

(1958) 05 AHC CK 0007
In the Allahabad High Court
Case No : Appln. No. 3 of 1957

Official Liquidator

APPELLANT

Vs

Sri Krishna Deo and Others

RESPONDENT

Date of Decision : 16-05-1958

Acts Referred:

Companies Act, 1913 — Section 109, 110
Companies Act, 1956 — Section 128
Registration Act, 1908 — Section 17(1), 2(6)

Citation : AIR 1959 All 247 : (1958) 28 AWR 738

Hon'ble Judges : B. Upadhyaya, J

Bench : Single Bench

Advocate : A. Sanyal, for the Appellant; Ram Shanker Pd., Bijai Shankar, M.L. Trivedi and B.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

B. Upadhyaya, J.—This is an application by the Official Liquidator praying for declaration that the holders of the third series of debentures of the U. P. Oil Industries Ltd., now in liquidation, are not secured creditors of the Company.

2. This Company was ordered to be wound up on the 11-5-1956. After investigating into the assets and liabilities of the Company the Liquidator found that it had three series of debentures. The first series of debentures were allotted to 8-4-1948 for a total sum of Rs. 1,50,000/-. A Debenture Trust Deed was executed and registered with the Registrar, Joint Stock Companies, Lucknow and also in the office of the Sub-Registrar, Lucknow under the Indian Registration Act.

The second series of Debentures were issued on 23-6-1950 for a sum of Rs. 100,000/-. For this series also a debenture Trust Deed was executed and it was registered with the Registrar, Joint Stock Companies Lucknow as well as in the office of the Sub-Registrar, Lucknow under the Indian Registration Act. By a resolution dated the 23rd March 1952 the Board of Directors authorised Sri B. P. Agarwall who was managing the affairs of the Company to issue a third series of

debentures for Rs. 4.50.000/- and a committee was appointed to allot these debentures.

In pursuance of the above resolution the committee on the 7th April 1952 allotted debentures bonds nos. 1 to 4 for Rs. 2,000/- to Rai Sahib Pt. Sri Krishna Deva Bhargava of Khatauli and four bonds nos. 5 to 8 for Rs. 3,000/- to Suit. Rajeshwari Devi of Karol Bagh Delhi. No Debenture Trust Deed was executed for this series and there was no registration in the office of the Sub-Registrar under the Indian Registration Act.

The Company however appears to have registered with the Registrar Joint Stock Companies the particulars of this third series of debentures on the 18th April 1952 u/s 109 of the Indian Companies Act 1913 and it further appears that a printed form of the debentures of this series along with the condition under which they were issued was also filed in the Office of the Registrar of companies, there being no Trust Deed relating to this third series of debentures each debenture allotted to each person is alleged to be a different transaction and the Official Liquidator contends that each such transaction should have been registered within 21 days of the date on which the debenture was issued. The holders of the third series of debentures are therefore said to be unsecured creditors and entitled to no preference.

3. Notice was issued of this petition and the petition was opposed both on behalf of the Company as well as on behalf of these debenture holders. It is contended that registration u/s 109 of the Companies Act is all that is needed under the law and as the issue of debentures was intended to create only a floating charge on all the assets of the Company generally no registration under the Registration Act was either necessary or practicable.

In this" connection it was also urged that the plant and the machinery of the Company, at least the major and more substantial part of it was movable property within the meaning of the law and even if the third series of debentures were not registered under the Registration Act such plant and machinery being movable property could be held to be under a charge so far as these debentures were concerned.

4. Two questions thus arise for consideration. The first is whether registration under the Registration Act is essential to create a charge on the assets of a Company and the second is as to whether the plant and machinery of the Company or any part thereof is movable property. Section 109 of the Indian Companies Act 1913 requires that every mortgage or charge created by a Company should be registered with the Registrar of Companies.

This is necessary whether the mortgage or charge is for the purpose of securing any issue of debenture or whether it is a mortgage or charge on the uncalled share capital of the Company or any Immovable property or interest therein or is a floating charge on the undertaking of the Company generally and the provision says that where necessary particulars of the mortgage or charge are not filed

with the registrar for registration in the manner prescribed, within 21 days of the date of its creation the mortgage or charge would be void and inoperative as such.

Proviso (iv) to this section says that the holding of debentures entitling the holder to a charge on Immovable property shall not be deemed to be an interest in Immovable property. Learned counsel for the debenture holders contended that the provisions of Section 109 and proviso (iv) referred to above indicate that while registration with the Registrar of Companies is intended to give notice to all who may be concerned with the charge created, it is clear that the holding of Debentures under which the charge is said to have been created is not to be considered as having an interest in Immovable property. The Debenture creating any interest in the Immovable property is not a transfer within the meaning of Section 17 of the Registration Act and therefore registration under that Act is not necessary.

5. Section 110 of the Companies Act deals-with the particulars that are required to be registered with the Registrar of Companies. These particulars are :

- (a) the total amount secured by the whole series, and
- (b) the date of the resolution authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined, and
- (c) a general description of the property charged and
- (d) the names of the trustees (if any) for the-debenture holders.

These particulars are to be filed with the deed or a verified copy thereof, and if there is no such deed one of the debentures of the series should be filed and the Registrar on payment of the prescribed fee is to enter all these particulars in a register. From the fact that a general description of the property charged only is required to be given u/s 100 (c) of the Companies Act and that it is not necessary to give any further details of the property it is apparent that such registration is not intended to inform any person as to what the Immovable property is on which the charge is created.

The purpose of the registration of debentures, charges and mortgages under the Companies Act is to give notice to persons dealing with the Company of the encumbrances on the properties of the Company. This encumbrance may be found by a search of the Registry of the place where the Company is registered or by proper enquiries in the office of the Registrar of Companies. But a Company may have a large number of branches situate at different places and there may be immovable property pertaining to these branches.

In case any such Immovable property is intended to be hypothecated or transferred, the person who is to accept such hypothecation or transfer ought to know whether that particular property is or is not subject to any encumbrance. To collect the necessary information he may make inspection at the Registration

Office of the place where the Company has its head office. In case there is no trust deed registered in respect of a series of debentures he cannot get any information from such inspection.

He may also make enquiries at the office of the Registrar of Companies. But inasmuch as the particulars required to be registered u/s 109 are of too general a character so far as the details of the properties are concerned, he is likely to have no clue to encumbrances on the property with which he is about to deal. In case there is no registration under the Indian Registration Act of the debentures issued specifying the properties purported to be encumbered, there will be no information available from the Registration Office of the place where the property is situated.

Thus in the absence of registration under the provisions of the Indian Registration Act such a person cannot get any information of the charge that might be claimed by a debenture holder.

I am therefore of opinion that the registration of the debentures u/s 109 of the Companies Act does not adequately inform any person who may have to deal with any particular immovable property of the Company.

6. One of the objects of registration is to provide information to persons dealing with the property with a view to prevent fraud. *Derbyshire C. J. in K. Roy and Bros. Vs. Ramanath Das and Others*, observed that the Registration Act is intended to afford warning to people in the district in which the land is situated as regards the charges affecting that land so that they may not suffer through lack of knowledge.

Of the other objects of registration one is to give solemnity of form and legal importance to certain classes of documents and another is to perpetuate documents which may afterwards be of legal importance and the general purpose appears to be to ensure a record of the rights and obligations relating to Immovable properties. It is difficult to hold that the registration of a general description of the property charged u/s 109 read with Section 110 of the Companies Act has the same effect as the registration under the Registration Act.

Section 17(1)(b) of the Indian Registration Act requires to be registered non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in Immovable property.

As observed by *Derbyshire C. J.* in the case referred to above, the issue of a debenture does limit the right of a Company to its property and creates from the moment it is executed a floating charge over the whole of the Company's property Immovable and movable & that though the floating charge may become fixed on the happening of one of the events mentioned in the conditions of the debentures, the issue of debentures is a mutation of the right of the Company to

its Immovable property contingent upon the happening of one of the events specified in the condition.

Referring to Section 100 of the Transfer of Property Act which describes a charge the learned. Chief Justice held that the issue of a debenture does purport to create a charge on the property of a Company. The provisions of Section 17(1) (b) are mandatory and it is therefore clear that the three series of debentures which were not registered under the Indian Registration Act failed to create a charge on the Immovable properties of the Company.

7. The other question as to whether the plant and machinery of the Company are movable or immovable properties does not admit of much discussion. Mr. S. N. Varma, Advocate of this Court was. appointed a Commissioner to inspect the premises of the Company and to ascertain whether the machinery and plant belonging to the Company were fixed and were things attached to the earth or permanently fastened to anything which was attached to the earth as mentioned in Section 2(6) of the Indian Registration Act,

The report submitted by Mr. Verma is a very careful and detailed report containing as many as 44 photographs. He has given as accurate a description of the machinery and the plant set up in the premises as could be possible. In fact the report was so exhaustive and gave the facts so clearly that the parties found it unnecessary to lead evidence and the report was of considerable assistance to the Court.

From this report it is clear that the plant and the machinery of the Company are either embedded in the earth or they are permanently fastened to things attached to the earth. It is contended that most parts of the machinery are fixed to their bases with bolts and nuts and they can be removed by removing the nuts. It is therefore contended that such machineries as can be moved away by removing the nuts should be held to be movable property.

A similar question went up for consideration to the House of Lords in/Reynolds v. Ashby & Son 1904 ACJ 466. Machines in that case were fixed to concrete beds in the floor of the factory by bolts and nuts and could have been removed without injury to the building or the beds. Lord Lindley observed:

"The purpose for which the machines were obtained and fixed seems to me unmistakable; it was to complete and use the building as a factory. It is true that the machines could be removed if necessary, but the concrete beds and bolts prepared for thorn negative any idea of treating the machines when fixed as movable chattels."

In the present case it is clear from the Commissioner's report that the machines are permanently fastened to things attached to the earth. They were set up there with the definite intention of running the Oil Mills and not with the idea of being removed after temporary use. I have therefore no hesitation in holding that the plant and machinery of the Company is not moveable property.

8. In the result the Official Liquidator is entitled to the declaration prayed for. It is hereby declared that the holders of the third series of debentures are not secured creditors of the Company but are only unsecured creditors.