
(1940) 08 MAD CK 0014
In the Madras High Court

S. Gopalaswami Gounder

APPELLANT

Vs

K. Krishnaswami Gounder (Interim Liquidator of the Pollachi Vellala Union Mills Company Limited, in liquidation)

RESPONDENT

Date of Decision : 05-08-1940

Acts Referred:

Companies Act, 1956 — Section 235

Citation : AIR 1941 Mad 53 : (1941) ILR (Mad) 120 : (1940) 52 LW 502 : (1940) 2 MLJ 594

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

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This is an appeal from an order passed by Gentle, J., on a misfeasance summons taken out by the

liquidator of the Pollachi Vellala Union Mills Company, Limited. The liquidator alleged that the appellant, who had been the manager of the

company, was liable u/s 235 of the Indian Companies Act to pay two sums of money, one of Rs. 3,448-10-6 and the other of Rs. 700-7-0. The

liquidator also asked that an order be passed against the appellant, directing him to produce all books, papers, documents and correspondence

relating to the company which were still in his possession. The learned Judge held that the: appellant Was not liable ill the sum of Rs. 3,448-10-6

and the liquidator withdrew the summons so far as Rs. 700-7-0 was concerned. With regard to the books it was said that the appellant had

wrongfully retained the following : (1) The inventory or stock book; (2) the directors" circulation book; (3) the shareholders" circulation book; and

(4) the share transfer application register. The learned Judge found that the first two of these books were with the appellant, but that the remaining

two were not with him. Accordingly he passed an order directing the appellant to deliver over to the liquidator the inventory book and the directors' circulation book. This order was not complied with and the learned Judge then called upon the appellant to show cause why he should not be committed for contempt of Court. In the meantime the appellant filed this appeal and as the result the contempt proceedings have been stayed.

2. Dr. John has contended that the learned Judge erred in law in confining his order to the delivery of the (sic) books. He says that unless a loss has been suffered by the company there can be no order u/s 235 and that when an order is passed for the return of property it must also state the

amount for which the person against whom it is passed is liable in the event of the non-delivery of the property. In this connection the learned

Counsel has quoted the decisions of the Court of Appeal in *In re Canadian Land Reclaiming and Colonizing Co. : Coventry and Dixon's case*

(1880) 14 Ch. D. 660 and of the House of Lords in *Cavendish Bentinck v. Fenn* (1887) 12 A.C. 652. In the first of these cases the Court held

that u/s 165 of the English Companies Act, 1862, in order to make a person liable under the section he must be shown to have been guilty of

misconduct by which the company has suffered loss. The section was not for punishing a man who had been guilty of misfeasance, but for

compensating the company for the loss suffered. In that case it had not been shown that there, was any loss. This interpretation of the section was

accepted by the House of Lords in the second case. There is, however, a great difference between Section 165 of the English Companies Act,

1862 and Section 235 of the Indian Companies Act, 1913, as amended by Act XXII of 1936. Section 165 of the English Act reads as follows:

Where, in the course of the winding up of any company under this Act, it appears that any past or present director, manager, official, or other

liquidator or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any moneys of the

company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of

any creditor or contributory of the company notwithstanding that the offence is one for which the offender is criminally responsible, examine into

the conduct of such director, manager, or other officer, and compel him to repay any monies so misapplied or retained, or for which he has

become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to assets of the

company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

3. Section 235 of the Indian Companies Act reads as follows:

Where in the course of winding up of a company it appears that any person who has taken part in the formation or promotion of the company or

any past or present director, manager, or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for

any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the

application of the liquidator, or of any creditor or contributory (made within three years from that date of the first appointment of a liquidator in the

winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer) examine into the conduct of

the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively

with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the Company by way of compensation in respect of the

misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

4. Under this section the Court may compel an officer of a company against whom a misfeasance summons has been taken out (1) to repay the

money, or (2) to restore the property, or (3) to pay compensation. The difference between the two sections is that u/s 165 of the English Act the

Court was not given the power to compel an officer of a company to restore property. He could only be compelled to make {payment either by

way of refund or compensation, and this was the position in England until the Companies (Winding up) Act, 1890, was passed. There power was

given to the Court to order the restoration of property and the corresponding sections of the English Acts of 1908 and 1929 have been drafted on

the same lines.

5. The appellant is in possession of two books belonging, to the company and therefore he is in possession of property of the company. It is true

that Section 235 contemplates a loss to the company before an order can be passed under the section. This was pointed out by Maugham, J., as

he then was, in *In re Etic, Limited* (1928) 1 Ch. D. 861, where he stated:

The conclusion at which I have arrived is that Section 215 (the corresponding section of the English Act to Section 235 of the Indian Act) is not

applicable to all cases in which the company has a right of action against an officer of the company. It is limited to cases where there has been

something in the nature of a breach of duty by an officer of the company as such which has caused pecuniary loss to the company. Breach of duty

of course would include a misfeasance or a breach of trust in the stricter sense, and the section will apply to a true case of misapplication of money

or property of the company, or a case where there has been retention of money or property which the officer was bound to have paid or

returned to the company.

6. The liquidator says that the retention of these two books by the appellant is likely to lead to considerable loss to the company. That has not been

found, but obviously these books must have some value and their retention by the appellant means a loss to the company. There being a loss the

learned Judge had the power to pass an order for the delivery of the books to the liquidator, and it was a proper order to pass.

7. The appeal must be dismissed with costs.