
(1929) 11 AHC CK 0021
In the Allahabad High Court

People's Industrial Bank, Ltd.	Vs	APPELLANT
Ram Chander Shukul and Others		RESPONDENT

Date of Decision : 22-11-1929

Acts Referred:

Companies Act, 1956 — Section 171

Citation : AIR 1930 All 503

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This second appeal raises some interesting questions of law and arises out of the following circumstances. The People's Industrial Bank went into liquidation some time ago and it is being wound up under the supervision of the Court. The District Judge of Allahabad is the Court under whose supervision it is being wound up at present. An order to pay a certain amount was passed by the learned Company Judge (learned District Judge) against two persons, namely Chandra Bali Shukla and a female, Mt. Annapurna, the wife of Chandra Bali Shukla. The order was sent down to Mirzapur for being executed. The sons of Chandra Bali Shukla instituted the suit out of which this second appeal has arisen to obtain a declaration that the order of the District Judge against Chandra Bali Shukla was not binding on them, inasmuch as Chandra Bali Shukla was already dead at the date of the order. The liquidator was a party to the suit and one of the objections that he took was that the leave of the Court, u/s 171, Companies Act, had not been obtained before the institution of the suit.

2. The learned Munsiff found on all points in favour of the plaintiffs, but dismissed the suit on the ground that no leave had been obtained, previous to the institution of the suit, although the learned District Judge of Allahabad did grant leave, on 6th February 1925, while the suit was pending.

3. The plaintiffs appealed and the learned Subordinate Judge, being of opinion

that the leave granted by the District Judge during the pendency of the suit was a good one, allowed the appeal and decreed the suit. The result was that the plaintiffs obtained a declaration that, so far as the order of the learned District Judge in the company proceedings purported to be against Chandra Bali Shukla, it was void and was not executable against his sons.

4. The liquidator has come up in second appeal and he has raised two points. The first is that the order is not a nullity simply because it was passed against a deceased person. The contention is that Chandra Bali Shukla was a contributory and it was in that capacity that the order was passed against him. We are not in a position to find out, at present, in what capacity Mr. Chandra Bali Shukla was held liable. Assuming that he was a contributory, an order against a contributory can be valid only when it is obtained in his life-time. There can be no doubt as to the liability of his estate, but to fix it with liability those persons who represent that estate should be brought on the record before an effective order may be made.

5. Coming to the other point, no authority has been cited before us. We have to remember that we are not sitting in appeal against the order of the learned District Judge dated 6th February 1925. That was an appealable order, and it was open to the liquidator to come up to this Court and to have it set aside. That order was passed, we take it, after notice to the liquidator; for the learned Judge says: "The liquidator is absent." The question that we have now to answer is:

whether when a leave has been granted, pending the suit, the leave is to be treated as a nullity and the suit is to be dismissed on the ground that, before it commenced, no leave had been obtained?

6. Supposing that the Court of first instance dismissed the suit on the ground that there was no leave obtained prior to the institution, of the suit, what was there to prevent the plaintiffs from filing a fresh suit? The dismissal of the suit after the leave has been granted would be a pure technicality and would serve no useful purpose to anybody. We have noted that if a fresh suit had been commenced after the grant of leave by the learned District Judge, no plea of limitation could have been successfully taken against such a suit and we also note that in this case the leave was obtained before the issues were framed.

7. The authority who is responsible to see whether the winding up proceedings would be properly safeguarded or not by grant or withholding of the leave is the Company Judge. If he thinks that leave may be granted, it is not the business of anybody else (except the Court of appeal) to say that the leave should not have been granted. What the learned Munsiff has done is to sit in appeal against the order of the learned District Judge and practically, to set it aside. A Punjab case has been cited to us: see *Amritsar Banking Co. Ltd. v. Mohan Lal* [1917] 13 P.R. 1917, on behalf of the appellant; but that was a case in which the Judge, being seised of the company proceedings, granted leave and the Chief Court set aside that order on the ground that, in the circumstances of that particular case, it was

not expedient to grant the leave and the learned Judge in the Court below had not considered properly whether the interests of the winding up would be served by granting the leave. That case has no application here.

8. We are of opinion that the appeal ought not to succeed and we accordingly dismiss it. Parties must pay their own costs throughout.