions in *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, *Gobind Lal Nakphopha Vs. The Administrator-General of Bihar and Others*, and, *Vishnu Pratap and Others Vs. Sm. Revati Devi and Others*, .

In my opinion, so far as these authorities are concerned, they on their very face are distinguishable. The decision reported in *Gobind Lal Nakphopha Vs. The Administrator-General of Bihar and Others*, relates to a probate case and the appeal thereunder was directed against the decision of the first court refusing to recall an order. In those circumstances, a question was raised whether any such appeal lay under Clause 10 of the Letters Patent or not. In answer thereto Narayan, J. with whom Imam, C. J. (as he then was) agreed, held, as is stated in the placitum of the case that -

"The term "judgment" in the Letters Patent of the High Courts means "decree" and not "order". The mere fact that a particular order is one from which an appeal lies as an appeal from an order does not ..... make that order a decree which is the meaning attached to the word "judgment" as used in Clause 10 of the Letters Patent. Therefore, if one of the parties comes and asks the Judge to recall the order either under his power of review or under his inherent power and the Judge merely refuses to take any steps in the matter, such an order is not a "judgment" within the meaning of Clause 10 of the Letters Patent."

14. The decision reported in *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, related to the question whether an order for transfer of a suit made under Clause 13 of the Letters Patent of the Calcutta High Court was or was not a judgment within the meaning of Clause 15. In answer thereto their Lordships held that such an order was not appealable and in support of that order they opined ;

"The order in the present case neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. An order for transfer cannot be placed in the same category as an order rejecting a plaint or one dismissing a suit on a preliminary ground as has been referred to by Couch C, J. in his observations quoted above. AN order directing a plaint to be rejected or taken off the file amounts to a final disposal of the suit so far as the Court making the order is concerned. That suit is completely an end and it is immaterial that another suit could be filed in the same or another Court after removing the defects which led to the order of rejection. On the other hand, an order of transfer under Clause 13 of the Letters Patent, is, in the first place, not at all an order made by the Court in which the suit is pending. In the second place, the order does not put an end to the suit which remains perfectly alive and that very suit is to be tried by another Court the proceedings in the latter, to be taken only from the stage at which they were left in the Court in which the suit was originally filed".

15. The appeal in *Vishnu Pratap and Others Vs. Sm. Revati Devi and Others*, related to an order which was passed by a single Judge of the Allahabad High Court appointing an interim receiver u/s 153 (c) (8), Companies Act, read with Order 40, Rule 1, Civil Procedure Code, pending the final disposal of an application u/s 153 (c). On those facts one of the questions that cropped up for decision was whether such an order was appealable u/s 202 of the Companies Act. In answer thereto their Lordships while distinguishing the case in *Levy Brothers and Knowles Ltd. Vs. Subodh Kumar Day and Another*, held :

"It would thus appear that the order was made in the matter of the winding-up of a company and it has nothing to do with an order like the one before us appointing an interim receiver pending the final disposal of an application u/s 153. We are, therefore, not satisfied that the appellants have any right of appeal u/s 202, Companies Act."

Then reverting to the question whether such an appeal could lie under the Letters Patent, their Lordships observed :

"Coming now to Clause 10 of the Letters Patent, a great deal of controversy has raged round the word "judgment" and what it means. In the Letters Patent itself we have several clauses in which provisions are made for appeals. Clause 10 deals with an appeal from the judgment of a single Judge. Clause 30 deals with appeals to the Privy Council from any final judgment, decree or order of the High Court. Clause 31 provides for appeals to the Privy Council against certain

preliminary or interlocutory judgment, decree, order or sentence of the High Court. Clause 32 provides for an appeal to the Privy Council against any judgment, order or sentence made by the High Court in the exercise of original criminal jurisdiction. It would thus appear that in dealing with appeals to the Privy Council the words used are "judgment, final, preliminary, or interlocutory decree, order or sentence", while in dealing with appeals from one judge to a bench of the same Court only the word "judgment" has been used. There being no appeal under the Letters Patent in criminal matters from one Judge to a larger number of Judges the word "sentence" could easily be omitted. There is also no appeal from an order passed by a single Judge in the exercise of revisional jurisdiction. Appeals only lie from judgment in civil matters in the exercise of ordinary or extraordinary original jurisdiction of the Court and, with the leave of the Judge, against a decree or order made by him in the exercise of appellate jurisdiction against a decree or order made by a Subordinate Court. In Section 205, Government of India Act providing for appeals to the Federal Court the words used are "judgment, decree or final order".

In *Mohammad Amin Brothers Ltd. v. Dominion of India* AIR 1950 FC 77, the point arose whether an order under the Letters Patent setting aside an order of a single judge directing the compulsory winding up of a company was a final order against which an appeal lay to the Federal Court and, it having been held that it was not a final order an argument was raised that it may be a judgment if it was not a final order. Their Lordships held that by reason of the collocation of the words the word "judgment" would not include interlocutory judgment and observed as follows:--

"In English Courts the word judgment is used in the same sense as a decree in the CPC and it means the declaration or final determination of the rights of the parties in the matter brought before the Court"

and referred to a previous decision of the same Court in AIR 1949 1 (Federal Court) . In that case Kania C. J., observed :

"It is next necessary to ascertain the meaning of the words judgment and decree. In England in civil actions a decree is understood to be the same as a judgment. If so, as there may be a preliminary decree, there may be a preliminary judgment."

His Lordship mentioned in the case of *Onslow v. Inland Revenue Commrs.* (1890) 25 QBD 465 where Lord Esher M. R. said :

"A judgment, therefore, is a decision obtained in an action, and every other decision is an order".

Kania, C. J, said:

These and other English decisions make it clear that in England when the word judgment or decree is used, whether it is preliminary or final, it means the declaration or final determination of the rights of the parties in the matter

brought before the Court". His Lordship pointed out that definitions of the words "judgment" and "decree" in the Code are applicable merely to that Code. Those definitions, therefore, are not helpful."

It is, therefore, clear that none of these decisions given in appeal refer to or arise out of Section 153 (7) of the Indian Companies Act 1913, which was enacted for the first time in the year 1936. Therefore, they are not helpful on the point raised here that the present appeals, which have been admittedly u/s 153(7) of the Indian Companies Act 1913, are not maintainable in law and competent.

16. Now coming to the question as to how far the word "judgment" as used in Clause 10 of the Letters Patent is applicable to the present order under appeal, it has to be conceded that the controversy in this regard is not free from difficulties. But, broadly speaking, this much seems to be well-established both on principle and authorities that the word "judgment" as used in Clause 10 of the Letters Patent does at least include those orders which finally determine a dispute between the parties.

If that is so then in the present appeals it is difficult to hold that the order under appeal does not determine a dispute between the propounder of the scheme on one side and the objecting creditors on the other at least to the extent to which it decides the question as to how far the proposed scheme was or was not approved by the statutory majority as contemplated in law.

It is the admitted case of the parties that on the poll taken in the meeting held on 9th November, 1953, the result would have been otherwise had the votes cast by Sri Arjun Prasad on behalf of Bhadani Brothers and Hindustan Coal Company in person would have been rejected and eliminated from the poll. In other words, in the latter case the scheme could not be placed before the court for the necessary sanction as contemplated u/s 153 of the Indian Companies Act 1913.

Therefore, it is manifest that in such circumstances any order dismissing the objection raised on behalf of those who were in opposition to the scheme finally determines and concludes their right of dissent to the same. That being so, I have no hesitation to hold that the order under appeal is a judgment within the meaning of the word as used in Clause 10 of the Letters Patent. In other words, the appeals are competent.

17. In the result, therefore, it has to be held that Sri Arjun Prasad (respondent No. 1) in law as laid down in the Indian Companies Act 1913 and the rules framed thereunder was not entitled to vote in person on behalf of the aforesaid two corporations, namely, Bhadani Brothers and Hindustan Coal Company, and as such the votes cast by him in person on their behalf without filing any proxy in the meeting of the unsecured creditors held on 9th November, 1953, are invalid and inoperative. Accordingly the order of the learned Company Judge as to this part of the case is set aside and the appeals are allowed. But in the circumstances there will be no order as to costs.

K. Dayal, J.

18. I agree.