

(1940) 11 AHC CK 0007
In the Allahabad High Court

Rawat Raj Kumar Singh and Others

APPELLANT

Vs

Benaras Bank Ltd. (In Liquidation) and Others

RESPONDENT

Date of Decision : 13-11-1940

Acts Referred:

Citation : AIR 1941 All 154 : (1941) 11 AWR 1

Hon'ble Judges : Braund, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Braund, J.—This is a little application in the matter of the Benares Bank Ltd., (in liquidation). It is a very usual form of application, u/s 171, Companies Act. The facts, so far as they are material, are that in August 1939 the company obtained a decree - it does not matter what kind of a decree - against the applicant. On 13th December 1939 the applicant filed an appeal to this Court against that decree, making the company, of course, a respondent. On 1st March 1940 the company was ordered to be wound up by the Court and an official liquidator was appointed. The present application is an application by the appellant to the appeal for the leave of the Court to proceed with his appeal. That involves a consideration of Section 171, Companies Act. Section 171 of the Act is in these terms:

When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

2. I confess that I should myself have little doubt, upon the ordinary use of language, as to the meaning of this section, had it not been for a decision of a Full Bench Court at Lahore to which my attention had been drawn and to which I shall refer more particularly in a moment. It would have appeared to me to be beyond controversy that an appeal from a decree was a "legal proceeding." And I

should have thought that it was equally plain that it was in this case a legal proceeding "against the company." Moreover, when an appellant goes on with his appeal at the date of the winding up order, I think he must be said to be "proceeding" with it. Upon the language of the section, therefore, I should have thought that it was plain that the prosecution of an appeal to which the company was a respondent and which was pending at the date of the winding up order was a proceeding for the prosecution of which the leave of the winding up Court was necessary under the section. That appears to have been the view which was taken in a case in 1916 in the Chief Court in Punjab *Milawa Ram v. People's Bank of India* ('16) 3 AIR 1916 Lah. 24 at p. 278. That case has reference to a revision proceedings, but there is, I think, no distinction to be drawn between a revision proceeding and an appeal for the present purpose. The learned Judges in that case say:

In this case the suit was by the company: the revision however is against the company and we hold that it was a proceeding against the company within the meaning of the section.

It is a proceeding intended to wrest from the company the decree obtained by it in the Courts below, a decree which but for the present revision would establish the company's title in the property in dispute. The present revision is a proceeding against the company to defeat that title.

3. Two years later, however, the matter was reconsidered by a Full Bench of the Punjab Chief Court *Kisan Singh v. Industrial Bank of India* Reported in ('18) 5 AIR 1918 Lah. 181 which included the Hon'ble Shadi Lal J., as he then was. This Bench, the judgment of which is of course, entitled to the greatest respect, took the view that the earlier case to which I have already referred was wrongly decided, although they make a concession to it by admitting that there is *prima facie* considerable force in the view taken by it. The Full Bench were, however, greatly influenced by a decision in the House of Lords in England in *Humber & Co. v. John Griffiths Cycle Co.* (1901) 85 L.T. 141 and, founding themselves, as I think, upon that case, they came to the conclusion that no leave of the winding up Court was necessary for the prosecution of an appeal or a revision pending at the date of the winding up order and arising out of a suit in which the plaintiff was the company. With the greatest respect, and I need hardly say only with great diffidence, I think that the learned Judges who composed that Full Bench have misunderstood the case in the House of Lords upon which they relied. To understand it, it is necessary, I think, to look closely at its facts. A company, John Griffiths Cycle Co., had in the first place brought an action against the defendant prior to the winding up in which they (the company) had been unsuccessful. The company then appealed to the Court of appeal and it was during the pendency of that appeal that the winding up order against the company was passed. In that appeal the company was eventually successful. Then the defendant to the suit, who was the respondent to the appeal, appealed to the House of Lords and it was in respect of the appeal to the House of Lords

that the question arose whether the leave of the winding up Court was necessary. Now, in my view, the thing to observe about this case is that at the date of the winding up order the "proceeding" which was then on foot was a proceeding, not against, but by the company and was one for the further prosecution of which no leave of the company Court whatever was required. The proceeding on foot at the date of the winding up order was the appeal by the company and it was open to the company to go on with that appeal without the leave of the Court. With that introduction it is possible to see what it was that Lord Davey in his speech actually said. He said this:

...The respondents, that is to say the company, "now" object that the present appellants cannot proceed with their appeal without the leave of the Court in Ireland. I am of opinion that the objection cannot be maintained. It was the respondents who themselves proceeded with the action after the winding up order, by prosecuting their appeal in the Court of Appeal, and when once an action by the company itself has been proceeded with, there is necessity for the defendants in the action to obtain leave for any defensive proceeding on their part....

4. The italics are, of course, my own, but, in my view, the words they cover afford the clue to what it was that the House of Lords really said in this case. His Lordship, as it seems to me, said no more than that when you find that at the date of the winding up order there is a proceeding already on foot, which proceeding requires no leave of the Court to prosecute it, then that proceeding may go on to its logical conclusion without leave of the Court. In other words, he said that, inasmuch as the appeal which was pending at the date of the winding up order in that case was an appeal by the company itself and, as such, was one which needed no leave to prosecute it, it was a proceeding which might go on to its ultimate conclusion - including an appeal to the House of Lords - notwithstanding Section 87, Companies Act of 1862, which was the Act then in force. Now reverting to the Full Bench case of the Punjab Chief Court it appears to me with great respect that the learned Judges have overlooked that the decision in *Kisan Singh v. Industrial Bank of India* Reported in ('18) 5 AIR 1918 Lah. 181 was limited in the way I have pointed out. It is not, I think, an authority which decides, in general terms, that wherever you find an appeal from a suit in which the company itself was the plaintiff s, that appeal may be either proceeded with or commenced without the leave of the Court. In the case before me, at the date of the winding up order, a proceeding was pending. But, unlike *Kisan Singh v. Industrial Bank of India* Reported in ('18) 5 AIR 1918 Lah. 181 it was a proceeding by the defendant against the company and it was, therefore, a proceeding which, according to what I conceive to be the plain meaning of the language used in Section 171, Companies Act, could not go on without the leave of the Court. For these reasons, in my view, the present case is one in which the leave of the winding up Court is necessary to the prosecution of the appeal and I give that leave accordingly.