
(1970) 02 PAT CK 0009

In the Patna High Court

Case No : Company Act Case No. 1 of 1958

Saumya Kumar Gupta

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 02-02-1970

Acts Referred:

Banking Regulation Act, 1949 — Section 45A, 45B, 45D, 45T
Companies Act, 1956 — Section 446, 446(1)

Citation : (1970) 02 PAT CK 0009

Hon'ble Judges : A.B.N. Sinha, J

Bench : Single Bench

Advocate : S.C. Ghose, for the Appellant;

Judgement

1. This is an application u/s 446 of the Indian Companies Act, 1956, for leave to implead the bank (in liquidation) through the official liquidator in Title Suit No. 106 of 1967 pending in the court of third Subordinate Judge, Alipore.

2. The aforesaid title suit has been instituted on the 21st of August, 1967, for partition of various items of properties after a declaration that the compromise decree passed in Partition Suit No. 19 of 1956, on the 15th May, 1956, in the court of the Subordinate Judge at Hazaribagh, was void and not binding on the petitioner as it had been obtained by practising fraud on him. It may be mentioned that Partition Suit No. 19 of 1956 of the court of Subordinate Judge, Hazaribagh, had been instituted by the petitioner along with his two brothers against their uncle, Rai Bahadur Surath Kumar Gupta, for partition of several properties situate in Hazaribagh and in Calcutta including an area of 1.71 acres of land lying within the, municipal limits of Hazaribagh and on which the " Anand Bhawan" cinema was located. The suit was decreed on compromise to which the petitioner was a party, and under that compromise decree the " Anand Bhawan" cinema property stood allotted exclusively to the aforesaid Rai Bahadur Surath Kumar Gupta. Now, after lapse of nearly eleven years from the date of the compromise decree, the petitioner has instituted a fresh partition suit in the

court at Alipore, and amongst other reliefs has claimed a declaration that the aforesaid compromise decree was vitiated by fraud. Meanwhile, it appears that the bank has obtained a decree u/s 45D of the Banking Regulation Act, 1949, against Rai Bahadur Surath Kumar Gupta who has since died on the 3rd of September, 1968, and the said decree has been put into execution before the certificate court, Hazaribagh, with leave of this court u/s 45T(3) of the said Act. In the certificate case, the said property known as the "Anand Bhawan" has been auction-sold on the 15th February, 1968, and though the auction purchaser has deposited the entire consideration, the official liquidator, it appears, has not been able to withdraw the same because of a stay order passed by the Deputy Commissioner, Hazaribagh, at the instance of late Sri Surath Kumar Gupta, who had filed an appeal, being Appeal No. 19 of 1968, for setting aside the aforesaid auction-sale of "Anand Bhawan". That appeal is still pending. Several other items of properties comprised, according to the official liquidator, in the assets held by aforesaid late Sri Surath Kumar Gupta, a debtor of the bank, have been attached for realisation of the claim of the bank in respect of the aforesaid decree passed by this court. It appears from the report of the official liquidator dated the 18th February 1969 (flag 803) that despite wide publicity given to the proposed auction-sale of the "Anand Bhawan" cinema, no claim whatsoever for any interest in that property was made by either the petitioner or his brothers at the time when the property was going to be auction-sold. The petitioner has, however, now for the first time through a notice u/s 80 of the CPC dated the 18th September, 1968, sent to the certificate officer and to the Deputy Commissioner, Hazaribagh, with a copy to the official liquidator, has started making claim that in the properties which the certificate officer, Hazaribagh, has either put to sale or has attached for the purposes of realisation of certificate dues against late Sri Surath Kumar Gupta, the petitioner, and his brothers as well as late Sri Surath Kumar Gupta were jointly interested and that those properties were by no means personal immovable properties of late Sri Rai Bahadur Surath Kumar Gupta. A copy of the notice u/s 80 of the CPC is attached to the supplementary report of the official liquidator dated the 24th February, 1969 (flag 806). It is apparent from what has been stated above, that in the suit pending at Alipore, the petitioner is seeking to agitate questions relating to some of the properties involved in the winding up of the bank and indeed this position is specifically admitted by the petitioner in paragraph 7 of his supplementary petition dated the 2nd May, 1969, filed in connection with his present application for leave to implead the official liquidator as a party defendant to the title suit pending at Alipore. The point which arises for determination is whether, in the above circumstances, the leave prayed for should or should not be granted.

3. It appears to me that, in view of the provisions of Section 45B of Part III-A of the Banking Regulation Act, 1949 (hereinafter referred to as "the Banking Act"), conferring exclusive jurisdiction, inter alia, in respect of matters which relate to or arise in the course of the winding up of a banking company on the very court, which was winding up the said company, leave to implead the official liquidator in

another proceeding pending in another court so that those matters may be agitated in that court was misconceived and could not be allowed. It is true that Sub-section (1) of Section 446 of the Companies Act, 1956, provides for such leave to be granted, but this permissive provision being inconsistent with the rule laid down in Section 45B must be deemed to have become inapplicable to banking companies. Section 45A of the Banking Act provides that Part III-A of the Banking Act overrides all other laws including those contained in the Companies Act, 1956, which might be in any manner inconsistent with the provisions contained in that part. It follows, therefore, that when, in regard to all matters, whether of law or fact which either relate to or arise in the course of winding up of a banking company, that court alone, which was engaged in the winding up of that banking company, had jurisdiction, the court cannot by granting leave to commence proceedings in any other court create or confer jurisdiction in that court in regard to those matters. In the instant case, the official liquidator has taken steps through certificate proceedings to recover or realise the assets of the banking company in liquidation. All questions relating to the realisability of those assets, must be said to be related to the winding up of the banking company. Indeed, this position cannot be disputed and has not been in fact disputed before me. The expression "relating to the winding up" as used in Section 45B of the Banking Act is very comprehensive in its scope, and the questions which are sought to be raised in the partition suit pending in the Alipore court, either in regard to "Anand Bhawan " or other properties which have been sought to be attached by the official liquidator as belonging to or not belonging exclusively to late Rai Bahadur Surath Kumar Gupta, a debtor of the banking company, undoubtedly relate to the winding up, and therefore, all those questions could only be tried and determined by this court. In the circumstances, the question of granting leave for getting those matters agitated or determined by some other court does not arise. Sri S.C. Ghose, learned counsel appearing for the petitioner, has, however, sought to support the prayer for leave on three grounds ; (i) that at least so far as " Anand Bhawan" is concerned, it having been sold already, it was the auction purchaser and not the official liquidator who can be interested in the said property and, therefore, questions arising in regard to " Anand Bhawan " could not be said to relate to or arise in the course of the winding up of a banking company and thus there was no difficulty in granting leave, (ii) Sections 45B and 45T when read together showed that the exclusive jurisdiction of the court winding up the banking company was not really exclusive, because it was shared by the executing court as well and, therefore, the provisions of Section 45B were no impediment in the way of granting the leave prayed for, and (iii) all questions necessary for a proper determination of the partition suit pending in the Alipore court which suit could not have been instituted in this court, should be allowed to be determined by that court and, accordingly, the leave prayed for should be granted because otherwise some of the rights and equities arising between the parties may have to be left undetermined.

4. It is obvious that, on the facts of this case, the validity or otherwise of the second ground raised by the learned counsel need not be determined in this case. If the petitioner had put forward his claim in respect of either "Anand Bhawan" or in respect of any of the other properties which have been attached in execution of the certificate dues, before the certificate court, the question might have arisen whether his claim or objection could be determined by the certificate court or not or those claims and objections should be determined by this court even though the decree passed u/s 45D against Rai Bahadur Surath Kumar Gupta had been transferred for execution with leave of this court to the certificate court at Hazaribagh. The decision in the case, Kartic Chandra Pal and Another Vs. Noakhali Union Bank Ltd., (In Liquidation), is only an authority for the proposition that, where a decree in favour of a bank in liquidation was transferred by the High Court to another court u/s 45T, the executing court had jurisdiction to decide a claim under Order 21, Rule 58, of the Code of Civil Procedure, notwithstanding Section 45B and no leave of the High Court was necessary for preferring such a claim. The basis for that decision was that the transfer order covered the whole execution processes and unless the transfer order was recalled or modified, the executing court had the same powers as the High Court to complete the execution. Apart from the fact that the question as raised or discussed in the Calcutta decision 1 does not arise in this case, it may be pointed out that the provisions of Section 45T dealing with the enforcement of orders and decisions of the High Court are in no manner destructive of the exclusive jurisdiction conferred on the High Court u/s 45B. u/s 45T(1), the order passed u/s 45D or a certificate issued thereunder comes within the scope of a decree of the High Court, and it can be executed as a decree of the High Court, and, accordingly, read with Section 38 of the Code of Civil Procedure, the decree could be executed by the High Court, if there was sufficient arrangement for the same. Since, however, there was no provision for executing a decree by the High Court, the party concerned can obtain a transfer of the decree for execution to any other court where the property is situate or where the defendant lived, or to any other court where the transfer would be justified under the Code of Civil Procedure. The fact that the High Court may give leave to the official liquidator to recover the amount due from the debtor in the same manner as an arrear of land revenue, does not in any manner qualify the exclusive jurisdiction conferred on the High Court u/s 45B. There is, accordingly, no force in the second ground urged. The other two grounds, namely, the first and the third, urged in support of this application are also wholly untenable. "Anand Bhawan" has been sold at the instance of the official liquidator as a property belonging to the debtor of the bank ; the sale proceeds whereof are still lying in deposit because the sale itself has been challenged by way of an appeal filed by the debtor, since deceased. According to the petitioner, late Rai Bahadur Surath Kumar Gupta had only a fractional share in "Anand Bhawan". It is in that context that the question whether the official liquidator has any interest to protect after the auction sale or not has to be considered. In case the petitioner succeeds in getting it determined in the presence of the official liquidator that "Anand Bhawan" did not belong

exclusively to Rai Bahadur Surath Kumar Gupta, the auction purchaser will at once become entitled to a refund of at least a portion of the sale proceeds lying in deposit and that is a matter in which the official liquidator must be held to be directly interested. It follows, therefore, that merely because "Anand Bhawan" has been auction-sold, it cannot be said that the official liquidator has no interest to safeguard. In regard to the last ground urged, it may be sufficient to point out that the partition suit instituted and pending in the court at Alipore can easily proceed in regard to all such matters which do not relate to or arise out of the winding up. It may be that the partition suit as such could not have been instituted in this court, but that is no reason why even matters which relate to or arise under the winding up of the bank, should be allowed to be determined, contrary to the provisions of Section 45B of the Banking Regulation Act, by any other court than this court where the winding up matter is pending. Further, if the petitioner had any bona fide claim to any interest in " Anand Bhawan " or to any of the other properties which have been attached at the instance of the official liquidator for realising the decretal dues against the debtor of the bank, it was open to the petitioner to file a claim in regard to those properties at the proper time, either in this court or before the executing court as they might have been advised. The very fact that despite wide publicity given to the proposed auction sale of " Anand Bhawan " cinema, no claim whatsoever for any interest in that property was made by either the petitioner or his brothers as is being now made after a lapse of nearly eleven years and the compromise decree is being sought to be set aside indicates that the present attempt is far from being bona fide.

5. This application is thus not only misconceived but appears to have been made with a view to delay and defeat the just dues of the bank in liquidation. The prayer for leave is, accordingly, rejected.