
(1984) 10 AHC CK 0006

In the Allahabad High Court

Case No : Special Appeal No. 4 of 1979 in Company Application No. 36 of 1977
arising out of Company Petition No. 10 of 1971

Official Liquidator U.P.

APPELLANT

Vs

Inder Raj Swarup and Others

RESPONDENT

Date of Decision : 08-10-1984

Acts Referred:

Banking Companies Act, 1949 — Section 45A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63, 47
Companies Act, 1913 — Section 171
Companies Act, 1956 — Section 391, 443, 446, 446(1), 446(2)
Displaced Persons (Debts Adjustment) Act, 1951 — Section 3
Life Insurance Corporation Act, 1956 — Section 41
Limitation Act, 1963 — Article 34, 59
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 331, 331(1), 331(2)

Citation : (1984) AWC 344 Supp

Hon'ble Judges : J.N. Dubey, J;B.D. Agrawal, J

Bench : Division Bench

Advocate : Prakash Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Agrawal, J.—This appeal is directed against the decision of a learned Single Judge dated November 30, 1978 rejecting the Appellant's application made u/s 446, Companies Act, 1956.

2. The Appellant's case in short is that on 19th October, 1946, the Moradabad Flour Milling and Refrigeration Company (hereinafter referred to as "the Company") made purchase of certain land (including plot No. 335) under a registered deed of sale. The Company entered in partnership with the Respondent No. 1 (since dead) run under the name and style of M/s. Swarup Cold Storage & General Mills. On April 24, 1958 the Company entered into another agreement with the Respondent No. 1 whereby the management of the affairs v of the Company was handed over to the said Respondent. The

Respondent continued in possession for and on behalf of the Company. The Company passed a resolution for voluntary winding up on September 29, 1962 and appointed a liquidator. The partnership aforementioned was dissolved with effect from the same day. On an application presented by the Registrar of the Companies, U.P. this Court on March 21, 1966 appointed the Official Liquidator as the provisional liquidator of the Company. The Official Liquidator applied vide Company Petition 10 of 1971 u/s 433 that the proceeding be converted into winding up by the Court. The Court allowed this petition on December 20, 1971. On 5th August, 1975 it was held that the assets of the partnership belonged to the Company. Special appeal 283 of 1975 filed by the Respondent No. 1 against this order was dismissed on September 2, 1976.

3. The Respondent No. 1 it appears, brought O.S. 307 of 1971 in the court of the Judicial Officer (Revenue) Moradabad u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) in respect of plot No. 335 claiming declaration that he was the Sirdar of this land. To this suit the parties impleaded were the Gaon Sabha and the State of Uttar Pradesh. The Company was not made a party to the proceeding. The suit was decreed ex-parte on February 24, 1972 in favour of the Respondent No. 1. On the basis of the decree the Respondent obtained mutation also in his favour in the revenue papers.

4. The Official Liquidator applied on September 14, 1977 u/s 446 to this Court claiming declaration that the decree in the aforesaid Original Suit No. 307 of 1971 dated 24th February, 1972 be held void and not binding upon him. Declaration is sought also to the effect that the plot No. 335 belongs to the Company and possession is claimed over this land by evicting the Respondents. The Respondent No. 1 resisted the application contending, inter-alia, that Section 446 is not attracted to the proceedings.

5. Learned Single Judge dismissed the application on ground that the relief sought therein could be had from the revenue court u/s 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) and since that is a court of exclusive jurisdiction, this Court cannot take cognizance u/s 446(2) of the Companies Act, 1956.

6. Aggrieved, the Official Liquidator has preferred this appeal.

7. Sri Prakash Gupta learned Counsel for the Appellant urged that since the Official Liquidator had been appointed as provisional Liquidator on 21st March, 1966, the Respondent No. 1 could not commence Original Suit No. 307 of 1971 in the revenue court without the leave of this Court. No leave was sought. The argument is that plot No. 335 had been, acquired by the Company and on 5th August, 1975 this Court held in Company Petition No. 10 of 1971 that the assets of the partnership aforementioned were those of the Company, and, therefore, the suit brought by the Respondent No. 1 involved the Companies assets. For that reason, it is submitted, the suit be deemed as being against the Company, and, further the Official Liquidator had No. other remedy except to move the

application u/s 446 Companies Act in this Court which is winding up the Company.

8. For the Respondent No. 1 substituted by his legal representatives the learned Counsel Sri S.C. Tripathi countered these contentions submitting that the proceeding in the revenue court was not of the nature as this Court could take cognizance and that, if aggrieved, against the *exparte* decree, the Appellant could seek relief in other forums.

9. In our opinion the contentions raised for the Appellant are devoid of merit.

10. Section 446 of the Companies Act, 1956 in so far relevant reads as under:

446. (1) 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.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of--

(a) any suit or proceeding by or against the company ;

(b) any claim made by or against the Company (including claims by or against any of its branches in India);

(c) any application made u/s 391 by or in respect of the Company;

(d)

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of company is proceeding may, notwithstanding anything contained in any other law for the time being in force be transferred to and disposed of by that Court.

(4)... .

11. The restraint placed in Sub-section (1) of Section 446, is, in so far as relevant, to commencement of a suit or other legal proceeding "against the Company." The expression "against the Company" appears in Sub-sections (2) & (3)

also. It is not suggested that this has a different "meaning in any of Sub-section. The suit which the court winding up the Company may entertain or dispose of must be a suit "by or against" the Company. This certainly was not a suit by the Company in the instant case, nor can this be said to be "against" the Company which was not arrayed therein in any capacity. It is trite that a Company is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession and the competence of suing or being sued against in

its name as such. In suit No. 307 of 1971 the Company did not at all figure as party on either side. The submission that the suit be deemed as having been against the Company because its assets were involved overlooks that if this be the interpretation given it would not at all fit in where the question raised is whether the suit is by the Company. The assets do not constitute a legal person; it would be meaningless to assume that there can be a suit by the assets of the Company. The words "by or against" the Company upon conjoint reading convey no other sense except that, in the context of a suit, the Company be shown as impleaded on one side or the other as the Plaintiff or defendant. In determining the meaning of any word or phrase in a statute the first question to ask always, it is well settled, is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase (Cross: Statutory Interpretation ; 1976 at p. 29 Maxwell Interpretation of Statutes 12th edition p. 43).

12. For purposes of attracting Section 446 it is not enough that Company is under liquidation or that the suit was commenced subsequent to the appointment of provisional liquidator. It has further to be shown that the suit or proceeding which is sought to be entertained and disposed of by this Court be of the kind specified in the section, that is to say, a suit or proceeding by or against the company. If the intention of the Legislature were to include within its compass any suit or proceeding that might be with respect to assets claimed by a Company as its own irrespective of whether the Company is or is not arrayed as party, there will have been different language employed in the context. In reference to body corporate the expression "a suit by or against" is of common use. "By" is defined in Blacks' Law Dictionary 5th edition p. 182 as meaning, inter alia, "Through the means, act, agency or instrumentality of "and against" sometimes has the meaning "upon", which is almost, if not altogether, synonymous with word "on" (p. 57). Dealing with the object of this section A. Ramaiya in his Commentary on the Companies Act (8th edition) observes at page 836:

Consequently, once the Court has taken the assets of a company under its control or has passed an order for its being wound up it will not be proper to allow proceedings to be started or continued against the company and embarrass the administration of its affairs.

13. The further contention of Sri P. Gupta that if Section 446 cannot be availed due to the suit not being against the Company the Appellants shall have no remedy against the ex parte decree passed by the revenue court has also not impressed us as tenable. We do not propose to enter into the merits of the title claimed on either side over the plot and decide whether this was held by the Company or the deceased Respondent. Assuming as the Appellant contends that the plot was held by the Company and the decree was allegedly fraudulent, the Appellant had the remedy to seek cancellation of the decree in the civil or

revenue-court; as the case may be, or to apply to the revenue Court for setting it aside. Limitation for a suit to seek cancellation is governed by Article 59 of the Schedule to the Limitation Act, 1963 and it is three years commencing from the date of the knowledge of such decree. In view of Article 34 of Schedule II read with Section 331(1) of the U.P. Act I of 1951 appeal against a decree u/s 229-B lies to the Commissioner and thence second appeal can be taken to the Board of Revenue. Section 229-B contemplates that a person claiming to be sirdar of land (where it is not recorded in the revenue papers) may sue the State Government and Gaon Sabha for declaration. If the decree in such a suit affects adversely the Company, there is nothing that prevents this from agitating against the same in civil or revenue court.

14. In *Bansidhar Shankarlal Vs. Mohd. Ibrahim and Another*, , the question involved in reference to Section 171 Companies Act, 1913 was about the maintainability of the execution proceeding commenced by the Plaintiff and against the company in liquidation without leave of the High Court which had ordered the Company to be wound up. It was held that there was nothing in the Act, which makes the leave a condition precedent to the institution of proceeding in execution of a decree against the Company and failure to obtain leave before institution of the proceeding entails dismissal of the proceedings. The suit or proceeding might be regarded as ineffective until leave is granted but once leave was obtained the proceeding will be deemed instituted on the date granting leave. The proceeding was against the Company. Referring to the object of Section 171 the Supreme Court observed at page 1294:

The section is intended to maintain control of the Court which has made an order for winding up on proceedings which may be pending against the Company or may be initiated after the order of winding up, and the Court may remain seized of all those matters so that its affairs are administered equitably and in an orderly fashion.

15. Section 171 of the old Act with little modification was re-enacted in Section 446(1). Section 446(2) in its present form as amended by the Companies (Amendment) Act, 1960 to give effect to the report of the Company Law Committee enacts a cheap and summary remedy by conferring jurisdiction on the Court winding up the Company to entertain petitions "in respect of claims for and against the Company" with the object to save the Company from expensive litigation and to accelerate the disposal of winding up proceedings. "It confers special jurisdiction on the Court which is winding up the Company to do things that are set out in the various clauses notwithstanding anything contained in any other law for the time being in force" *Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others*, .

16. In *Smt. Bhagwati Devi Bubna and Others Vs. Dhanraj Mills Private Ltd. and Others*, which the Appellants' counsel cites the money decree under execution was expressly against the company. The decision was that in absence of leave to continue the suit, the decree passed is voidable at the instance of the Liquidator

and not void. This clearly is of No. assistance to the Appellant.

17. Reliance for the Appellant is, then placed strongly on certain observations of a Full Bench of this Court in *Rahmat Ali Fatehullah Vs. Calcutta National Bank Ltd.*, . It is necessary to consider this at some length. Section 171 of the old Companies Act, 1913 that arose for interpretation therein provided as under:

When a winding up order has been made...No. suit or other legal proceeding shall be proceeded with or commenced against the Company except by leave of the Court, and subject to such terms as the Court may impose--

18. In that case the Company viz. the Calcutta National Bank Ltd. had filed the suit for recovery of money against father and son. For a suit by a company No. leave of the Court was required u/s 171 then in force. The suit was decreed against the father, but dismissed in favour of the son. In execution of the decree the son objected u/s 47 CPC the objection was decided in his favour. The appeal filed by the Bank against this order was allowed. After the appeal was allowed, the High Court passed an order winding up the Bank. An application was made, thereafter, by the judgment debtor for review against the appellate order in proceeding u/s 47. The question arose whether this was a proceeding "against" the Company, and, therefore, leave of the Court was required u/s 171. The answer to this by the larger Bench was in the negative. It was held that--

(i) the words "other legal proceedings" could not be confined within narrow limits and need not necessarily be proceedings analogous to a suit initiated by means of a petition similar to a plaint;

(ii) the Company having obtained the decree an application to have that decree reviewed was not a legal proceeding commenced against the Company within the meaning of Section 171 and No. leave of the Company Judge was necessary.

The test propounded as appearing from para 17 was--

The words "against the Company" must mean a proceeding where a liability is intended to be fastened on the company or its assets not a proceeding commenced by a person with the object of escaping liability arising out of a proceeding commenced by the company itself. It would probably be useful to clarify the position a little further. If a person wants to file a suit to escape liability on the ground that company's claim against him is unfounded. It is a proceeding against the company, but where the company has started the proceeding, that is put forward its claim in a court of law, any remedy available by way. of defence to escape liability, which the company wants to fasten on him, should not be deemed to be a proceeding commenced or continued against the company and in such a case the question, whether the claim was put forward or the suit was filed by the company before or after the winding-up order, should make No. difference.

19. It was not enough in their Lordships' opinion that the Company is merely arrayed as the opposite party. To hold otherwise, it was clarified, would imply

that where the Company filed a suit (which it could without leave) the Defendant will be required to take permission of the High Court even for the purpose of defending himself and this would put him in a difficult position. Far from supporting the Appellant's contention in the present case this serves rather to assist the Respondent. The Bank was the decree-holder in the suit between the parties; in the application for at the instance of the judgment-debtor the Bank was arrayed as the opposite party but it was said that in itself did not import Section 171 or require the objector to obtain leave of the court. In order that the proceeding could be considered as being against the Company it had to appear that person suing wanted to escape liability on the ground that the Company's claim against him is unfounded". Nothing of kind exists in the present; the suit was neither by or against the Company; there is nothing to show that in the plaint there was reference to right or interest of the Company over the disputed plot in any shape or form. The Calcutta H.C. distinguished this case in *Smt. Tarubala Saha v. Nath Bank Ltd. etc.* (1972) 4 SCC 588 also cited on Appellant's behalf and held where there is a suit under Order 21 Rule 63 CPC against a Company arrayed as such leave of the Court u/s 171 was incumbent.

20. Learned Single Judge in the instant case made reference to the relief sought in the application u/s 446 and was of opinion that since in view of Section 331(1) of the U.P. Act 1 of 1951 the revenue court had exclusive jurisdiction to grant relief sought for in the application, this Court can have no jurisdiction under Sub-section (2) of Section 446 of the Companies Act to proceed with it. The U.P. Act 1 of 1951, it was observed, is to be regarded as a special Act in this respect. This approach to the issue with utmost respect to the learned Judge cannot be considered justified. Section 331(1) of the U.P. Act 1 of 1951 no doubt overrides in regard to suits, applications or proceedings mentioned in the Schedule II, the ordinary provisions pertaining to jurisdiction of the civil court contained in the Civil Procedure Code, but then 446 of the Companies Act, 1956 is also overriding as is made manifest by the non obstante clause "notwithstanding anything contained in any other law for the time being in force." We are clearly of the view that the suit or other legal proceeding is by or against a Company which is under winding up before the Company Judge, the jurisdiction is specially carved out to vest in the High Court to entertain or dispose of such suit or proceeding and that overrides anything to the contrary contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950 or the Civil Procedure Code, for that matter. This is intended to subserve the subject behind the winding up of a Company by the Court to facilitate the protection and realization of its assets and to ensure an equitable distribution thereof among those entitled. Section 446 aims at safeguarding the assets of a Company in winding up against wasteful or expensive litigation in regard to matters capable of being determined expeditiously and cheaply by the winding up Court itself.

21. In *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, the Supreme Court was seized with the problem to reconcile non obstante clauses contained in the Slum Areas (Improvement and Clearance) Act, 1956 and the Delhi Rent Control

(Amendment) Act, 1976. The criterion laid down was that the Court has to consider the object and purpose of the two laws. It was observed:

When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one before us arose in *Shri Ram Narain v. Simla Banking and Industrial Co. Ltd.* the competing statutes being the Banking Companies Act, 1949 as amended by Act 52 of 1953, and the Displaced Persons (Debts Adjustment) Act, 1951. Section 45-A of the Banking Companies Act, which was introduced by the amending Act of 1953, and Section 3 of the Displaced Persons Act, 1951 contained each a non-obstante clause, providing that certain provisions would have effect "notwithstanding anything inconsistent therewith contained in any other law for the time being in force...". This Court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing:

It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intent conveyed by the language of the relevant provisions therein.

22. One other test propounded was that "the later enactment must prevail over therefore one" (page 761). The Supreme Court followed this decision in *Ravi Dutt Sharma Vs. Ratan Lal Bhargava*, . In *Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another*, it was noticed that both Public Premises (Eviction of un authorised Occupants) Act, 1971 and the Delhi Rent Control Act, 1958 contained non-obstante clauses. In such a case, it was held, "the question to be determined is whether the non obstante clauses operate on the same field or have two different spheres though there may be some amount of overlapping" and that "the conflict should be resolved by reference to the object and purpose of the laws in consideration". Section 446 of the Companies Act (apart from being later in point of time) operates in a very limited field concerning as it does a suit or other legal proceeding by or against a company under winding up and so far as this sphere is concerned taking into account the object and purpose behind these provisions it may not "be doubted that they would prevail against Section 331 of the U.P. Act 1 of 1951 pertaining to suits or proceedings with respect to tenure holders in general. The decision in *Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others*, upon which the learned Single Judge relied in" No. manner detracts against this proposition. Section 41 of the Life Insurance Corporation Act, 1956 provides that No. civil court shall have jurisdiction to entertain or adjudicate upon any matter which a Tribunal is empowered to decide or determine under the Act. It was not disputed that the Tribunal had jurisdiction to entertain the application of the

Corporation and adjudicate on the matters raised thereby. In view of Section 41 of the LIC Act, the jurisdiction of the Company court u/s 446 Companies Act was ousted; Section 446 could not operate on the proceedings pending or commenced before the Tribunal. The Supreme Court laid down further "that the provisions of the special Act i.e. the LIC Act, will override the provisions of the general Act viz. the Companies Act which is an Act relating to Companies in General".

(Emphasis is ours)

23. For the reasons given by us, however, the appeal in our opinion lacks force and is accordingly dismissed. In the circumstances we make No. order as to costs.