
(1965) 08 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 23-D of 1957

Seth Kundan Lal and Another

APPELLANT

Vs

Hanuman Chamber of Commerce Limited

RESPONDENT

Date of Decision : 19-08-1965

Acts Referred:

Companies Act, 1913 — Section 247
Companies Act, 1956 — Section 560(5)

Citation : (1966) 36 CompCas 231 : (1966) 1 ILR (P&H) 730

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : H.R. Sawhney and Y.K. Sabharwal, for the Appellant; B.C. Misra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kapur, J.—This appeal is directed against the judgment of the District Judge, Delhi, dated 23rd February, 1956. The appellants Kundan Lal and firm Jessa Ram Hira Nand filed a petition for winding up of Hanuman Chamber of Commerce Limited (hereafter referred to as the company) on 18th July, 1954, u/s 162 of the Indian Companies Act, 1913. The appellants claimed to be the creditors of the company and the winding up was sought on four grounds :

- (1) The company was unable to pay its debts ;
 - (2) It had suspended business for more than a year ;
 - (3) The name of the company had been struck off the register by the Registrar of Companies on 23rd July, 1952, and the company had been dissolved u/s 247 of the Indian Companies Act, 1913 ; and
 - (4) It was just and equitable to wind up the company.
2. The company having been dissolved the petition was resisted by one Sat Narain Goenka. He took a preliminary objection that since the company had been

dissolved in 1952 no order could be passed for the winding up of the company. The learned District Judge framed two issues which were as under :

(1) Is the petition maintainable in view of the dissolution of the Hanuman Chamber of Commerce Limited by the Registrar, Joint Stock Companies, Delhi, u/s 247 of the Indian Companies Act on 23rd July, 1952 ?

(2) Is it competent to Sat Narain Goenka to make the above objection ?

3. He decided issue No. (2) in favour of the respondent but, following a decision of the High Court in *Parduman Singh v. Pioneer Jewellery Company Limited* AIR 1921 Lah. 78 held that, before a petition for winding up could be entertained, proper steps had to be taken under Sub-section (6) of Section 247 for setting aside the order of dissolution and that not having been done in this case, the winding up petition was not maintainable. Mr. Sawhney, the learned counsel for the appellants, has submitted that the impugned order was passed on 23rd February, 1956, and the Companies Act, 1956, received the assent of the President on 18th January, 1956, and came into force from 1st April, 1956. He submits that whatever be the position under the 1913 Act it is clear that such an order can be made under the 1956 Act without first getting the dissolution of the company set aside under Sub-section (6) of Section 247. He has invited my attention to proviso (b) to Sub-section (5) of Section 560 which provides that notwithstanding the fact that a company has been struck off the register by the Registrar and dissolved, the powers of the court to wind up the company will not be affected. He says that an appeal is a continuation of the original proceedings and, taking account of the change in law, it should be held that the jurisdiction of the court to wind up the company in such circumstances is unaffected. He has further invited my attention to Section 645 of the Companies Act, 1956, and says that the order of the Registrar striking off the company passed in July, 1952, should be deemed to have been passed under the new Act. Lastly, Mr. Sawhney submits that even under the 1913 Act the position was the same and proviso (b) to Subsection (5) of Section 560 merely clarifies the position that obtained under the 1913 Act.

4. In reply to the first submission of Mr. Sawhney, Mr. Misra, the learned counsel for the respondents, says that reference to Sections 647 and 658 shows that the winding-up petition had to be disposed of on the assumption that the new Act had not been passed. According to Mr. Misra, the same result would follow by the application of Section 6 of the General Clauses Act.

5. I am in agreement with the submission of Mr. Sawhney to the effect that in view of proviso (b) to Sub-section (5) of Section 560 a winding up order can be passed against a company without first getting the dissolution order set aside. There can be no doubt nor has it been disputed by the respondent that the present appeal is a continuation of the original proceedings. It has also not been disputed that change of law can be taken into consideration. The contention of the respondent merely is that, by applying the said proviso (b) to Sub-section

(5) of Section 560, I will be nullifying the effect of the express provisions contained in Sections 647 and 658. So far as Section 647 is concerned, the same is not, in my opinion, applicable. The said provision postulates a winding-up order having been passed before the commencement of the 1956 Act and deals with the actual winding up of the affairs of the company. No doubt, the winding up of a company by the court commences from the date of the petition but it is only when an order for the winding up is made that it relates back to the date of petition. The reference to Clauses (i) and (ii) also leads to the suggestion that the view taken by me is in conformity with the intention of the legislature. Mr. Misra says that, the proviso to Section 647 is destructive of the argument, that applicability of Section 647 is confined only to the winding up of the affairs of a company which has already been ordered to be wound up or where in the case of a voluntary winding up a resolution for the purpose has already been passed. I find no such justification from the language of the proviso. As a matter of fact, reference to the four sections mentioned in the proviso would further support rather than destroy the arguments of Mr. Sawhney. Sections 463, 515 and 524 undoubtedly relate to the actual winding up of the affairs of the company and not passing of the winding-up order or the resolution therefor. Some doubt may, however, arise as to why Section 502 was made applicable by the proviso when the said section deals with the appointment of a liquidator. But a little closer scrutiny of the said section would show that it deals not only with the nomination of a liquidator by the creditors but also a stage posterior thereto. Reference may be made in this connection to the proviso to Sub-section (2) of Section 502. It is significant that the provisions of Section 502 are applicable "as far as may be". In cases of voluntary winding up, it commences from the date of passing of the resolution. That is patent from the mere reading of Section 441. It follows that, in so far as the voluntary winding up is concerned, Section 647 would come into play only where the resolution had been passed before the commencement of the 1956 Act and, therefore, Section 647 at least so far as voluntary winding up is concerned, deals with a stage after the commencement of the winding up. To my mind it appears that, even in the case of winding up through court, the section applies only where an order for winding up has been passed before the coming into force of the 1956 Act and does not mean that the court has to abide by the provisions of the 1913 Act in considering whether or not to pass a winding-up order. Of course, where rights are concerned the court may have to look to the 1913 Act because of the provisions of the General Clauses Act and Section 658. The matter can be looked at from another point of view. As I have said earlier, in the case of winding up by court it is only when a winding-up order is passed that it dates back to the date of petition. When Section 647 says "where the winding up of a company has commenced before the commencement of this Act", it must mean that both the order and petition for winding up are of a date prior to the commencement of the 1956 Act. My conclusion, therefore, is that the section will apply only to the winding up of the affairs of the company. So far as Section 6 of the General Clauses Act is concerned, no doubt the repeal cannot affect, unless a different intention appears, any investigation, legal proceedings

or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment, but in a case like the present no right of any party is being affected or taken away. It is only procedural impediment, if at all it existed, under the 1913 Act to first get the dissolution order discharged, that is removed by proviso (b) to Section 560(5). It is not the case of Mr. Misra that no company, which has been struck off the register and dissolved, can at all be wound up. All that he contends is that it cannot be wound up till the dissolution order has been got vacated. That being the position, I am inclined to the view that in an appeal it is open to apply the change in law and direct winding up of a company.

6. Coming now to the position that obtained under the 1913 Act, I am of the opinion that possibly such an order could be made even under that Act without first getting the dissolution set aside. In *In re Cambridge Coffee Room Association Ltd.* [1952] 1 All E.R. 112 Wynne Parry J. said :

" In all the circumstances it appears desirable that the petition in such cases should follow the form of this amended petition which asks that the name of the company be restored to the register and then that the company be wound up. "

7. At the same time it is clear from the judgment that in a number of cases compulsory winding-up order had been made without the name of the company having been restored to the register. Wynne-Parry J. expressed the view that he did not intend to cast doubts on past cases where such an order had been made. It is suggested that Wynne-Parry J. only thought that procedure to be more convenient, but in India even the question of advisability of such a course does not arise because in the Indian Act there are no provisions corresponding to Section 354 expressly declaring the property of a dissolved company to be bona vacantia. That, to my mind, does not make any difference. Although such a provision does not exist in the Companies Act, 1956, the principle of bona-vacantia would be as much applicable in India as in England. Since I have held in favour of the appellants on the first point, it is not necessary to carry the matter further. May be that the effect of a winding-up order itself is to vest the custody of the company's property in court and divest the State of the same. I must also refer to the judgment of the Lahore High Court in *Parduman Singh v. Pioneer Jewellery Company Limited* AIR 1921 Lah. 78 on which strong reliance has been placed by the learned counsel for the respondent. There it was held that a person to whom the liquidator had transferred a payment-order made by the court u/s 150 against a contributory was entitled to invoke the summary jurisdiction of the court for the purpose of recovering the money due from the latter, and the circumstance that the company has been finally dissolved did not prevent the assignee from seeking relief from the liquidation court. It was observed by Shadi Lal C.J.:

" It is true that Section 159 requires the court to pass an order of dissolution when the affairs of the company have been completely wound up, and there is authority for the view that unless and until the order of dissolution has been set aside, it prevents any proceedings being taken against the promoters, directors

or officers of the company in respect of any misfeasance or breach of trust, or a creditor proving a debt against the company : vide Halsbury's Laws of England, volume V, page 567. "

8. I do not see how that case is relevant for determining the issue now before me. Here there is no dispute that the company can be wound up. The dispute is within a narrow compass, namely, whether it can be wound up without first getting the dissolution vacated ? In this view, the appeal must succeed and is allowed. There will, therefore, be no order as to costs. The matter will now be taken up by the appropriate court for disposal on merits.