

(1959) 11 OHC CK 0005
In the Orissa High Court
Case No : Civil Revision No. 189 of 1958

Raghunath Prusty

APPELLANT

Vs

Orissa Bank Ltd. and Another

RESPONDENT

Date of Decision : 30-11-1959

Acts Referred:

Banking Companies (Amendment) Act, 1953 — Section 22, 45A, 45B, 45C
Companies Act, 1913 — Section 207
Companies Act, 1956 — Section 488

Citation : AIR 1961 Ori 26 : (1961) 31 CompCas 617

Hon'ble Judges : S. Barman, J

Bench : Single Bench

Advocate : A. Das and Srinivas Misra, for the Appellant; D.S. Das and R.S. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—The defendant No. 1 is the petitioner in this Civil Revn. directed against an order of the Addl. Subordinate Judge, Cuttack, in mortgage suit No. 53 of 1953, who, --on a consideration of the preliminary issues raised by the defendants in the said suit as to maintainability and jurisdiction of the trial court to entertain the said suit, in view of certain provisions of the Banking Companies Act, 1949, --held that this suit was maintainable in his court and that the said Court had jurisdiction to entertain and try the same.

2. The plaintiff in the suit is Orissa Bank Ltd. The suit was filed by the plaintiff through its Official Liquidator as Liquidator of the Bank "In Members Voluntary Liquidation". The relevant facts shortly stated are these: In 1933 the plaintiff was registered as a company under the Indian Companies Act, 1913. The name of the Company, Orissa Bank Ltd., was registered as stated in the Memorandum and Articles of Association as appears from a copy thereof amended up to 25-3-1944 filed in this Court in course of the hearing of the application.

The objects for which the company was established were, inter alia, to carry on

business as Bankers and to advance money on interest, and to carry on and engage in any or more of the forms of business and other objects as stated in the Memorandum of Association. The Company was carrying on such business until it was voluntarily wound up as hereinafter mentioned. In the meantime, the Banking Companies Act, 1949, (Act X of 1949) came into force with effect from March 16, 1949. On June 25, 1952 by a resolution passed in an Extra-ordinary General Meeting of the shareholders of the Company held on that day, a resolution was passed that the said Company be voluntarily liquidated under the members' voluntary winding up scheme u/s 207 of the Indian Companies Act, 1913.

It appears from the minutes of the proceedings of the said meeting --a certified copy of which was filed in Court during the hearing of this application -- that the shareholders, after examining the present financial position of the Company, considered that the liability can be met from the assets, if only the Company be voluntarily liquidated: and accordingly the said resolution for voluntary liquidation was passed. On that day there was a further resolution that the copies of the resolution passed in the said meeting including the one for voluntary liquidation be forwarded to the Registrar, Joint Stock Companies and Reserve Bank.

On August 29, 1953, the present suit was filed by the Company against the defendant-petitioner and another for recovery of dues on a mortgage bond, being the said Mortgage Suit No. 53 of 1953. During the pendency of the suit the original Part III-A of the Banking Companies Act -- being "Special Provisions for Speedy Disposal of Winding up proceedings" --was amended and a new Part III-A was substituted by the Banking Companies (Amendment) Act, 52 of 1953, which came into force on 30-12-1953. Part III-A of the Act contains Sections 45-A to 45-X.

3. The defendants in their written statement, among other pleas, raised the defence that having regard to the provisions of Banking Companies Act, the Court of Subordinate Judge had no jurisdiction to try the suit and that the suit was not maintainable there. The said points were tried as preliminary issues and decided in favour of the plaintiff. Hence this revision.

4. Mr. Asok Das, learned counsel for the defendant-petitioner, contended that the Company being a Banking Company within the interpretation given in the Act u/s 5(c) thereof was required to take out a licence u/s 22 of the Act providing that no company shall carry on Banking business unless it holds a licence granted by the Reserve Bank in such behalf. Section 7 of the Act provides that after expiry of two years from the commencement of the Act no Company other than a Banking Company shall use as part of its name any of the words "bank", "banker" and "banking" and no Company shall carry on business of banking in India unless it uses as part of its name at least one of such words u/s 37 the High Court may, on the application of a Banking Company which is temporarily unable to meet its obligations, make an order staying the commencement or

continuance of all actions and proceedings against the Company for such time and on such terms and conditions as it shall think fit and proper.

Section 38-A provides that there shall be attached to every High Court a court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose. Section 39 makes provisions for the Reserve Bank to be empowered in certain cases to carry out the liquidation so that unnecessary expenses and delay in liquidation proceedings may be avoided and that assets may be realised as speedily as possible in the interests of the creditors.

Section 44, laying down certain restrictions on voluntary winding up, provides that notwithstanding anything to the contrary in Section 484 of the Companies Act, 1956, no banking company which holds a licence granted u/s 22 may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in Sections 521 and 441 of the Companies Act, 1956, the High Court shall, on the application of the Reserve Bank, order the winding up of the Company if at any stage during the voluntary winding up proceedings the Company is not able to meet such debts as they accrue. These restrictions became necessary as it was found that the banking companies in a shaky condition were found to be taking advantage of the voluntary winding up proceedings or manipulate such proceedings to the disadvantage of the depositors who are a scattered body and are unlikely to take concerted action. This section was intended to prevent such abuses by Banking Company which held a license granted u/s 22 of the Banking Companies Act.

Then comes Part III-A of the Act including Sections 45-A, 45-B and 45-C with which this Court for the present purpose is directly concerned. Section 45-A provides that the provisions of the said Part III-A and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1956 of the CPC 1908 or the Code of Criminal Procedure, 1898 or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under Part III-A.

Then Section 458 which gives power to the High Court to decide all claims in respect of banking companies provides that the High Court shall, save as otherwise expressly provided in Section 45-C, 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 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 of the winding up of the banking company or after the commencement of the Banking Companies (Amendment) Act, 1953.

Then Section 45-C on which the defendant-petitioner mainly relies provides for transfer of pending proceedings to the High Court. The scheme of Section 45-C is as follows: Sub-section (1) provides that where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether Civil or Criminal, in respect of which the High Court has jurisdiction under this Act and, which is pending in any other court immediately before the commencement of the Banking Companies (Amendment) Act, 1953 or the date of the order for the winding up of the Banking Company, whichever is later, shall be proceeded with except in the manner provided in the other sub-sections of the said section.

Sub-section (2) provides that the official liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof. Sub-section (3) provides as to the subsequent stage, namely that on receipt of a report under Sub-section (2) the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made u/s 45-U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall therefore be disposed of by the High Court.

Sub-sec. (4) is illuminating in the present context which provides that if any proceeding pending in a court is not so transferred to the High Court under Sub-section (3), such proceedings shall be continued in the Court in which the proceeding was pending. Then for completing the scheme of the section, Sub-section (5) provides that nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

5. Mr. Asok Das on the basis of the provisions in Sections 45-A, 45-B and 45-C contended that the only court which can entertain a suit by the plaintiff as a banking company is the High Court. He contended that the plaintiff Orissa Bank Ltd. doing business of banking as a Banking Company is an illegal body in view of the mandatory provisions of Section 22 of the Act requiring licence. That apart, Section 46(4) of the Act provides for penalty if any provision of the Act is contravened or if any default is made in complying with any requirement of the Act or of any order or direction made thereunder. Thus, it is contended that the company is an illegal body and could not as such file the suit in the manner it has done.

The learned Counsel also contended that the liquidation of a banking company

can only be effected by the High Court and in support of this ha relied on Section 38-A of the Act which provides that every High Court shall have a Court Liquidator for the purpose of conducting all proceedings for the winding up of banking companies, According to him, in the present case the plaintiff Bank through its liquidator cannot sue and accordingly this suit is not maintainable. The learned Counsel strongly urged that by reason of Sections 45-A, 45-B and 45-C, it was the High Court alone which could entertain such a suit. In the present case, however the position was that the High Court had nothing to do with the voluntary liquidation of the Company.

6. Mr. D. S. Das on behalf of the plaintiff company, -- in support of his contention that the suit is maintainable in the Court of the Additional Subordinate Judge and that the said Court has jurisdiction to entertain the same, -- contended that part III-A of the Act containing Sections 45-A, 45-B and 45-C has no application, as it is a case of voluntary winding up of the Company under the Indian Companies Act, as it appears from the minutes of the proceedings hereinbefore mentioned. With regard to Section 44, which lays restrictions on voluntary winding up, the learned counsel argued that this section has no application to this case as the plaintiff company holds no licence granted u/s 22 and accordingly the plaintiff company is not bound by the restrictions laid down in Section 44. In fact, according to the learned counsel, it is not a banking company at all within the meaning of the Act and so the Act did not apply to the facts and circumstances of the present case.

7. The only question for consideration in the present case is whether part III-A of the Act containing Sections 45-A, 45-B and 45-C has any application to the facts and circumstances of the case before me. It appears from the records that the plaintiff company was a company registered under the Indian Companies Act, 1913. The definition of "banking as given in Section 5(b) is that "banking" means accepting, for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, Section 5(c) defines "banking company" to mean any company which transacts the business of banking in India.

It was contended on behalf of the plaintiff company that this did not relate to past investment as in the present case. In fact, the company has ceased to work as a banking company from long long before and accordingly it was contended on behalf of the plaintiff that it was not a banking company "which transacts the business of banking in India" as "banking Company" is interpreted to be u/s 5(c) of the Act. In other words, it was argued that this did not relate to past investments but to an existing banking business concern.

With regard to compliance with Section 22 of the Act requiring licencing of banking companies, it was contended on behalf of the plaintiff that having regard to the financial position of the company it was not possible for the company to comply with the conditions of Section 22(3) of the Act which provides that before granting any licence under the section, the Beserve Bank may require to be

satisfied by an inspection of the books of the Company or otherwise that all or any of the conditions mentioned therein are fulfilled, including inter alia, the conditions that the Company is in a position to pay its depositors in full as their claims accrue and that the affairs of the company are not being conducted to the detriment of the interests of the depositors.

In fact, the Company had no sufficient reserve fund so as to be in a position to pay to its depositors in full as their claims accrued. Then in this state of affairs, the company was not in a position to ask for grant of license nor was it in a position to ask the Reserve Bank to liquidate it. As to the application of Section 44 of the Act laying down restrictions on voluntary winding up it was sought to be explained that the plaintiff company in the present case was not in a position to ask from the Reserve Bank a certificate in writing that the company was able to pay in full all its debts to the creditors as they accrued because the company held no licence u/s 22.

Therefore, the position was that the plaintiff Company was in such a moribund state, that it was not in a position to obtain the license u/s 22 which could entitle the plaintiff to a certificate from the Reserve Bank for the purpose of voluntary liquidation in compliance with Section 44 of the Act and accordingly this company could not possibly come within the operation of the Banking Companies Act, 1949, nor could it avail itself of the suit being transferred to the High Court u/s 45-C of the Act. The plaintiff company clearly appears to be a company which went into voluntary liquidation u/s 207 of the Indian Companies Act, 1913 as appears from the minutes of the proceedings of the Extraordinary General Meeting of 25-6-1952 referred to above. For convenience of ready reference, the relevant portions of the minutes containing the resolutions passed at the said Extraordinary General Meeting are set out as follows :

"The shareholders after examining the present financial position of the Bank considered that the liability can be met from the assets if only the Bank -be voluntarily liquidated. Resolve :

"that the Bank be voluntarily liquidated under the members voluntarily winding up scheme u/s 207 of Indian Companies Act." Further Resolved :

"that a Committee consisting of Sjs. B. C Patnaik, George Patnaik and R. K. Das be appointed to scrutinise and ascertain the position of the assets of the Bank and give their report by 30th June 1952 to be placed before a joint meeting of the creditors and shareholders." Resolved :

"that a joint meeting of the creditors and shareholders be called as early as possible after the report of the Committee is received. Resolved :

"that copies of these resolutions be forwarded to the Registrar, Joint Stock Companies and Reserve Bank."

It is quite clear from the minutes quoted above that at the said extra-ordinary General Meeting, it was proposed to wind up the Company voluntarily u/s 207 of

the Indian Companies Act, 1913 which then was still in force. The present Section 488 of the Indian Companies Act 1956, is based on the said Section 207. The course that the plaintiff Company took for its voluntary winding up was permissible under the circumstances and was according to law. The Banking Companies Act was no bar to such course taken by the plaintiff company having regard to Section 2 of the Act which provides that the provisions of the Banking Companies Act shall be in addition to and not save as expressly provided in the Act, in derogation of the Indian Companies Act and any other law for the time being in force.

8. The learned Additional Subordinate Judge had fully considered all the aspects having regard to the peculiar facts and circumstances of the case in which the plaintiff Company was placed. It is quite clear that, on the facts of this case, part III-A of the Banking Companies Act (Act 52 of 1953) in terms cannot apply to this particular case. This suit, therefore is maintainable in the Court where it has been filed and the said court has jurisdiction to try this suit. While taking this view, I must make it clear however that this decision is only in the context of the peculiar facts and circumstances of the present case.

9. In this view of the matter I maintain the order of the learned Additional Subordinate Judge. This revision is accordingly dismissed but in the circumstances of this case without costs.