(1967) 09 BOM CK 0032

In the Bombay High Court

Case No : Company Application No. 23 of 1967

Official Liquidator APPELLANT

Vs

V.M. Deshpande and Another RESPONDENT

Date of Decision : 28-09-1967

Acts Referred:

Companies Act, 1956 — Section 446, 446(1)
Income Tax Act, 1961 — Section 171

Citation : (1968) 38 CompCas 26

Hon'ble Judges : Vimadalal, J

Bench : Single Bench

Advocate : S.J. Sorabji and I.M. Chagle, for the Appellant; R.J. Joshi, for the Respondent

Judgement

Vimadalal, J.—This is a judge''s summons taken out by the official liquidator of the Colaba Land & Mills Co. Ltd. for an order that certain notices dated 23rd August, 1966, and 31st December, 1966, taken out by the income tax Officer and the proceedings taken pursuant thereto be quashed, and for an order that, if necessary, the respondents be directed not to proceed with those notices till further orders of this court, and on such terms as the court might impose and be restrained from in any way assessing or reassessing the Colaba Land and Mills Co. Ltd. in liquidation for the assessment years 1950-51 to 1955-56.

2. The facts necessary for the purpose of this application are that the Colaba Land and Mills Co. Ltd. was ordered to be wound up, and the applicant was appointed liquidator by this court by its order dated 7th October, 1959. The entire undertaking of the Colaba Land and Mills Co. Ltd. had been sold on 21st May, 1958, and all the records (except the financial books) of the undertaking maintained by the company had been handed over to the purchasers for the purposes of running and working the said undertaking. On 23rd August, 1966, the Income Tax Officer served on the official liquidator, who is the applicant before me, notices u/s 148 of the Income Tax Act, 1961, proposing to re-open

the assessment of the company and to reassess the company in respect of the assessment years 1950-51 to 1955-56. Copies of those notices have been annexed to the affidavit in support of the present judge''s summons and collectively marked " C". On 31st December, 1966, the Income Tax Officer served further notices u/s 142(1) of the Income Tax Act, 1961, upon the official liquidator, calling upon him to produce the accounts and documents specified on the reverse of the said notice and to furnish certain information called for by him. At the foot of the said notices it was stated that failure on the part of the official liquidator to comply with the terms of the said notices would not only result in an ex parte assessment against the company but might also entail a penalty u/s 271 of the Income Tax Act or even prosecution u/s 276 of the said Act. Certain negotiations thereafter ensued between the official liquidator and the Inspecting Assistant Commissioner of Income Tax which, however, proved infructuous. The official liquidator has stated that, in view of the fact that all the books of account, except a few of them, had already been handed over to the purchasers of the undertaking, he was not in a position to comply with the said notices. It has further been contended by the official liquidator that no case has been made out for the reopening of the assessment by the Income Tax authorities, but I am not concerned with these contentions on the present summons.

3. The main contention raised before me is to be found embodied in Clauses (a), (b) and (c) of paragraph 26 of the affidavit in support filed by the official liquidator on the present summons, and that is, (1) that reassessment proceedings against the company, if at all, can only be instituted or commenced after first obtaining the leave of the court which is winding up the said company u/s 446(1) of the Companies Act, 1956 ; (2) that, without such leave, the reassessment proceedings instituted or commenced and the action taken in furtherance or in pursuance thereof by Income Tax authorities were a nullity ; and (3) that the reassessment proceedings and the notices referred to above had been issued without jurisdiction or were barred by the provisions of the Companies Act, 1956, as, after the commencement of the winding-up of the company, all claims and questions arising under or in relation to the winding-up of that company can only be determined by the court which is winding up the company.

4. Before I proceed to deal with these contentions, it would be convenient to refer to the relevant statutory provisions with which I am concerned on the present summons. Section 147 of the Income Tax Act, 1961, provides that, if the Income Tax Officer has reason to believe that income chargeable to tax has escaped assessment, he may, subject to certain formalities provided for by the Act, reassess the same. Section 148 of the Act, however, provides that, before doing so, the Income Tax Officer must serve on the assessee a notice containing certain requirements which are laid down in another Section of the Act. Section 446 of the Companies Act, 1956, with the interpretation of which I am directly concerned on the present summons, provides, in Sub-section(1) thereof as follows:

" When a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding-up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose. "

5. Sub-section (2) of that Section then proceeds to enact that the court which is winding up the company is to have jurisdiction to entertain and dispose of any suit or proceeding by or against the company and certain other matters laid down therein "notwithstanding anything contained in any other law for the time being in force ". Sub-section (3) of Section 446 provides that any suit or proceeding by or against the company which is pending in any other court may also be transferred to and "disposed of by the court which is winding up the company.

6. The main contention of the official liquidator on the present summons is that the Income Tax Officer has no jurisdiction to issue the notices which he has issued, or to proceed with the reassessment of the company, without the leave of the court winding up the company being first obtained, as proceedings for reassessment are "legal proceedings" within the meaning of that expression in Section 446(1) of the Companies Act. On a plain reading of that Section, there is no reason whatsoever for coming to the conclusion that the expression " legal proceedings " would not include a proceeding for assessment or reassessment under the Income--tax Act, since it would be a proceeding adopted in accordance with the provisions of law or a legal enactment.

7. The question is, however, in my opinion, clinched by one single decision of the Federal Court. Before I refer to that decision, it may be pertinent to state that decisions of the erstwhile Federal Court are, subject to appeal to the Privy Council, "law in force", within the terms of Article 372 of the Constitution, and, as such, are binding on all courts of law. I will now proceed to deal with the decision of the Federal Court to which I have just referred. That is the decision in the case of the Governor-General in Council v. Shiromani Sugar Mills [1946] 16 Comp. Cas. 71 ; 14 ITR 248 . The facts of that case were that the company which was concerned in the case was ordered to be wound up by the Allahabad High Court on the 17th of April, 1942. On the 25th of February, 1943, an assessment order in regard to Income Tax for the assessment year 1941-42 was passed, under which Rs. 18,493-12-0 was assessed as the tax due by the company for that year. On the 10th of March, 1943, a notice of demand was served upon the official liquidator of the company u/s 29 of the old Income Tax Act of 1922. On the 13th March, 1943, the official liquidator pointed out to the Income Tax department that the proper procedure to be followed was for the Income Tax department to ledge a claim in the winding-up of the company in respect of the arrears of tax alleged to be due from the company. The Income Tax department, however, did not take that advice from the official liquidator but decided to adopt the procedure provided by Section 46 of the Income Tax Act,

1922, in regard to the recovery of Income Tax as arrears of land revenue, and forwarded a recovery certificate under Sub-section (2) of that Section to the Collector of Allahabad. On the 10th of July, 1944, the official liquidator received from the Collector a demand for the recovery of the said amount as arrears of land revenue. On these facts, the official liquidator made an application to the High Court, inter alia, u/s 171 of the old Indian Companies Act, 1913, which is identical in terms with Section 446(1) of the present Companies Act of 1956, against the Governor-General for an order that the respondents be directed to put in a formal claim to the official liquidator, and for an injunction restraining the Collector from effecting recovery of the said sum as arrears of land revenue, pending disposal of the application. A Division Bench of the Allahabad High Court, before whom the application came up for hearing held, inter alia, that the respondent should be restrained from proceeding, without the leave of the court, with the subsisting proceeding before the Collector of Allahabad for recovery of the sum claimed by the Income Tax authorities as arrears of land revenue in accordance with the provisions of Section 46 of the Income Tax Act, 1922. On a certificate granted u/s 205 of the Government of India Act, 1935, the matter was taken up to the Federal Court, and one of the main contentions of the Government, which was the appellant before the Federal Court, was that the action taken by the revenue authorities u/s 46 of the Income Tax Act, 1922, did not require any prior leave of the court tinder Section 171 of the Companies Act, 1913. It was held by the Federal Court that the Crown was not entitled to any prerogative, priority or preferential rights of treatment save those expressly conferred upon it by a statute, and that the particular arrears of Income Tax which the authorities had endeavoured to collect through the machinery of Section 46 of the Income Tax Act did not come within the prescribed class of tax for which the Crown could claim even the limited priority given to it by Section 230 of the Companies Act, 1913. The learned judges then proceeded to observe that the claim to exercise the machinery of Section 46 of the Income Tax Act, 1922, if successful, would in effect enable the Crown to secure for the arrears in question the priority to which, both in England and India, the Crown has been held not entitled. The judgment then proceeds to deal with the very question with which I am directly concerned on the present application. It was sought to be contended by the learned counsel appearing for the revenue authorities that, for a proceeding to be within the scope of Section 171 of the Companies Act, 1913, it must be (1) in the nature of a suit, and (2) a proceeding in a court of law, in which way only could proper effect be given to the phrase " legal proceedings " as contrasted with the word "proceeding" by itself which occurs in Section 169 of the Companies Act, 1922. It was held by the Federal Court that the expression "all other legal proceedings " occurring in Section 171 of the Companies Act, 1913, which, as already stated by me, is identical in terms with Section 446(1) of the present Companies Act, 1956, should not be confined to original proceedings in a court of the first instance analogous to a suit initiated by a petition similar to a plaint. The learned Judges proceeded to observe that no narrow construction should be placed upon those words, and they should be held to cover distress and execution proceedings in the ordinary courts, as such proceedings are other legal proceedings against the company as contrasted with ordinary suits against the company. On the same page, the learned judges then proceeded to state as follows;

" That still leaves open the question whether action u/s 46 of the Indian Income Tax Act is covered by the phrase '' other legal proceeding ''. Clearly it is not a proceeding in an ordinary court of law. But we see no reason why in British India no '' legal proceeding can be taken otherwise than in an ordinary court of law, or why a proceeding taken elsewhere than in an ordinary court of law provided it be taken in the manner prescribed by law and in pursuance of law or legal enactment, cannot properly be described as a legal proceeding.

If it be considered that the effect of the Income Tax authorities putting the machinery of Section 46 of the Income Tax Act in motion for the collection of arrears of Income Tax is to bring into operation all the appropriate legal enactments relating to the collection of land revenue in the Province concerned, it is, in our judgment, very difficult to say that they are not taking a ''legal proceeding ''. "

8. The Federal Court, therefore, agreed with the Allahabad High Court in holding that the words " other legal proceeding " in Section 171 of the Companies Act, 1913, covers any proceeding by the revenue authorities u/s 46(2) of the Income Tax Act, 1922, and that accordingly, before forwarding the requisite certificate u/s 46(2) to the Collector which would put the machinery for the collection of the arrears of Income Tax as arrears of land revenue into'' motion, the revenue authorities should have applied u/s 171 of the Companies Act, 1913, for leave of the winding up court. For the purpose of the present summons, it is unnecessary for me to consider the other points which were decided by the Federal Court in Shiromani''s case. The ratio of the decision of the Federal Court in that case, therefore, is, (1) that the expression " other legal proceeding " in Section 446(1) of the Companies Act, 1956, need not be confined to an original proceeding in the nature of a suit, and (2) that it need not be a proceeding in a court of law, so long as it is a proceeding taken in pursuance of a legal enactment.

9. Mr. Sorabji referred to some other cases also in the course of his argument, but I do not think it necessary to deal with any of them, except the decision of the Supreme Court in the case of Union of India (UOI) and Another Vs. India Fisheries (P) Ltd., which was a decision in appeal from the Income Tax bench of the Bombay High Court in Indian Fisheries (Private) Ltd. Vs. Union of India and Others, and to make a passing reference to the decision of a Division Bench of this court in the case of Abdul Aziz Ansari Vs. The State of Bombay, . The company in the former case was ordered to be wound up by an order dated 11th October, 1950, and a liquidator was appointed of its assets. Instead of refunding to the company a sum of Rs. 1,460-1-0, being the balance of the excess amount paid by the company as advance tax for the year 1955-56, the Income Tax Officer set off the said amount against the balance of Rs. 5,549-12-0, which was

still outstanding in respect of the Income Tax demand for the year 1948-49, purporting to do so under the provisions of Section 49E of the Income Tax Act, 1922. The Company filed a writ petition under Article 226 of the constitution for setting aside the order of the Income Tax Officer and for restraining him from setting off the refund against the tax dues, and directing him to hand over the balance to the official liquidator. The Income Tax bench of the Bombay High Court, following the decision of the Federal Court in Shiromani''s case cited by me above, set aside the orders passed by the Income Tax Officer holding that the provisions of Section 49E were not available to the Income Tax department, and directing the Income Tax Officer to dispose of the respondent''s claim for refund and pass appropriate orders in respect of the same u/s 48 of the Income Tax Act, 1922. That decision was confirmed on appeal to the Supreme Court. After quoting Section 49E of the Income Tax Act, 1922, the Supreme Court observed as follows: "On the face of this provision, there is no doubt that this Section is not subject to any other provision of law. But it will be surprising if this power can be exercised in such a way as to defeat the provisions of the Indian Companies Act."

10. It may be mentioned that it was not denied by the Additional Solicitor-General before the Supreme Court that the State had no priority in respect of its claim for Income Tax dues. The Supreme Court in its judgment then referred to Sections 228 and 229 of the Companies Act, 1913, which dealt with proof of debts in winding up, and held that, in view of those statutory provisions, once the claim of the Income Tax department had to be proved and was proved in the liquidation proceedings, the said department could not, by exercising the right u/s 49E of the Income Tax Act, 1922, get priority over other unsecured creditors and thereby defeat the very object underlying Sections 228 and 229 of the Companies Act, 1913. The learned judges then proceeded to observe as follows:

" If there is an apparent conflict between two independent provisions of law, the special provision must prevail. Section 49E is a general provision applicable to all assessees and in all circumstances ; Sections 228 and 229 deal with the proof of debts and their payment in liquidation. In our opinion, Section 49E can be reconciled with Sections 228 and 229 by holding that Section 49E applies when insolvency rules do not apply."

11. The appeal of the revenue authorities was, therefore, dismissed by the Supreme Court. I have cited this decision for two reasons. First, because it lays down that, though a provision of the Income Tax Act may not, as such, be subject to any other provisions of law, it cannot be used in such a way as to defeat the provisions of the Companies Act; and, secondly because it lays down in effect that, as between the Income Tax Act and the Companies Act, if there is an apparent conflict, the Companies Act must prevail, because the Income Tax Act is a general provision applicable to all assessees whilst the Companies Act contains special provisions in regard to proof and payment of debts in liquidation.

12. In the case of Abdul Aziz v. State of Bombay, which was a case arising under

the Bombay Sales Tax Act, 1953, it was held by a Division Bench of this court that the expression "legal proceeding" in Section 48(2) (ii) of that Act could, in its normal connotation, only mean a proceeding in accordance with law and there could be no doubt that assessment proceedings under the Sales Tax Act were such proceedings. After discussing the relevant provisions of the Act, it was further observed that it had to be remembered that the expression "legal proceeding" was not synonymous with "judicial proceedings" and that proceedings would be legal, even if they were not judicial proceedings, if they were authorised by law, there being no justification for limiting the meaning of that expression to proceedings in a court of law.

13. Mr. Joshi, who appeared for the revenue authorities (respondents) to oppose the present application, has sought to distinguish both the above decisions on three grounds: (1) That the notices issued by the Income Tax Officer are not "legal proceedings" at all within the terms of Section 446(1). Mr. Joshi has contended that it is only after the reassessment proceedings are completed and steps are taken to recover the additional tax, if any, that may be found due, that they become "legal proceedings" within the terms of that Section. Mr, Joshi has based this contention of his on a decision of the Allahabad High Court in the case of Tika Ram and Sons Ltd. v. Commissioner of Income Tax to which I will presently refer. (2) That, assuming the reassessment proceedings started by the notices in question are "legal proceedings", they do not fall u/s 446 because the Income Tax Officer alone has exclusive jurisdiction to make the reassessment and to determine the tax liability, if any. In support of this contention, Mr. Joshi has relied on the observations of the Supreme Court in the case of Damji Valji v. Life Insurance Corporation of India to which also I will presently refer. (3) That, in any event, the present application, as framed is misconceived, in so far as the court cannot, on an application like this, be asked to quash the proceedings. Mr. Joshi has contended that the most that the court can be asked to do at this stage is to declare the law that leave u/s 446(1) is necessary. I will now proceed to consider each of these contentions of Mr. Joshi.

14. As already stated by me, the first contention of Mr. Joshi is based entirely on the decision of Manchanda J. in Tika Ram''s case and I may, therefore, proceed to deal with that case straightaway. The facts of that case were that a notice u/s 22(2): of the Income Tax Act, 1922, was served on the petitioner-company in respect of the assessment year 1958-59, and the company filed a return of its income in response to the same on the 17th of July, 1958. Whilst the assessment proceedings pursuant thereto were still pending, on the 8th of January, 1960, the Allahabad High Court ordered the winding-up of the said company. During the liquidation proceedings, & compromise was arrived at between the company and its creditors, but the Income Tax authorities were not concerned with the same, as the Income Tax Officer had not been shown as a creditor in the statement filed u/s 454 of the Companies Act, 1956, and no notice of the creditor''s meeting was given to him. On the 8th of May, 1962, the Income Tax Officer issued a notice u/s 23(2) of the Act, calling upon the petitioner to appear on the

22nd of May, 1962. In reply to that notice, the company protested against the continuance of the proceedings which had commenced prior to the winding-up order on the ground that the Income Tax Officer had no longer any jurisdiction to continue the same, and thereafter filed a writ petition which came up for hearing before Manchanda J. As stated in the judgment of the learned judge, two questions arose before him, (1) whether the Income Tax department could be said to be a creditor of the company within the meaning of Section 391 before an assessment was made, and (2) whether the Income Tax assessment proceedings were "other legal proceedings" which could not thereafter be proceeded with by reason of the provisions of Section 446 of the Companies Act, 1956. In regard to the first question, it was held held that the revenue department was not a creditor and could not have proved its claim in the liquidation proceedings before the court, since the assessment had not yet been completed. Though Mr. Joshi has sought to rely upon the decision of Manchanda J. on this question also, I do not think I am concerned at all with the same in the present application, and I do not, therefore, propose to deal with the judgment of the learned judge on that point.

15. The learned judge then proceeded to deal with the second question that arose before him. After quoting Section 446(1) of the Companies Act, 1956, Manchanda J. proceeded to deal with the case-law on the point including the decision of the Federal Court in Shiromani''s case already discussed by me above, and observed that the judgment of the Federal Court made it clear that the expression " other legal proceedings ", so far as it relates to Income Tax proceedings was confined to execution or distress proceedings, that is, action u/s 46, which is a stage arising after the assessment has been completed. Manchanda J. then stated as follows at page 158:

" The ratio of the decision is that because other Acts--U.P. Land Revenue Act and the Civil Procedure Code--in proceedings u/s 46 of the Income Tax Act come to the assistance of the Collector, those proceedings can be termed as legal proceedings. It was, however, nowhere held that even assessment proceedings which fall under a special Act which is a complete code in itself could be considered to be '' other legal proceedings''. "

16. The learned judge then proceeded to state that the provisions of Subsections (2) and (3) of Section 446 would also go to indicate the scope of the words " other legal proceeding " as used in Sub-section (1) thereof. He stated that Sub-sections (2) and (3) of Section 446 go to indicate that " other legal proceeding" must be such proceeding over which the High Court in its ordinary jurisdiction could exercise some original or appellate jurisdiction and control. I am afraid, I do not agree with that statement of Manchanda J. No such limitation can be imposed on the expression " other legal proceeding" in Sub-section (1) from the language of Sub-section (2) of Section 446, in view of the "fact that the latter Sub-section uses the still wider expression " proceeding " in Clause (a) thereof. Sub-section (3) of Section 446, on the other hand, can be of no assistance for

the purpose of construing the expression " other legal proceeding " occurring in Sub-section (1) of that Section, in view of the fact that it is expressly confined to a " proceeding... ...pending in any court". Moreover, to limit the meaning of the expression "other legal proceeding" in Section 446(1) in the manner in which Manchanda J. has limited the same, would be clearly contrary to the view of the Federal Court in Shiromani''s case that the said expression should not be given a narrow construction. In the view that he took of the matter, Manchanda J. held that Section 446 of the Companies Act, 1956, cannot have any application to Income Tax proceedings prior to the stage of assessment. He then went on to observe that it was, however, unnecessary for him to decide as to whether, after assessment was made, the department could or could not proceed to recover the amount found due without the leave of company judge. I fail to see how he could make that observation in the face of the decision of the Federal Court in Shiromani''s case: which is a direct decision on the point, and in which it was held that proceedings for recovery u/s 46 of the Income Tax Act cannot be taken without the leave of the company judge. Manchanda J. therefore, dismissed the writ petition filed by the company. I do not agree either with the construction placed by him upon the decision of the Federal Court in Shiromani''s case by Manchanda J. in Tika Ram''s case or with the construction placed by him upon the expression " other legal proceeding " in Section 446(1) of the Companies Act. It is true that the question which arose before the Federal Court in Shiromani''s case related to recovery proceedings u/s 446 of the Companies Act, but the Federal Court has in unambiguous terms construed the expression " other legal proceeding " as including any proceeding taken in pursuance of a legal enactment which need not be in a court of law. I do not see how the distinction which Manchanda J. has sought to draw in Tika Ram''s case can be drawn at all on a plain reading of the language of Section 446(1) itself. In my opinion, recovery proceedings are proceedings which are as much under a legal enactment as assessment proceedings, and, in fact, both the proceedings would be proceedings under the same Act, though they relate to different stages. Manchanda J. has sought to distinguish the decision of the Federal Court in Shiromani''s case but I am afraid I am unable to see what is the distinction in principle which he seeks to make. I am bound by the decision of the Federal Court in Shiromani''s case and I also respectfully agree with the same. The first contention of Mr. Joshi based on the decision of Manchanda J. in Tika Ram''s case must, therefore, be rejected.

17. That brings me to the second contention of Mr. Joshi. In support of that contention, Mr. Joshi has argued that the Income Tax Act is a special Act under which the Income Tax Officer has exclusive jurisdiction and is under a statutory duty to assess the company, whereas, according to Mr. Joshi, proceedings which fall u/s 446(1) are only those proceedings with regard to which exclusive jurisdiction is given to the company judge u/s 446(2) and (3). It may be mentioned that Section 446(2) lays down that the court which is winding up a company is "notwithstanding anything contained in any other law for the time

being in force" to have jurisdiction to entertain and dispose of certain matters specified therein which include "any suit or proceeding by or against the company". Mr. Joshi''s contention is that Sub-section (2) of that Section cannot be construed in such a way as to deprive the Income Tax Officer of his statutory duty under the Income Tax Act to assess the company and to invest those powers of the Income Tax Officer in the winding-up court, in view of the fact that the Income Tax Act is a self-contained and complete code under which the High Court is given only an advisory jurisdiction. As already stated by me earlier, as far as Sub-section (3) of Section 446 is concerned that Sub-section in terms refers only to proceedings pending in a court of law, and cannot, therefore, be of any assistance in the interpretation of the expression "other legal proceeding" occurring in Section 446(1). As this argument of Mr. Joshi is founded on the decision of the Supreme Court in the case of Damji Valji v. Life Insurance Corporation of India [1965] 35 Comp. Cas. 755 I must proceed to deal with the relevant part of the judgment in that case. The facts of that case were that the Life Insurance Corporation Act, 1956, came into force on the 1st of July, 1956, and the company in that case was ordered to be wound up on the 9th November, 1959. The question which arose was whether the Tribunal constituted under the Life Insurance Corporation Act would continue to have jurisdiction in regard to matters raised in a petition filed u/s 15 of that Act even after the winding up order was made on 9th November, 1959. It was held that the provisions of Section 41 of the Life Insurance Corporation Act, which provided that no civil court was to have jurisdiction to entertain or adjudicate upon any matter which the Tribunal constituted under that Act was empowered to decide, being a provision of a special Act, would override the provisions of Section 446 of the Companies Act, which is an Act relating to companies in general. In so far as the decision is based upon that ground, I am afraid, it is inapplicable in considering the question as to which is the special Act and which the general statute as between the Companies Act and the Income Tax Act. The Supreme Court itself has in effect held in the case of Union of India (UOI) and Another Vs. India Fisheries (P) Ltd., that the Income Tax Act must be considered to be a general provision applicable to all assessees, whereas the Companies Act must be held to be a special Act dealing with the proceedings relating to companies. Mr. Joshi has also relied upon the following observations of the Supreme Court in Damji Valji''s case :

"It is in view of exclusive jurisdiction which Sub-section (2) of Section 446 of the Companies Act confers on the company court to entertain or dispose of any suit or proceeding by or against a company or any claim made by or against it that the restriction referred to in Sub-section (1) has been imposed on the commencement of the proceedings or proceeding with such proceedings against a company after a winding-up order has been made."

18. It appears to me that the word "exclusive", which is to be found in the above passage in the judgment in Damji Valji''s case, has occurred there per incuriam, in so far as Section 446(2) is an empowering provision which confers an

overriding controlling power on the court which is winding up a company, so that liquidation proceedings may not be impeded or delayed in any manner, and so as to ensure a fair and equitable distribution of the assets of the company. It is on the latter ground that the Federal Court based its decision on the first question in Shiromani''s case. So construed, the very wide powers conferred by Section 446(2), which are clearly stated to be "notwithstanding anything contained in any other law for the time being in force" would not lead to the absurd situations which were placed before me by Mr. Joshi in the course of his arguments for the purpose of testing the meaning of the expression " other legal proceeding " in Subsection (1) of Section 446. Since Sub-section (2) of that Section is a mere empowering provision, the court which is winding up a company would not exercise those powers except in a proper case. It would not, for instance, interfere in assessment proceedings or undertake them itself, unless those proceedings are likely to hold up or delay the liquidation of the company for an inordinate length of time, and in such a case it may well decline to grant leave u/s 446(1) to commence or continue those proceedings before the Income Tax authorities. Moreover, even if the view taken by Manchanda J. in TIKA RAM AND SONS (PRIVATE) LTD. Vs. COMMISSIONER OF Income Tax, U. P., AND ANOTHER., were to be accepted, and it were to be held that Income Tax proceedings up to the stage of assessment do not fall under the expression "other legal proceeding" in Section 446(1), of the Companies Act, it is quite clear from the judgment of the Federal Court in Shiromani''s case, that ultimately the Income Tax authorities would have to come in as ordinary creditors for rateable distribution in the winding-up. There is nothing in the judgment of the Federal Court in Shiromani''s case to lead to the conclusion that the expression "other legal proceeding" should not be held to apply to cases in which proceedings have been taken under a special Act like the Income Tax Act which is a complete code in itself and under which the Income Tax authorities are under a statutory duty to assess tax. Proceedings under such Act are, in my opinion, none the less proceedings taken pursuant to a legal enactment, and the statutory duty to which Mr. Joshi has referred also arises only pursuant to a legal enactment, and would, therefore, fall within the ratio of the decision in Shiromani''s case. I, therefore, reject the second contention of Mr. Joshi also.

19. That brings me to the last contention of Mr. Joshi in regard to the frame of the reliefs sought on the judge''s summons in the present case. Mr. Sorabji has, however, very fairly conceded that prayers (a) and (b) of the judge''s summons are not properly framed, and it would be sufficient for his purpose if the injunction sought in the latter part of prayer (b) is granted.

20. In the result, I hold that the Income Tax authorities are not entitled to commence the assessment or reassessment proceedings contemplated against the Colaba Land and Mills Co. Ltd., or to continue the same, without obtaining the leave of the court u/s 446(1) of the Companies Act, 1956. I, therefore, grant an injunction restraining the respondents from assessing or reassessing the said company for the assessment years 1950-51 to 1955-56.

21. The respondents must pay the applicant''s costs of this summons.

