
(1955) 10 AHC CK 0028

In the Allahabad High Court

Case No : Special Appeal No's. 159, 164 and 167 of 1954

Rama Shankar

APPELLANT

Vs

Official Liquidator, Jwala Bank Ltd.

RESPONDENT

Date of Decision : 14-10-1955

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 104, 96
Companies Act, 1913 — Section 202, 235

Citation : AIR 1956 All 222 : (1956) 26 AWR 808 : (1956) CriLJ 369

Hon'ble Judges : Upadhya, J;Agarwala, J

Bench : Division Bench

Advocate : Lakshmi Saran and J. Swarup, for the Appellant; H.L. Kapur, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a special appeal arising in proceedings u/s 235, Companies Act. The Jwala Bank Ltd., went into liquidation by an order dated 17-2-1950 upon an application for winding up made on 1-8-1949. An appeal was filed against the order of winding up and the winding up proceedings were stayed pending the appeal. The appeal was, however, dismissed on 24-10-1950. The Official Liquidator filed a Petition u/s 235, Companies Act, against seven persons including the appellant who was one of the Directors of the Bank.

2. The Official Liquidator's case was that the Directors, Manager and Auditors of the Bank were guilty of various acts of misfeasance which caused to the Company a loss of over four & a half lacs of rupees. He prayed that a decree for this amount be passed against the opposite parties including the appellant severally or jointly.

3. The appellant and the, other opposite parties denied the allegations made against them and further pleaded that the application was barred by limitation. On their prayer that the plea of limitation may be decided first, the learned

Company Judge proceeded to decide it and came to the conclusion that the Official Liquidator's application was within time. Against this order of the learned Company Judge, this special appeal has been instituted and a preliminary objection has been raised by the learned counsel for the Official Liquidator that the appeal does not lie.

4. A special appeal to a Division Bench from the judgment of a single Judge lies under Ch. 8, Rule 5 of the Rules of the Court, No appeal would lie under this rule unless the order of the learned single Judge amounts to what is described as a "judgment".

5. An appeal also lies from any order or decision made or given in the matter of winding up of a company u/s 202, Companies Act. The section runs as follows:

"Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction."

6. u/s 202 appeals lie from any order or decision, but in the same manner and subject to the same conditions as apply to an appeal from any order or decision of the same court in cases within its ordinary jurisdiction.

7. "Manner" means "method or mode or style" (see Webster's International Dictionary) The word "manner" therefore refers to the procedure to be followed in the matter of institution and hearing of the appeal.

8. "Condition" means "essential quality; property, attribute, that which must exist as the occasion or concomitant of something else; that which is requisite in order that something else should take effect; an essential qualification; stipulation; terms specified; a clause in a contract, or agreement, which has for its object to suspend, to defeat, or in some way to modify, the principal obligation." (See Webster's International Dictionary.)

The word "condition" has reference to the nature, quality, qualifications of the order or decision itself against which an appeal is proposed to be filed and the other circumstances touching the right of appeal. The requirement that in order that an appeal should lie, the order or decision must be a final order, or a judgment or a decree or an order of a particular nature is certainly a "condition" of the right of appeal. The "conditions" applicable to appeals from the orders or decisions of the Court made in the exercise of its ordinary jurisdiction are also applicable to the orders or decisions of the Court made in the winding up, proceedings.

9. Therefore when an appeal is filed from an order or decision made or given by a single Judge of a High Court in the matter of the winding up of a company, an appeal lies to a Division Bench in the same manner and subject to the same conditions in which special appeals ordinarily lie in the exercise of the ordinary

jurisdiction of the Court.

The conditions under which special appeals lie in the exercise of the ordinary jurisdiction of the Court are mentioned in Rule 5 of Ch. 8 of the Rules of the Court, which provides that an appeal has to be from a "judgment" of a learned single Judge.

10. Thus in order that an appeal may lie u/s 202, Companies Act, the order or decision made or given in the matter of the winding up of a company by a single Judge of this Court must be a "judgment" within the meaning of Ch. 8, Rule 5, of the Rules of the Court.

11. So also, if the order or decision is given by a District Judge, his order or decision must amount either to a decree from which appeals lie u/s 96, Civil Procedure Code, or to such an order as falls within the ambit of Section 104 read with Order 43, Rule 1 of the aforesaid Code.

12. I am supported in this view by the observations made in a decision of this Court, "Santi Lal v. Indian Exchange Bank, Lahore" AIR 1916 All 341 (A) and in two decisions of the Calcutta High Court, -- Levy Brothers and Knowles Ltd. Vs. Subodh Kumar Day and Another, and -- " Madan Gopal Daga Vs. Sachindra Nath Sen, .

12A. In "Santi Lal's case (A)", it was held that the right of appeal from an order of the District Judge u/s 169 of the Companies Act of 1882 (corresponding to Section 202 of the present Companies Act) was co-extensive with the light of appeal conferred by the Code of Civil Procedure.

13. In the two Calcutta cases cited above it was held that in order that an order made by a single Judge of the High Court be appealable u/s 202, Companies Act it should be shown that the order is a judgment within the meaning of the relevant clause of the Letters Patent.

14. In "Madan Gopal Daga's case (C)" it was observed:

"I am not unmindful of the contention which has been advanced on behalf of the appellant, namely, that the words "same manner" and "same conditions" used in Section 202, Companies Act, mean that the procedure as regards appeals from orders made in the winding up of a company by the Court must be the same as in the case of orders made in cases within the ordinary jurisdiction of the Court and that nothing further was intended or indicated.

That may or may not be so; but in my view an order made in winding up in order to be appealable u/s 202, Companies Act, must satisfy the requirements of Clause 15, Letters Patent, as understood and explained in various decided cases in this Court from time to time."

15. On behalf of the appellant, reliance was placed on two cases decided by the Lahore High. Court, -- "Sansar Chand v. Punjab Industrial Bank Ltd." AIR 1929 Lah 707 (PB) (D) and -- "Mulk Raj Bhalla v. Official Liquidator of the Peoples

Bank of Northern India, Ltd., Lahore" AIR 1938 Lah 658 (E).

"Sansar Chand"s case (D)" related to an appeal against an order of a District Judge and it was held that the right of appeal u/s 203 is not co-extensive with the right to appeal under the CPC and that the language of Section 202 is wide enough to cover appeals against all orders made in the matter of the winding up of a company provided that such an order finally decides a dispute between the parties and deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order.

16. In "Lala Mulk Raj Bhalla"s case (E)" it was held that the expression "appeals will be had in the same manner and subject to the same conditions in, and subject to which, appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction" merely regulates the procedure to be followed in the presentation and hearing of such appeals, that is to say, the necessary copies to be filed, the period of limitation within which the appeal is to be presented, the manner in which service is to be effected, the order in which parties are to be heard and so forth.

17. With great respect, it may be stated that the learned Judges did not pay sufficient attention to the reason why Section 202 used two different words "manner" and "conditions". If the Legislature intended that every order or decision in the course of the winding up was appealable and the limitations in the section merely referred to the method of presentation or hearing of the appeals, then there was no reason why two expressions "in the same manner" and "subject to the same conditions" were used. It would have been enough to use the phrase "in the same manner".

18. The learned Judges further stated:

"Any other interpretation is not warranted by the plain wording of the section, and", if accepted, will lead to startling results. It will have the effect of practically shutting out appeals from all orders passed by a District Court, in cases in which the winding up proceedings are going on before it, for very few of such orders would fall within Section 104 or Order 43 of the Code, which alone permit appeals against orders passed by a Subordinate Court in the exercise of its original jurisdiction."

To my mind, the learned Judges fell into error in thinking that all the decisions passed by the Company Judge in the course of winding up are merely "orders" within the meaning of the CPC and are not decrees. Many such decisions would fall under the heading of decrees and appeals would lie therefrom. A decree is defined as

"the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit."

19. A proceeding u/s 235, Companies Act, for instance is in the nature of a suit

and the order passed therein finally disposing of the petition would be a decree because it will determine the rights of the parties with regard to all or any of the matters in controversy in the suit. So would be several other orders.

The word "suit" has not been defined in the Civil Procedure Code. It is not necessary that a suit is always commenced by a document which is styled as plaint. Any action or proceeding for the recovery of a right or claim in a regular manner in a court of justice is a suit.

20. If any and every order or decision made during the course of the winding up proceedings is held appealable u/s 202, without restriction as to the nature of the order, it is hard to see how the learned Judges arrived at the conclusion that no appeal lies against a formal or interlocutory order. A formal or interlocutory order is just as good an order as a final order.

In my judgment, this, limitation flows from the provisions of the section itself, namely that appeals are permitted only "under the same conditions in, and subject to which, appeals are permitted from ordinary orders of the Court." Where an ordinary order is appealable under the provisions which apply to the Court in the exercise of its ordinary jurisdiction, one has simply to see whether the order made in the winding up proceedings is of the same nature as the order passed in the exercise of ordinary jurisdiction. If an appeal lies from the order of the same nature, an appeal would lie from the order made in the winding up proceedings also, otherwise not.

21. The question, therefore, is whether the order in question in the present case is a "judgment". The word "judgment" in Rule 5, Ch. 8 of the Rules of the Court has been taken from the Letters Patent of the Allahabad High Court issued by Her Majesty in Council in the year 1866. The rule is practically the same as para. 10 of the Letters Patent.

Consequently, the word "judgment" has to be interpreted not in the light in which it is defined in the CPC but as having the meaning assigned to it in English Law. The Federal Court had occasion to define the word "judgment" in -- " AIR 1949 1 (Federal Court) where it held that the word "judgment" means the declaration " or the final determination of the rights of the parties in the matter brought before the Court.

The word does not include interlocutory orders or orders which do not finally determine any of the rights of the parties in controversy, vide -- AIR 1939 43 (Federal Court) See also -- " AIR 1925 155 (Privy Council) where their Lordships said that the word "Judgment" in the Letters Patent of the High Court, in civil cases, means a "decree" and not a judgment in the ordinary sense. The Supreme Court has also taken the same view in -- " Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, observing:

"The judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. It certainly includes

the determination of some right or liability though it may not be necessary that there must be a decision on the merits."

22. The order in the present case has merely decided that the application of the Official Liquidator is not barred by time. It has not disposed of the application itself which is still pending before the learned Company Judge. The order is, therefore, interlocutory and has not disposed of finally any of the rights of the parties. On these grounds, the order under appeal cannot, therefore, be considered to be a "judgment" and the appeal is not maintainable.

23. In view of this finding, it is not necessary to go into the question of limitation.

24. The appeal is dismissed with costs.

Upadhya, J.

25. I respectfully agree and have to add nothing.