

(1981) 11 DEL CK 0015

In the Delhi High Court

Case No : Company Petition No. 39 of 1981

P.L. Juneja

APPELLANT

Vs

Narang Bank of India Ltd. and others

RESPONDENT

Date of Decision : 10-11-1981

Acts Referred:

Citation : (1984) 55 CompCas 302

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

B.N. kirpal, J.—This is an application under s. 45B of the Banking Regulation Act, 1949, wherein the petitioner is claiming gratuity from respondent No. 1.

2. Respondent No. 1 was a company carrying on the business of banking under the provisions of the Banking Regulation Act, 1949. This company has gone into voluntary liquidation. According to the petitioner, a sum of Rs. 19,500 was payable to him as gratuity on his retiring from service. The said amount not having been paid, the petitioner had filed a civil suit for the realisation of the amount claimed by him. An objection was taken on behalf of the voluntary liquidator to the effect that the civil court had no jurisdiction. On a preliminary issue being framed, the court upheld the objection of the voluntary liquidator and dismissed the suit. Thereafter, the present application under s. 45B of the Banking Regulation Act, 1949, has been filed.

3. Before me, at the outset, on behalf of respondent No. 1, which has since been merged with the United Bank of India, the objection, which has been raised is that this court has no jurisdiction under s. 45B to deal with such a claim. The submission on behalf on the respondents is that it is only when a banking company is being wound up under the supervision of this court that the provision of s. 45B can be invoked. This plea is contrary to the plea which was taken on behalf of the respondents in the civil suit filed by the petitioner. Ordinarily, the respondents would have been estopped from raising such a contention but as there can be no estoppel against a statute, more so when I cannot confer

jurisdiction on myself if none exists, I have no option but to decide this contention.

4. Three provisions which are relevant to the Banking regulation Act, 1949, are ss. 44, 45A and 45B. Section 44 gives powers to the High Court in respect of companies which are under voluntary liquidation. The provisions of s. 45A of the Act override, inter alia, the provisions of the Companies Act, 1956, only in so far as the provisions of the Companies Act, 1956, are inconsistent with the provisions of the Banking Regulation Act 1949. The procedure for voluntarily winding-up a banking company which has to be followed is the one which has to be followed is the one which is provided by the Companies Act, 1956. Under s. 44 of the Banking Regulation Act, 1949, the High Court has been given power to pass an order to the effect that the voluntary winding-up may continue under the supervision of the court. Under the said section, power has also been given, under certain circumstances, to the High Court to order the winding-up of a company which is being wound up voluntarily. In the present case, no such order of supervision of winding-up has been passed by the High Court in respect of respondent No. 1. It is the admitted case of the parties that the company is being wound up voluntarily under the provision of the Companies Act, 1956.

5. Section 45B reads as under :

"45B. Power of High Court to decide all claims in respect of banking companies. - The High Court shall, save as otherwise expressly provided in Section 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking-company which is being wound up (including claims by or against any of its branches in India) or any application made u/s 391 of the Companies Act, 1956, by or in respect of a banking-company or any question of priorities, or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of a banking-company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953."

6. The contention on behalf of the respondent is that the later portion of s. 45B clearly indicates and postulates that the section will apply to only those types of cases where a winding-up order in respect of a company has been passed. It might here be noticed that according to the provision of s. 523 of the Companies Act, 1956, when an application for bringing the voluntary winding-up under the supervision of the Court, is moved for the purposes of giving exclusive jurisdiction to the High Court over suits and legal proceedings, then, such a petition would be deemed to be a petition for winding-up by the Court. Mr. Sikri submits that no order under s. 44 of the Banking Regulation Act, 1949, has been

passed and as the company has neither been wound up by this court nor is the voluntary winding-up taking place under the supervision of this court, the provision of s. 45B are not applicable.

7. To my mind the objection is well taken. A similar question arose for consideration before the Mysore High Court in the of Century Bank Ltd. v. Marlingappa [1964] 34 Comp Cas 566. It was observed by the learned judge in that case as follows (at p. 568) :

"On a careful examination of the section it will be seen that it applies only when there in an order of winding-up of a banking company passed by the High Court. The words, "before or after the dates of the order for the winding-up of the winding-up of a banking company by the court that the court will pass an order for winding-up. Where the winding-up is voluntary, the matter does not come before the court and there will be no occasion for the court to pass an order for winding-up of the banking-company.

The intention underlying section 45B, 45C and 45J in Chapter III-A of the Act appears to be to allow the liquidator to proceed with all proceeding in one court, namely, the High Court, and to avoid proceeding in a multiplicity of courts in matters relating to, or arising in the course of, the winding-up of a banking company. Where the winding-up proceedings are before the High Court, the intention of the Legislature appears to be that all suits and other proceedings which relate to or arise in the course of the winding-up of a banking company should also be before the High Court. Since in the of a voluntary winding-up there will be no winding-up proceedings before the High Court, no useful purposes would be served in providing that suits and other proceedings which could ordinarily be tried by other courts should be tried by the High Courts. It could not have been the intention of the legislature that the High Court should be crowded with suits which could be tried by subordinate courts merely because such have been filed by or against a banking-company which is wound up voluntarily without such winding-up proceedings coming before the High Court."

8. I am in respectful agreement with the aforesaid observations of the learned judges. It is true that in the opening portion of s. 45B, the court has been given jurisdiction to decide claims by or against the company which is being wound up and the company which is under voluntary liquidation is also a company which is being wound up. The use of the words "made before or offer the date of the order for the winding-up of the banking company", however, would qualify the rest of the Section and limit the scope of its application. These words clearly contemplate that question would be decided in respect of that company only where a winding-up order has been will passed. It is not disputed that in the case of voluntary winding-up, it is not necessary that a winding-up order should be passed by the court.

9. It was contended by the learned counsel for the petitioner, while replying upon Musamia Imam Haider Bax Razvi v. Rabari Govindbhai Ratnabhai, AIR 1969 SC

1298, and Thomas toraneey and Others Vs. Htoz Htoels Limited and Others, , that if two interpretations were possible, the court should accept the one which will not oust the court's jurisdiction from considering cases concerning companies which are under voluntary liquidation. To my mind, these decision go against the petitioners, that a winding-up order should be passed by the court. Ordinarily, every dispute is to be decided by the civil courts. The jurisdiction of the civil courts is ousted by special provisions like s. 45B of the Banking Regulation Act, 1949. If a court does not have the jurisdiction under s. 45B, then the jurisdiction of deciding the claim like the present would be with the civil courts. Applying the ratio in the aforesaid three decisions, the court should construe the provisions of s. 45B, which seeks to oust the jurisdiction of the civil courts, very strictly. If two interpretations are possible, I must accept the one which will retain the jurisdiction of the civil courts rather than oust the same. For this reason also I would accept the interpretation of the said section as put by the Mysore case, century Bank Ltd. v. Marlingappa and Venkoba Rao [1964] 34 Comp Cas 566, and hold that this court has no jurisdiction to decide the dispute like the present.

10. I may, however, state that I heard the arguments on merits also. On merits, to me, it appears that the claim of the petitioner is justified to the extent of his being entitled to gratuity after deducting there from, any payment which has been made to him. It will be seen that is far as 1973, and 26th February, 1974, the company had agreed to pay gratuity to the petitioner but the resolutions required the approval of the Reserve Bank of India. By the resolution dated 26th December, 1973, gratuity of 9 months was to be paid. This was superseded by a resolution of 26th February, 1974. By this resolution was to be subject to the approval of the Reserve Bank of India as and when the same was proposed to be paid. The only objection which the respondents originally had to the payment of the gratuity was that the Reserve Bank had not agreed to the said terms. This is evident from the following observations contained in the letter dated 6th February, 1978, written to the petitioner by the voluntary liquidator :

"Nor is such approval even now after a reference in the matter had been made by me to the RBI after appointment as liquidator of the Bank. In the circumstance you are not entitled to payment of any gratuity."

11. It is evident there from that the voluntary liquidator must have written to the RBI with regard to the payment of gratuity to the petitioner but did not receive any reply. It is admitted, that now the Reserve Bank, vide its letter dated 16th February, 1978, has directed the payment of gratuity to the petitioner. I would ordinarily have directed the payment of gratuity to the petitioner but in view of the fact that I have no jurisdiction to pass any order, I refrain from doing so.

12. For the aforesaid reasons, the petition is dismissed. In view of the fact that the respondents have taken a contradictory stand here and as it was on their objection that the suit, which was rightly filed in the civil court, was wrongly dismissed, the petitioner shall be entitled to costs from the respondents I assess

the counsel fee at Rs. 500. The petitioner would be entitled to file appropriate proceedings in the civil court to seek redress including moving an application for the revival of the earlier suit in accordance with law.