
(1940) 08 MAD CK 0016
In the Madras High Court

R.C. Bhide

APPELLANT

Vs

The Travancore National and Quilon Bank Ltd.

RESPONDENT

Date of Decision : 22-08-1940

Acts Referred:

Companies Act, 1956 — Section 230A

Citation : AIR 1941 Mad 18 : (1941) ILR (Mad) 328 : (1940) 52 LW 635 :
(1940) 2 MLJ 697

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant claims, to be a creditor of the Travancore National and Quilon Bank, Ltd., which is now in

liquidation under an order passed by this Court for its compulsory winding up. In February 1938 the appellant entered into an agreement with the

bank under which the bank was to allow him on certain conditions to overdraw his account up to the sum of Rs. 75,000 for the purpose of

financing a contract which he had entered into with the Travancore Government. The bank suspended payment on the 20th June, 1938. The

petition for winding up was filed on the 21st June, 1938 and the order for compulsory winding up was passed on the 4th September, 1938. On the

date of suspension of payment by the bank the appellant had overdrawn his account to the extent of Rs. 56,000. After suspension of payment he

was, of course, not allowed to draw further on his account and he says that in consequence the bank has committed a breach of contract. He also

alleges that the contract is a continuing one. On this basis he filed an application u/s 230-A of the Indian Companies Act for an order rescinding the

contract and awarding him damages. Other reliefs were also asked for but the

learned Judge refused to consider the application and directed the appellant to file a regular suit. The appellant contends that the learned Judge erred in so doing. In the first place he says that the learned Judge had no power to relegate him to a regular suit and in the second place that he should have heard the application and passed such order thereon as the circumstances demanded. If the appellant was not entitled to an order u/s 230-A he would be entitled to prove in the ordinary way for any loss suffered by him.

2. Section 230-A(5) says:

The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

3. The discretion here given to the Court is a discretion to make an order rescinding the contract. Of course if a contract has already been rescinded an application under this section will not lie, and it is the case of the liquidators that this contract has been terminated by a notice calling in the amount due on the overdraft. It is said that the liquidators had a right to do this because the contract between the appellant and the bank provided that the amount was to be repayable on demand.

4. Section 229 of the Indian Companies Act states that in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable as are in force under the law of insolvency and that all persons who in such a case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they are entitled to by virtue of the section. Therefore the general law of insolvency applies to the winding up of an insolvent company. A creditor in insolvency cannot in ordinary circumstances bring a suit against the Official

Assignee. If he claims to be a creditor he must file a proof of his debt with the Official Assignee. If his claim is rejected, then he has the right of

asking the Judge sitting in insolvency to reverse the Official Assignee's decision. The Presidency Towns Insolvency Act contains a section similar

to Section 230-A of the Indian Companies Act, namely, Section 65. When it is not a question of rescinding a contract and assessing damages u/s

65 a person who has contracted with an insolvent may file a proof of the damages suffered by him by virtue of the provisions of Section 46 of the

Presidency Towns Insolvency Act.

5. The position then is this. The appellant was entitled to have his application heard. If the Court then came to the conclusion that the contract had

already been rescinded it would have no power to pass an order on the application and the appellant would have to be relegated to the ordinary

procedure provided by the Act for proving any debt in the winding up. The learned Counsel for the liquidators has been unable to point to any

authority, either in England or in India, which lends support for the course taken by the learned Judge in this cause.

6. The appeal must be allowed and the case will be remanded to the learned Judge to hear and decide according to law. The appellant is entitled

to his costs. The liquidators will be entitled to their costs out of the estate. The court-fee paid on the memorandum of appeal will be refunded to the

appellant.

7. It follows from this order that application No. 1863 of 1939 which the appellant has filed asking that leave be granted to the liquidators to

compromise the appellant's claim will also be remanded to the learned Judge for disposal. His order under appeal apparently applied to this

application as well.