
(1936) 04 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Original Order No. 96 of 1935

Rajshahi Banking Corporation

APPELLANT

Vs

Surabala Debi

RESPONDENT

Date of Decision : 08-04-1936

Acts Referred:

Citation : (1936) 04 CAL CK 0008

Final Decision : Dismissed

Judgement

Derbyshire, C.J.—This appeal arises from an order of Mr. Justice Panckridge delivered on the 31st of July, 1935, wherein he ordered that certain words in a scheme of arrangement sanctioned by this Court be deleted. The circumstances which led up to this litigation are as follows: The Rajshahi Banking and Trading Corporation, Ltd., carried on its business, I presume, for some years and then got into financial difficulties and it was unable to pay its depositors. On the 17th of August, 1933, the Respondent, Srimati Surabala Debi, obtained a decree against the Rajshahi Banking and Trading Corporation for Rs. 2,189-3-0 in a suit. By the decree the money was payable by, monthly instalments extending over a period of eight months. The Plaintiff's claim in the suit was based upon the fact that she had been a depositor in the Company. On January 8th, 1934, the Company made an application to Mr. Justice Buckland asking for leave to convene a meeting to consider a scheme of arrangement and compromise under sec. 153 of the Indian Companies Act, and the Court directed that a meeting of the depositors of the Company should be held on March 18th, 1934, at the registered office of the Company for considering and if thought fit, approving, with or without modification, a scheme of arrangement proposed to be made between the Company and the depositors. That was a scheme whereby the Company was to get respite for a period of 12 years and the depositors were to be paid off in small instalments. The Schedule set out in the scheme in paragraph (1) says: The depositors, (which expression also includes depositors who have filed suits or obtained decrees against the Company) will not be entitled to withdraw their deposits or otherwise demand payment or execute or

proceed with the execution of decrees or instalment decrees or take any legal steps against the Company for a period of 12 years.

The meeting was duly held, notice of it having been sent out which said:

Notice is hereby given that by an order dated the 8th day of January, 1934, the Hon"ble Mr. Justice Buckland has directed a meeting of the depositors of the Company above named to be held on Sunday the 18th day of March, 1931 at the hour of 3 o'clock in the afternoon at the registered office of the Company at Rajshahi for the purpose of considering and if thought fit approving with or without modifications, the scheme of arrangement proposed to be made between the said company and the depositors. A copy of the said scheme of arrangement is annexed hereto and marked with the letter " A." Depositors desiring to attend or vote personally must produce at the time and place of the meeting the Pass-Book in respect of their deposits with the company above named. Depositors desiring to attend or vote by proxy must on or before the 16th day of March, 1934, deposit their proxy-form together with their Pass-Book for verification.

2. Now, it is said that Srimati Surabala Debi received that notice, that she did not attend the meeting and that at the meeting the scheme that I have referred to was agreed to. That was on the 18th of March, 1934. On the 13th of April, 1934, the Company paid to Srimati Surabala Debi the first instalment under her decree and on July 3rd, 1934, the Court approved the scheme of arrangement. The applicant then began proceedings before Mr. Justice Panckridge asking that the words in paragraph (1) of the Schedule set out in the scheme of arrangement,

which expression also includes depositors who have filed suits or obtained decrees against the company,

and also the words,

or execute or proceed with the execution of decrees or instalment decrees,

be expunged; in other words she asked that those provisions in the scheme of arrangement which prevented her from executing her decree should be deleted. She says that she is entitled to have the decree executed because the scheme does not bind her.

3. Now, the scheme was propounded under sec. 153 of the Indian Companies Act, which enacts:--

[His Lordship after setting out the provisions of the section proceeded.]

4. Now, it is not a case here that the scheme of arrangement is between the Company and its creditors. The notice referred to the " depositors " and " creditors " is a wider term than " depositors." But it is a question of a scheme of arrangement between the Company and a class of its creditors. In the provisions of sec. 153 it is contemplated that if a majority in number representing 3/4 the in value of a class of creditors agree to the scheme then it is binding on that class of creditors. Srimati Surabala Debi says that she was not of the class of

depositors; that that was a meeting of the depositors; that their agreement might bind them but it does not bind her. She says:--

I was a depositor but I pass into another class and I became a decree-holder and I am no longer a depositor.

5. In my view that is a sound contention. A depositor is a person who has rights against the Company which arise out of a contract created by the deposit with the Company. If a depositor decides to start a suit against the Company for his money he has to go to the expense of paying Court fees, of instructing lawyers, of attending Court, and otherwise incurring expense and the result is that in the end he gets a decree instead of having rights arising out of the contract with the Company. He has now rights against the Company by virtue of the decree in his favour. The old debt arising out of the contract becomes merged into the decree and the depositor passes from one class to another and for this he had to incur expense and go to some trouble. When he becomes a judgment-creditor or a decree-holder he has different rights from those which he had as a depositor. He has rights which he can enforce more easily and rights which are more valuable. In my view, therefore, a depositor who has gone to the length of obtaining a decree against the Company in respect of the amount of his deposit is in a different position from those persons who have not. In my view, he is entitled to be considered as belonging to a different class when the provisions of sec. 153 of the Companies Act are sought to be enforced.

6. It is true, that there are a number of decisions in this Court some of which have held that depositors and decree-holders are in the same class. There are some decisions which have held that they are not of the same class. In my view, for the reasons I have given, which are based on a consideration of first principles, depositors and decree-holders are not in the same class and must be dealt with separately under sec. 153 of the Companies Act.

7. Cl. (1) of the schedule purports to include amongst the depositors those who have filed suits or obtained decrees against the Company. It seems to me that those words were put in to get round the difficulties which arose from the cases I have referred to, which said that depositors and decree-holders belong to two different classes. In my view, notwithstanding the attempt that was made in cl. (1) of the schedule, depositors and decree-holders are persons who essentially go into different classes, and decree-holders cannot in law, for the purpose of the scheme of arrangement, be considered as one of the same class with the depositors. That being so the notice which was sent to the Respondent Srimati Surabala Debi directing her attention to a meeting of the depositors did not affect her. She was essentially a person who came under a different category and in my view she was not bound by the decision which was come to at the meeting of the depositors.

8. Srimati Surabala Debi had obtained her decree against the Company before the scheme of arrangement was propounded, and before it was approved by the

Court she had been paid one instalment under that decree. She had, in my view, a vested right by virtue of her decree of which that scheme of arrangement cannot deprive her, but; in fact the scheme of arrangement does purport to deprive her of it. What is to be done to give effect to her right? That matter was considered by Mr. Justice Buckland in the case of *In re: Dewanganj Bank and Industry, Ltd.* 38 C.W.N. 1171 (1934). The facts of that case were very largely similar to the facts in this case and in order to give effect to the decree-holder's rights Mr. Justice Buckland modified the words of the scheme, so as to expunge the words which prevented the applicant from getting the benefit of his decree. He said at page 1173:

At the time when the notice of the scheme of the proposed meeting was given, the petitioners had ceased to be depositors. They were fully justified in not attending the meeting. The meeting, I conceive, though sanctioned by the Court, had no right by a mere definition to include the petitioners within the scope of depositors any more than a company would have the right by definition to include its general trade creditors, and in my opinion the petitioners are not bound by the scheme. The scheme having been sanctioned by the Court, doubtless per incuriam, or because the circumstances were not sufficiently explained to the learned Judge, the applicant's only remedy in my judgment is to come to this Court to have the scheme modified. There will be an order in the alternative form set out in the summons expunging from the scheme the words, "Those who have instituted suits and obtained decrees in respect of his or her deposits including costs, if any, shall also be deemed as creditors and the scheme shall be binding on them as well ?"

9. I think, the course taken by Mr. Justice Buckland in that case was the course which was proper for the learned Judge to take in this case, namely, to expunge the words which he was asked to expunge and thereby to give effect to the decree which the applicant held.

10. In my view the order of Mr. Justice Panckridge, which is appealed from, was correctly made and this appeal must be dismissed with costs.

11. Rs. 1,000 which was deposited with the Registrar by the Appellant for staying the operation of the order of Mr. Justice Panckridge should be paid to the solicitors of the Respondent and satisfaction of the decree to that extent should be entered.

Costello, J.

12. It is, I think, somewhat unfortunate that the scheme which was propounded by the Rajshahi Banking and Trading Corporation, Ltd., was ever sanctioned by the Court, under the provisions of sec. 153 of the Indian Companies Act, 1913. There have, in recent years, been a large number of applications from so called Banking or Loan Companies for sanction of schemes of arrangement similar to the scheme which was put forward by the Rajshahi Banking Corporation and with which we are now concerned. In my opinion, it is in the highest degree

undesirable that a scheme of this character in relation to a Company, of the nature this Company is, should ever receive the sanction of the Court. The principle upon which the Court should act in a matter of this kind, was dealt with by the Court of Appeal in England in the case of *Re: Alabama New Orleans, Texas and Pacific Junction Railway Company* [1891] 1 Ch. 213. From the judgment in that case, it seems clear that one of the questions which the Court should decide, before it gives sanction to an " arrangement," was whether the arrangement proposed was such as a man of business would reasonably approve. In my view, it is not desirable that a Company, of the kind this Company is and being in a condition this Company was in, should be allowed to remain outside the purview of the provisions for the winding up of Companies.

13. However, the scheme put forward in the present instance, was approved by Mr. Justice Buckland on the 3rd July, 1934, and the scheme then sanctioned was a scheme which was moved at a meeting held on the 18th March, 1934, pursuant to an order made on the 8th January, 1934. The scheme as sanctioned is set forth in a Schedule referred to in the order of the 30th July, 1934. The first paragraph of the scheme reads as follows:--

The depositors (which expression also includes depositors who have filed suits or obtained decrees against the company) will act he entitled to withdraw their deposits or otherwise demand payment or execute or proceed with the execution of decrees or instalment decrees or take any legal steps against the company for a period of 12 years.

14. The fundamental question before Mr. Justice Panckridge in the Court below was whether or not the present applicant, Sreemutty Surobala Debi, was bound by the scheme as sanctioned, and the answer to that question in the circumstances of the case depended upon a further question, whether there had been a proper class meeting as required by the provisions of sec. 153 of the Indian Companies Act, 1913. The questions before the Court in that respect was the same as the question which was considered in *In re: United Provinces Assurance Company, Limited* [1910] 2 Ch. 477. At page 479, Mr. Justice Swinfen Eady after stating facts said this: " The question is whether there have been proper class meetings under sec. 120." Then the learned Judge set out the terms of the section which was sec. 120 of the Companies (Consolidation) Act, 1908; and which has now become sec. 153 of the English Companies Act, 1929. Having set forth the terms of the section the learned Judge says:

The question is whether it was not essential to hold a separate class meeting of group C. The Company contended that this was not necessary and that group C were in the same position as group A, the holders of fully paid shares.

15. After discussing the matter the learned Judge came to the conclusion that the share-holders of group C constituted a separate class with separate rights under sec. 120 and were not in the same position as fully paid share-holders.

16. What we have to determine primarily is whether persons who originally had

deposited monies with this Company and so had become " depositors," but prior to the framing of the scheme of arrangement had obtained decrees against the Company in respect of the monies deposited, fall into the same class for the purpose of sec. 153, as depositors who had not obtained decrees against the Company or even instituted any legal proceedings against the Company. It has been pointed out by Lord Wrenbury in his book on the Companies Acts, (Buckley on the Companies Acts) eleventh edition, at page 318, that it is not always easy to determine whether a particular set of creditors falls within the same class as another set of creditors. We are however here concerned not with creditors in the ordinary sense of the term, but with persons who had deposited monies with the Company and had become depositors and with the applicant who was originally a depositor but subsequently became a decree-holder.

17. As my Lord the Chief Justice has pointed out, there are a large number of cases dealing with the question, whether unsecured creditors who had obtained decrees, are or are not in a different position from unsecured creditors who have not obtained decrees: or more specifically, whether depositors as such are in the same class as depositors who have obtained decrees and have attained the status of decree-holders. There is in fact, unfortunately, such a conflict of decisions which makes it necessary that one should deal with the cases in some detail. Before, doing so, however, I may say that I entirely agree that it seems to be the fact that in the scheme which was originally drafted, the words in clause (1) must have been inserted there for the express purpose of overcoming any difficulty created by the decision of Mr. Justice Buckland In the matter of the Dewanganj Bank and Industry, Ltd. 38 C.W.N. 1171 (1934), where the learned Judge in terms says:

A depositor who obtains & decree against a banking Company before any scheme is embarked upon by the latter, ceases to be a depositor and becomes a decree-holder.

18. The learned Judge then at page 1173 says:

At the time when the notice of the scheme of the proposed meeting was given, the petitioners had ceased to be depositors. They were fully justified in not attending the meeting. The meeting, I conceive, though sanctioned by the Court, had no right by a mere definition to include the petitioners within the scope of depositors any more than a Company would have the right by definition to include its general trade creditors, and in my opinion the petitioners are not bound by the scheme. The scheme, having been sanctioned by the Court, doubtless per incuriam, or because the circumstances were not applicant's only explained to the learned Judge, the applicant's only remedy in my judgment is to come to this Court to have the scheme modified.

19. It seems to me that some astute person must have endeavoured to circumvent that decision by putting such provisions in the scheme, which would on being passed at a meeting of " depositors " would have the effect of binding

not only the depositors properly so called but also the depositors who had the foresight and diligence to obtain decrees against the Company before the scheme was propounded. The decision of Mr. Justice Buckland, just referred to, is the earliest decision we have to consider. It was given on the 5th March, 1934. In my opinion, it is to be regretted that that decision was not brought to the attention of the Court in all subsequent cases which came before the various Judges of this Court, for the purpose of obtaining sanction of schemes similar to, if not identical with, the scheme with which Mr. Justice Buckland was concerned, as well as the scheme with which we are now concerned. The next relevant decision in order of time was given by Mr. Justice Cunliffe on the 21st January, 1935, in *In re Melanda Loan Office, Limited* 39 C.W.N. 690 (1935). The head-note runs as follows:--

When a meeting under sec. 153 of the Companies Act is directed to be called, it is necessary, where there are different classes of creditors of the Company, to call a separate meeting for each class of creditors. A scheme approved in a meeting in which different classes of creditors are represented is not fit properly approved scheme.

20. This case is remarkable for the fact that it is unlike some of the other cases to which I shall refer in this respect that actually Mr. Justice Buckland's decision in *In re Dewanganj Bank and Industry, Ltd.* 38 C.W.N. 1171 (1934), was brought to the notice of Mr. Justice Cunliffe. At page 691 of the report, the learned Judge said:

I think that the decision of Mr. Justice Buckland reported in *Dewanganj Bank and Industry Co., Ltd.* (1), shows that he was fully aware of the necessity for construing the section in sub-divided classes properly. The case was cited to me as an authority against this contention and I think it is in favour of the objectors on the whole. For these reasons I am forced to withhold my sanction at the present time to the scheme of arrangement put forward before me.

21. It seems to me, therefore, that Mr. Justice Cunliffe on that occasion expressed agreement with the decision of Mr. Justice Buckland and acted upon it and consequently he refused to sanction the scheme which was being put forward. It is noteworthy that the learned Judge points out in his judgment that the objection taken to the scheme by the objector was that he constituted, together with several decree-holders a separate class which had not been considered apart from other creditors who were, for the most part, depositors.

22. It appears therefore that there the learned Judge to all intents and purposes held that the objector, as a decree-holder, was in a different category from the other depositors who were not decree-holders. Nevertheless, within a period of two months from that date, namely, on the 11th March, 1935, the same learned Judge in the case of *Jalpaiguri Banking and Trading Company, Ltd.* 39 C.W.N. 875 (1935) held that unsecured creditors of a Company who had obtained decrees and unsecured creditors as had not obtained decrees did not constitute different

classes of creditors so as to entitle either of them to have a separate meeting under sec. 153 of the Indian Companies Act. It seems to me that it is very difficult to reconcile that decision with the one previously given by the same learned Judge. It can only be explained, I imagine, by the fact that the decision of Mr. Justice Buckland in *In re: Dewanganj Bank and Industry, Ltd.* 38 C.W.N. 1171 (1934) was not again brought to his notice in the latter case, and must have escaped his memory. In my opinion the earlier of the two decisions given by Mr. Justice Cunliffe was undoubtedly the more correct decision of the two.

23. Curiously enough almost contemporaneously with Mr. Justice Cunliffe's second decision, there came into existence a decision by Mr. Justice Henderson. It is unfortunate that the case in which it was given did not find its way into any of the authorised reports. It is however reported in the *Srt. Shushila Bala Basu Vs. Anjuman Trading and Banking Co., Ltd. and Another*, under the title *Srt. Shushila Bala Basu Vs. Anjuman Trading and Banking Co., Ltd. and Another*, . Fortunately, if I am allowed to say so, the decision of Mr. Justice Buckland was put before Mr. Justice Henderson and duly taken into account by him. At page 399 the learned Judge says:

The Subordinate Judge held that the petitioner was bound in view of the provisions of sec. 153, sub-sec. 2. With great respect to his decision he appears to have misunderstood the meaning of that sub-section. It is clear that only the class of creditors who framed the scheme are bound by it. The present scheme was framed by the depositors with the object of saving the bank. The petitioner was no longer a depositor. She had obtained a decree and was a judgment-creditor. Her interest was not in any way the same as that of the depositors. It would be most unreasonable to hold that the arrangement made by the depositors in their own exclusive interest should be binding upon other persons who have conflicting interest. There is nothing in the sub-section to justify any such view and I need only refer to the case of *In re Dewanganj Bank and Industry, Ltd.* 38 C.W.N. 1171 (1934), which supports the contention raised by the petitioner in this Rule. The result is that this Rule is made absolute. The order of the learned Subordinate Judge allowing the objection under sec. 47, Civil Procedure Code, is set aside and he is directed to proceed with the execution.

24. The position had been that the Petitioner as the holder of a decree against the Anjuman Trading and Banking Co., Ltd., had sought to put her decree into execution, and there had been objection on the ground that she was bound by a "scheme." The learned Judge in this Court held, and in my view quite correctly, that she was not bound by the scheme because she was not in the same " class " of creditors as the depositors who had expressly agreed to the scheme.

25. We now come to a decision which was given, a few months after the decision of Mr. Justice Henderson, by Mr. Justice Guha and Mr. Justice Lodge in the case of *Barisal Loan Office, Ltd. v. Sasthi Charan Bhattacharjee* 39 C.W.N. 1198 (1935). The head-note is as follows:--

A scheme of composition passed and sanctioned under sec. 153 of the Indian Companies Act binds all creditors of the Company, including those who obtained decrees before the date on which the scheme was agreed to. Accordingly, such a decree-holder cannot execute his decree or proceed with execution against the Company after a scheme has been passed.

26. One cannot tell from the report of the judgment that authorities were cited to the Court in this case. The decision (p. 1199) was as follows:--

On the facts of the cases before us, the composition as passed and sanctioned under the provisions contained in the Indian Companies Act applied to all the creditors of the judgment-debtor Company, including the judgment-creditors. The circumstances that the decrees sought to be executed were passed long before the scheme of composition, could not possibly affect the position created by this scheme of composition. If the decrees passed before the scheme of composition were not affected by the same as contended before us, the whole object of the scheme would be frustrated. In our judgment therefore, the learned Judges in the Courts below are wrong in holding that the executions could be allowed to proceed as prayed by the decree-holders, and the reason given by them cannot be supported. In the result, the appeals are allowed, the orders passed by the Court below are set aside. The execution cases started by the decree-holders Respondents giving rise to these appeals are dismissed, the objections by the judgment-debtor Company, Appellant in this Court, under sec. 47 of the CPC being allowed to prevail.

27. The learned Judges do not seem to have had before them the decision of Mr. Justice Buckland in *In re: Dewanganj Bank and Industry, Ltd.* 38 C. W.N. 1171(1934) and with all respect I cannot accept the decision they arrived at. As it was, however, a decision of two Judges of this Court sitting in appeal it might have been difficult for us to say that we were in a position to dissent from that decision but for a subsequent event namely that Mr. Justice Guha, in a later case, agreed with another learned Judge of this Court in taking an exactly contrary view of the law.

28. In the meantime, however, there had been another decision of a Judge of this Court--on the 9th August, 1935--the Judge on that occasion being Mr. Justice R. C. Mitter who in the case of *Serajganj Loan Office, Ltd. v. Nilkanta Lahiri* 39 C.W.N. 1199 (1935) came to the conclusion that--

For the purposes of sec. 153 of the Indian Companies Act, creditor- of a certain class e. g., unsecured creditors who have already obtained decrees against the Company, do not form a distinct class from others of the same class who have not obtained decrees. Consequently, a scheme of composition adopted by the majority of the creditors of a Company in accordance with a preliminary order of the Court under sec. 153, and subsequently sanctioned by the Court, binds all creditors of the class represented by the majority, including those who obtained decrees before the meeting at which the scheme was adopted. After the passing

of the scheme the latter cannot execute their decrees.

29. By that decision Mr. Justice R. C. Mitter obviously held that depositors who had obtained decrees were to be put in in the same " class " as depositors who had not obtained decrees. Mr. Justice Mitter expressly dissented from the view taken by Mr. Justice Henderson in *Srt. Shushila Bala Basu Vs. Anjuman Trading and Banking Co., Ltd. and Another*, and said that he preferred to follow the decision in *In re: Barisal Loan Office, Limited* 39 C.W.N. 1198 (1935) to which I have already referred. That case is reported partly on the previous page and partly on the same page of 39 C.W.N. as the decision of Mr. Justice R. C. Mitter. It would again appear that the learned Judge had not the advantage of having had before him [This is not strictly accurate. That Mr. Justice Mitter had notice of Mr. Justice Buckland's judgment will appear from the fact that the said judgment is referred to in Mr. Justice Henderson's judgment.--Reporter.] the decision of Mr. Justice Buckland.

30. As already stated Mr. Justice Guha did not adhere to his original opinion. I come to the last of the authorities which have to be referred to--in the case of *Manikganj Trading and Banking Company, Ltd. v. Madhabendra Kumar Saha* 40 C.W.N. 580 (1936). The judgment of the Court (Mr. Justice Guha and Mr. Justice Bartley) was delivered by Mr. Justice Bartley on the 23rd January, 1936, with the concurrence of Mr. Justice Guha. Mr. Justice Bartley said:

This appeal arises from an order made in execution proceedings. The judgment creditor Respondents obtained a compromise decree against the Appellant Bank on the 25th July, 1933. On the 28th August, 1933, an order was obtained from this Court under sec. 153 of the Indian Companies Act, directing the Company to convene a meeting of its depositors for the purpose of considering a scheme of arrangement between the Company and its depositors. At this meeting, held in November, 1933, it was agreed that depositors should not be entitled to demand payment for a period of 7 years, and that each depositor should, for the purposes of the scheme, be deemed to be a creditor for the amount shown to his credit in the books of the Company as on the 30th July, 1933, irrespective of whether he had obtained a decree or not. The scheme was sanctioned by this Court on the 23rd February, 1934.

31. It is to be observed, therefore, that by the scheme itself, in this case, an attempt was made to identify depositors with decrees, with depositors without decrees. The learned Judge continues thus:

On an application by the Bank objecting to the execution of the decree obtained by the Respondents, the Court of first instance held that it could not be executed, on the ground that every depositor, whether armed with a decree or not, was bound by the arrangement entered into by the majority and sanctioned by this Court. The Court of appeal below reversed this decision, holding that the decree-holders ceased to be depositors when their decree was obtained.

32. The Court of Appeal below in the Mofussil came to a decision which we now

deem to be a right one. Mr. Justice Bartley then says:

On appeal before us, it was contended on the strength of two decisions (1) Barisal Loan Office Ltd. 39 C.W.N. 1198 (1935), and (2) Serajganj Loan Office 39 C.W.N. 1199 (1935), that the decision of the Court below was wrong and that the decree in the present case was incapable of execution.

33. Then the learned Judge says:

The earlier of the two decisions cited is authority for the proposition that a scheme of composition passed and sanctioned under sec. 153 of the Companies Act, binds all creditors of the Company, and it was definitely found in that case that on the facts, the composition applied to all the creditors, including the judgment-creditors. In the subsequent case cited, Mitter, J., while adopting the view of the law stated above, pointed out that it was the duty of the Court sanctioning a scheme under the Act to see that one class of creditors or depositors does not feast upon the rights of another class. "It is for this purpose", he went on to say, " that separate meetings must be convened by distinct classes of creditors."

34. Mr. Justice Bartley to some extent discussed the two decision which were against the contention, that the depositors with decrees are different from depositors without decrees. Then he states the conclusions of the Court thus:

It has been held in *In re Dewanganj Bank and Industry Ltd.* 38 C.W.N. 1171 (1934), that a depositor who has obtained a decree against a Banking Company before any scheme has been embarked on by the latter, ceases to be a depositor and becomes a decree-holder. We see no reason to dissent from this view.

35. It would seem therefore that Mr. Justice Guha--to use a word which is in common use in this country had --" resiled" from his former opinion. The position, therefore, to sum up the whole matter is that it must be taken that there is no decision other than those of certain individual Judges against the view we are now taking. It is, therefore, quite competent for us to say here and now categorically--and to say so--that in our opinion the law is that depositors with decrees, and depositors without decrees are not of the same " class of creditors," and, therefore, the meeting held by the depositors, which purported to bind decree-holders also, did not have any such effect. No doubt the Rajshahi Banking and Trading Corporation, Ltd., had in their mind the difficulties confronting them by reason of the decision of Mr. Justice Buckland and they endeavoured to surmount those difficulties by inserting in cl. (1) their own definition or description of depositors and to achieve the object of preventing decree-holders including the present decree-holder, from saying that they were not bound by the decision arrived by depositors at the meeting held on the 18th March, 1934. Apparently serving of the notice [to which was annexed a copy of the proposed scheme of arrangement containing the parenthesis in cl. (1)] on all the decree-holders was designed to have the effect of identifying depositors who were decree-holders with depositors who were not decree-holders.

36. I pointed out in the course of the argument, however, that the notice stated that persons attending the meeting personally were required to produce at the meeting " the pass book in respect of their deposits " and depositors desiring to attend or vote by proxy were required on or before the 16th day of March, 1934, to deposit their proxy form together with their passbook for verification. These provisions seem to indicate that the meeting was a meeting primarily and essentially one composed of " depositors." The applicant says in her petition paragraph 7:

Your Petitioner is a judgment creditor of the Company and her claim under the consent decree included not only the amount of her deposit in the Bank but also her costs of the suit and having regard to the said consent decree your petitioner could neither be placed in the category of the depositors nor the amount of her claim under the consent decree in view of the, inclusion of the costs of the snit could be treated as deposit money. Your petitioner further states that she was also not in a position to produce her pass book which was filed in Court in the suit in which the above consent decree was made and no new pass book was or could be issued to your petitioner.

37. I accept these contentions put forward by the Petitioner Sreemutty Surabala Debi and I think that they are correct and wholly warranted by the circumstances of the case. She was no longer a depositor with a pass book, she had become a judgment-creditor with a decree. I am, therefore, quite clearly and definitely of opinion that as a decree-holder she was not in the same class as the mere depositors, and, therefore she was not obliged co attend the meeting nor was she bound by anything that transpired at the meeting.

38. The only other question we have to consider is what was the right course for her to take in the circumstances in order to enable her to exercise the rights she possessed under the consent decree. In several of the cases to which I have referred decree-holder depositors as applicants had applied to Courts in the Mofussil for the purpose of putting their decrees to execution, because the Companies concerned objected to the decrees being put to execution and eventually the cases reached this Court in second appeal. Thus there was much delay and a great deal of trouble and expense to the decree-holder in question, all that was illustrative of what Mr. Justice Buckland in *In re Dewanganj Bonk and Industry, Ltd.* 38 C.W.N. 1171 (1934) described, and in my opinion rightly described at page 1173 of the report, as " an extremely roundabout method " of attaining justice. The argument before Mr. Justice Buckland was that he had no jurisdiction to entertain the application which was made to him for an order modifying the scheme so as to expunge from the scheme certain words preventing the decree-holders from executing his decree. The learned Judge in answer to that contention said:

It is suggested that the proper course to be followed is for the decree holders to execute their decrees, which I am told would be at Rangpur, when they could contend before the local Court that they were not bound by the scheme. Not only

would it be embarrassing to throw the burden of deciding the point upon the local Subordinate Court, but I see no reason for justice being done in this matter by an extremely roundabout method.

39. Mr. Justice Buckland declined to take the course which the Company was suggesting. Had the decree-holder been forced to go to the Court at Rangpur, there would have been an objection by the Company concerned, there might have been a first appeal and even second appeal. Obviously it was just and proper and in accordance with equity and good conscience that the learned Judge should have taken the course of expunging from the scheme words operating to the prejudice of the decree-holder. I agree with my Lord the Chief Justice that the decision given by Mr. Justice Buckland in *In re Dewanganj Bank and Industry, Ltd.* 38 C.W.N. 1171 (1934) and the course which the learned Judge took in that matter are correct and therefore this appeal should be dismissed.