
(1944) 11 AHC CK 0023
In the Allahabad High Court
Case No : Miscellaneous Case No. 414 of 1944

SHIROMANI SUGAR MILLS LTD. (IN LIQUIDATION)	APPELLANT
Vs	
GOVERNOR-GENERAL IN COUNCIL.	RESPONDENT

Date of Decision : 18-11-1944

Acts Referred:

Companies Act, 1913 — Section 169
Income Tax Act, 1961 — Section 46

Citation : (1945) 13 ITR 480

Hon'ble Judges : Braund, J

Bench : Division Bench

Final Decision : Allowed

Judgement

BRAUND, J. - This is an application under the Indian Companies Act, 1913, made in the winding-up of the Shiromani Sugar Mills, Ltd., in liquidation.

The Company prior to its winding-up carried on business as the proprietors of Sugar Mills at Khalilabad in the Basti District of the United Provinces. In the course of its business the company is said to have made profits amounting to Rs. 66,407 in the year ending 30th May, 1941, in respect of which it was assessed to Income Tax for the year of assessment 1941-42 in the sum of Rs. 18,493-12-0. This assessment was not however, actually made by the Income Tax Office until 25th February, 1943, by which time an order for the compulsory winding-up of the Company had been made on the petition of a debenture holder. The date of the presentation of the petition for winding-up was 26th November, 1941. On 7th April, 1942, the winding-up order was made by this Court. The position, therefore, was that the assessment was actually made by the Income Tax Officer after the date of the winding-up order, but was in respect of the winding-up order, but was in respect of the assessment year 1941-42, and was based on the profits of the year 190-41.

The liquidators, having received the assessment, took the view that the proper course would be for the Income Tax Officer to prove in the liquidation for the tax

claimed; and they so informed him. After some correspondence, the Income Tax Department intimated that they proposed to proceed u/s 46 of the Income Tax Act, and that they had issued a recovery certificate in respect of the amount of the assessment of 25th February, 1943, to the Collector of Allahabad for recovery of the tax in question under that section "as if it were an arrear of land revenue."

These are the material facts which have led to the present application by the liquidators to the High Court in the winding up of the Company. In view of the many points raised. It is important to observe that the relief asked for before us by the liquidators is, in effect, only that the Income Tax Officer may be restrained u/s 169 of the Indian Companies Act, 1913, from proceeding with the recovery of the amount of the assessment through the machinery of section 46 of the Income Tax Act, and may in consequence be related to his right of proof in the winding-up for such amount (if any) as may be payable by the Company in respect of tax due. On the hearing of the application we have actually been invited to go a good deal further than this and, in effect, to determine the validity of the assessment itself in the sense of deciding whether the assessment or the full assessment, can be sustained by the Income Tax Officer. But that does not appear to us to arise at this stage. The only matter in issue before us on this present application is whether it is open to the Income Tax Officer to proceed with the recovery of the assessed amount u/s 46 of the Income Tax Act, notwithstanding the winding-up order and notwithstanding the provisions of the Indian Companies Act, 1913, regulating the distribution of the assets of the Company in a liquidation. If the rights of the Income Tax authorities u/s 46 of the Income Tax Act are unaffected by the scheme of distribution of assets in a liquidation contained in the Indian Companies Act, 1913, then *cadit quaestio*. If, on the other hand, the rights of the Income Tax authorities under that section are subordinated to the relevant winding-up provisions of the Indian Companies Act, 1913, then subject to the question whether the Court can, will, exercise its discretion u/s 171 of the Indian Companies Act, 1913, in favour of the Income Tax Officer so as to allow him to continue the recovery proceedings before the Collector, the Income Tax Department will necessary be thrown back on to its rights of proof in the liquidation. In our view, therefore, subject to a preliminary point as to jurisdiction, the only question at present before us is whether the Income Tax Department, without the leave of the winding-up Court, can continue the proceedings for summary collection of the tax claimed "outside the winding-up"; or whether, if they wish to recover the debt, they are bound to prove as creditors in the liquidation.

Mr. Pathak, who has appeared on behalf of the Income Tax Department has, however, taken the point that this Court has no jurisdiction to entertain this question. This has been argued somewhat late in proceedings, but we shall do well to deal with it first, since it is a point which is in the nature of a demurrer and is, moreover, one both of difficulty and importance. It rests on Section 226 (1) of the Government of India Act, 1935, which provides that :

"Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force."

We do not purpose to embark on the entertaining question whether the jurisdiction exercised by the High Court in winding-up under the Indian Companies Act, 1913, is "original" jurisdiction within the meaning of this section, because we think that this demurrer can be better disposed of on other grounds.

Mr. Pathak relies on the case of Governor-General in Council v. Raleigh Investment Co., Ltd., in which the Federal Court, reversing a decision of the Calcutta High Court, has recently held that certain proceedings on the original side of the latter Court were excluded from its jurisdiction by Section 226 (1) of the Government of India Act. In this case the assessee Company, having been assessed to Income Tax which it disputed, nevertheless paid the tax under protest and instituted a suit on the original side in Calcutta for the recovery of the tax so paid on certain grounds which involved a contention that the Indian legislation under which the tax was claimed was ultra vires the Indian Legislature in so far as it purported to authorise the levy of tax on a non-resident company in respect of income from dividends which had accrued outside British India. The dispute, therefore, was one in which the subject challenged, nor merely something ordered or done in the collection of the tax, but the validity of the levying of the tax itself. The Calcutta High Court nevertheless, held that it was entitled, notwithstanding Section 226 (1) of the Government of India Act, to determine the validity of the legislation under which the tax was levied and that only after that matter had been determined, could any question arise u/s 226. The Federal Court took the view that Section 226 applies generally to all questions of demand or assessment and that the question of the validity of the legislation under which an assessment is made is clearly a matter "concerning the revenue." If the decision of the Federal Court in this case covers the case before us then that is an end of the matter.

This involves a very careful consideration of the language of sub-section (1) of Section 226 of the Government of India Act. It has to be noticed that the section itself appears to draw a distinction between a "matter concerning the revenue," and a "matter concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force." It treats them as separate things. We think that this must be so, since otherwise there would be no object in placing the last twenty-nine words in the section at all. It would have been quite sufficient to oust the jurisdiction of the High Court to have stopped at the words "in any matter concerning the revenue." If the legislature had not intended to place the collection of the revenue on some different footing from the revenue itself, it would we think, have been content to stop at the word "revenue." We think this important because the last words of the sub-section "the law for the time being in force" govern the words "any act

ordered or done in the collection thereof," but do not, as we read the section, govern the words "concerning the revenue." As we read it, this means that any matter concerning the revenue is placed without any qualification outside the original jurisdiction of a High Court; but only such matters concerning the "collecting" of the revenue are placed beyond the jurisdiction of a High Court as are "ordered or done according to the usage and practice of the country or the law for the time being in force." It is, therefore, as we view the matter, a condition precedent to the ousting of the jurisdiction of a High Court in a case concerning any act ordered or done merely in the collection of the revenue (as opposed to an act or order concerning the revenue itself) that the act or order should be one done or ordered in accordance with the usage and practice of the country or the law for the time being in force.

At first sight it is possible to say that this construction of Section 226 (1) of the Government of India Act, 1935, is an inadmissible one in view of the decision of the Judicial Committee in *Spooner v. Juddow* on which the Federal Court itself has relied in the *Raleigh Investment Co., Ltd.*, case. But, on a careful examination of this case, we think that it does not prevent our distinguishing, in the way we have done, the one before us from the one before the Federal Court. *Spooner v. Juddow* was decided in reference to the relevant Act regulating the Supreme Court of Bombay in 1848, which provided that

"the Supreme Court shall not have, or exercise any jurisdiction, in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations of the Governor-General and Council."

Apart from the wording, the punctuation is also somewhat different from Section 226 (1) of the Act of 1935; but on that we do not find it necessary to rely. The facts of the case, shortly put, were that the Collector of Revenue of Bombay, one Spooner, had taken steps through his assistants to enter the premises of a certain Hurkisondass Hurgovundass by force for the purposes of taking possession of them under Bombay Regulation XIX of 1827 in order to recover a sum described as a "quit-rent", charged on the premises, which can for this purposes be assumed to have been an item to the Bombay Governments revenue. In the course of these proceedings, Hurkisondass Hurgovundass resisted and there was a scuffle, involving damage. Hurkisondass Hurgovundass thereupon brought an action in trespass against Spooner and one of his assistants in the Supreme Court claiming damage. It would appear from the report that the ground upon which the plaintiff rested the trespass was that there had been a technical irregularity in the warrant, inasmuch as it referred, not to the plaintiff, but to one, Narrondss Tookaydass, a former owner and occupant of the premises. On these facts, in reference to the Bombay Regulation, the Privy Council held that the Supreme Court of Bombay had no jurisdiction, saying that :

"If the act complained of concerned the revenue, or was a matter concerning an act bona fide believed to be done according to the Regulations of the Governor

and Council of Bombay, his (the Judges) jurisdiction was gone....."

At first sight this might appear fatal to the reasoning we have, applied above to Section 226 (1) of the Government of India Act. But if it is examined, we do not think it is. In the Bombay case there was no question but that the Collector, in proceeding against the plaintiffs house, was putting into motion a proceeding which the Bombay Regulation authorized to be taken. What was complained of was, not that he had no power to proceed under the Regulation, but that his manner of doing it was irregular, and in the sense only the proceeding became illegal. There was no challenge to the procedure per se, but only to the steps taken in execution of it; and this, we think, is what their Lordships refer to when they speak of "an act bona fide believed to be done according to the Regulations....."

Now, our case, as we see it, is very different. Section 226 (1) of the Government of India Act requires the act or order in the matter of the "collection" of the revenue to be one which is "according", not to a particular Regulation or Statute, but to the whole of "the law for the time being in force." What is challenged before is, not that any particular step taken in enforcing the ascertained law is illegal, but that the Income Tax Department is not proceeding according to "the law for the time being in force" at all. In that case, we see a great difference between involving the protection of the statute where its conditions have, as in the Bombay case, been complied with in the sense that Governments proceedings are of a kind which the law provides for the collection of revenue, and invoking the protection of Section 226 (1) where what is challenged in limine is the fact that the conditions which bring the statute into play have been complied with, that it to say whether the Governments proceedings, are of the character which "the law for the time being in force" allows. If it is established that the Government is not proceeding in accordance with the law for time being in force in the wider sense, then, as we understand it, the protection of Section 226 (1) simply never arises. In the Bombay case, the Bombay Government were using a means of recovery which the Regulation gave them, but had used it, so it was said, irregularly. In the case before us, it is alleged, on the other hand, that the Income Tax Department is claiming a mode of collection which "the law for the time being in force" does not give them at all in the circumstances that have arisen. That appears to us to be the difference between the two cases.

It appears to us to follow that, before Section 226 of the Government of India Act comes into play at all in relation to an act ordered or done in the collection of the revenue, it has necessarily first to be determined whether the act or order in question is one which - to apply it to the case before us - was ordered or done "according to the law for the time being in force."

If this view be the right one, then there appears to be a clear distinction between the case with which we are dealing and Governor-General v. Raleigh Investment Co., Ltd. In the case before the Federal Court, the matter concerned the revenue and had nothing to do specifically with its collection. It was a case, on the

original side of the High Court, in which the subject was proceeding against the Government and was challenging the Government's right at large to levy the tax. That manifestly was a matter "concerning the revenue." Our case is quite different. On this application, neither the right of the Income Tax Department to levy the tax, nor its amount is or can be, in dispute. The sole question is whether the Department has the right to collect it in a particular way which will, or may, react unfavourably on the statutory rights of other. For any purpose now before us, the assessment stands as a perfectly valid assessment. The question is, therefore, in our view, one concerning an act "ordered or done in the collection" of the revenue, and not one concerning the revenue itself. In our judgment, it follows that we have first to decide whether the collection of the revenue in the particular way chosen by the Income Tax Department in this case is one which is in accordance with the law for the time being in force. If it is, then Section 226 of the Government of India Act sweeps away our jurisdiction. If it is not, then we retain our jurisdiction.

But it is contended by the Department that even if this is so then "the law for the time being in force" is, so far as it is concerned, to be found in the Indian Income Tax Act, 1922, and nowhere else. In other words, it is said that in the present case Section 46 of the Indian Income Tax Act is the law, so far as the Income Tax Department is concerned. This we cannot accept. The law for the time being in force concerning any particular matter, whether it be the collection of the revenue or anything else, is a comprehensive expression which includes, not one particular statute but the whole body of law, whether in one or more statutes or outside a statute altogether, which for the time being governs that particular matter. The Income Tax Department cannot pick and choose its law. If the winding-up provisions of the Indian Companies Act, 1913, have effected or modified the law relating to the collection of revenue, then the Indian Income Tax Act, as affected by the Indian Companies Act, will be "the law for the time being in force" relating to the collection of revenue in these particular circumstances and not merely the Income Tax Act alone. The question involved in this construction of Section 226 (1) of the Government of India Act is of considerable general importance, and the conclusion we have reached is that the section does not preclude a High Court, in a matter concerning any act ordered or done in the collection of the revenue, as opposed to an act or order concerning the revenue itself, from inquiring whether that act has been ordered or done according to the law for the time being in force, in the sense of being in the exercise, or purported exercise, of a method of recovery which the law applicable in the circumstances allows. Applying this to the facts of the case before us, which we think are different from the facts of the case in *Governor-General in Council v. Raleigh Investment Co., Ltd.*, we are of the opinion that we are both entitled and bound to decide in this case whether the Income Tax Department has a right, under the present law relating to the recovery of arrears of revenue, to proceed in the way it has chosen to employ. If this were not so, it would lead to the extraordinary conclusion that, if the winding-up jurisdiction of

this Court had been conferred u/s 3 of the Indian Companies Act on the District Court of Cawnpore, that Court (as a winding-up Court) could decide whether the Income Tax Department was acting in the matter of the collection of the tax in accordance with the law for the time being in force whereas this Court (as a winding-up Court) could not.

The Income Tax Officer, however, maintains that, apart from the question of jurisdiction, the proceedings in pursuance of Section 46 of the Indian Income Tax Act are still in accordance with the law for the time being in force, notwithstanding the winding-up of the company, on the ground that neither the general prerogative of the Crown to prefer its own debt to the debt of the subject, nor its particular rights u/s 46 have been taken away by anything in the Indian Companies Act, 1913. This rests on a general argument that the prerogatives of the Crown cannot be taken away except by the express enactment, and on a particular argument that there is that to be found in the Indian Companies Act which, so far from taking away the Crowns rights, expressly preserves them.

The former of these propositions, so far as its effect on Section 171 of the Indian Companies Act is concerned, relies on decision of the Calcutta High Court (*In re West Laikdih Coal Co., Ltd.*) which has been followed in this Court in the case of *Commissioner of Income Tax v. Official Liquidators, Agra Spinning and Weaving Mill Co.* both of which we are respectfully compelled to think were wrongly decided, and, indeed would not have been so decided, if the attention of the Court had been drawn to the decision of the House of Lords in the case of *Food Controller v. Cork*. In the Calcutta case, Mr. Justice page, as he then was, considered the effect of Section 171 of the Companies Act on the right to recovery of cess from a company in liquidation by the process of the Bengal Public Demands Recovery Act, 1913. Basing himself on the supposed effect of two English decisions in *In re Henley & Co., Ltd.* and *In re Oriental Bank Corporation, Ltd.* the learned Judge came to the conclusion that Section 171 of the Indian Companies Act in no way affected the rights which the Crown possessed in virtue of its prerogative, on the ground that the Companies Act, 1913, did not expressly or by necessary implication bind the Crown. This decision was followed in our own Court in the second of the two cases referred to above, in which two learned Judges simply referred to it, themselves, adding only very briefly that "by mere implication, the Crowns right and remedy cannot be barred." These decisions are now relied on before us by the Income Tax Department.

Had the attention, however, of the learned Judges been called in either of these cases to the case of *Food Controller v. Cork* in the House of Lords, in which it was made quite clear that *In re Henley & Co., Ltd.*, though rightly decided as the English law stood in 1878, had ceased to be any authority for the law as it stood from 1888 onwards, we venture to think that both the Calcutta and the Allahabad cases would not have been decided as they were.

The general principle of the winding-up provisions of the Indian Companies Act, 1913, is, as also under the English Companies Act, to secure the satisfaction of the liabilities of the company as nearly as possible *pari passu*. This principle is introduced by Section 211 of the Indian Act, 1913, which is identical with Section 247 of the English Act of 1929 and substantially reproduces Section 186 of the Companies (Consolidation) Act of 1908. As an express exception to this principle of *pari passu* distribution, the preferential payments provisions are introduced by Section 230 of the Indian Act, following Section 264 of the Companies Act, 1929, and Section 209 of the Indian Act, following Section 264 of the Companies Act, 1929, and Section 209 of the Companies (Consolidation) Act, 1908. It is clear from sub-section (1) of Section 230 of the Indian Companies Act, which groups together revenue, taxes, cesses, rates, wages and salaries of clerks and servants, wages of labourers and workmen, Workmens Compensation Act claims and sums due to employees provident funds, that, whatever may be said about is, the Crowns prerogatives have in fact been extensively tampered with. Instead of the Crown any longer having a prerogative of preference for its own debt, it has to be content with a status of equality with servants, workmen and other classes. It cannot be supposed that the Crowns rights were so dealt with in this way otherwise than deliberately; and it cannot, therefore, any longer be suggested that there was no express or implied intention on the part of the Legislature to subject to prerogatives of the Crown, in the matter of preferential payment in any competition with the subject, to the general statutory scheme introduced by the Companies Act for the distribution of assets in a winding-up. To carry this to its logical conclusion, it is, we think, a necessary implication that the intention of the Legislature is that the Crown shall conform to the general scheme for the distribution of assets, except to the extent that the statute itself otherwise provides. This has been made abundantly plain by the House of Lords in *Food Controller v. Cork*. To take one passage from the speech of Lord Wrenbury :

"Section 209 of the Act of 1908 does bind the Crown, and it binds the Crown to a statutory scheme of administration of the assets wherein the prerogative right of the Crown to priority no longer exists."

We need not deal at any length with *In re Henley & Co., Ltd.*, except to say, as is pointed out by the House of Lords, that it ceased to be an authority at the moment when the scheme of distribution u/s 133 of the Companies Act, 1862, (which nowhere referred to Crown debts and did not bind the Crown) was altered by the Preferential Payment in Bankruptcy Act of 1888, which applied (and by virtue of the subsequent Companies Acts, has since applied) to all winding-up proceedings commenced after the date of its commencement.

The prerogative of the Crown to prefer a debt due to itself in the winding-up is, therefore, no longer effective as against the statutory scheme for the distribution of the assets contained in the Act itself. Nor do we think that Section 232, sub-section (2), of the Indian Companies Act, 1913, constitutes, as is contended by

the Income Tax Department, an express saving of the rights of Government as against the terms of Section 171. Section 232 only says that "any attachment, distress or execution put in force without leave of the Court... after the commencement of the winding up shall be void;" but that this is not to apply to any such attachment, distress or execution so put in force by the Government. We should not suggest for a moment, in view of this section, that any such proceeding by the Government was made void. Section 171 has nothing to do with making anything "void". What Section 171 does is to lay down that certain proceedings shall not be "commenced" or "proceeded with". If existing, they remain in existence; but cannot be proceeded with. Obviously, if the proceedings had already been made void by Section 232, they could never be proceeded with so as to attract Section 171 at all. It is one thing to make proceedings "void", but it is quite another thing to prevent proceedings which are not necessarily void, being continued as against the assets of the company otherwise than by the means provided in the liquidation. Those proceedings which are not void, or are expressly saved from being void, may still be stopped u/s 171 from being continued. Indeed they could not be stopped from being continued if they were already void. In our view, Section 232 has nothing to do with Section 171, nor with the question before us. It simply says that certain proceedings shall be void, but that, if they are by the Government, they shall not be void. Very well : Assuming that the class of proceedings we are considering is not made void u/s 232, this simply means that it remains for us to consider u/s 171 whether it shall go on. If it had been avoided by Section 232, there would have been no necessity to consider u/s 171, whether it should continue; and in considering u/s 171 whether it should be "proceeded with", we are certainly not declaring any attachment, distress or execution to be void. The conclusion we have reached, therefore, is that, subject to the final question whether a revenue proceeding taken in pursuance of section 46 of the Indian Income Tax Act, 1922, is an "other legal proceeding" at all within the meaning of Section 171 of the Indian Companies Act, we are unable to hold that the assessment of the 25th February 1943, constitutes a debt which is protected from the general scheme for the distribution of the assets in the winding-up. We should perhaps add that we have assumed throughout, as is clear, that the assessment of the 25th February, 1943, does not constitute a preferential debt within the meaning of Section 230 of the Indian Companies Act, 1913, since it was not "due from the company" at the date of the winding-up order [Section 230 (5)].

This brings us to the last and, in our view, probably the most difficult point in the case. It is said that, even if the Crown is bound in respect of a debt by the provisions of Sections 171, 211, 226 and 230 of the Indian Companies Act, 1913, the steps which it is now taking u/s 46 of the Income Tax Act to recover the amount of the assessment in question do not constitute a "suit, or other legal proceeding.... proceeded with or commenced, against the company..." within the meaning of Section 171 of the Act and, accordingly, that no leave of the winding-up Court is required to go on with them.

Section 171 of the Companies Act provides that :

"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."

The question we have to decide, therefore, is whether the initiation by the Income Tax Officer of steps to recover the amount of the assessment u/s 46 of the Income Tax Act, and the prosecution by the Collector of those steps, amount to "commencing" or "proceeding with" a "suit or other legal proceeding."

We have been referred to a Full Bench case of the High Court at Lahore, *Shakuntla v. The Peoples Bank of Northern India, Ltd. (in liquidation)*, which if it correctly construes Section 171 of the Indian Companies Act, appears to be fatal to the liquidators contention that the taking of steps by the Income Tax Officer u/s 46 of the Income Tax Act requires the leave of this Court. The question in that case was whether a person who wished to bring a suit against the company in liquidation under Order 21, Rule 63, of the CPC had first to obtain leave u/s 171 of the Companies Act. In a sense, therefore, this was a stronger case for bringing the suit within the terms of Section 171 than the case before us, since it must be admitted that a suit under Order 21, Rule 63, partakes *prima facie* more nearly of the character of a "suit" than the steps taken u/s 46 of the Income Tax Act with which we are now dealing. The construction placed by the Full Bench of the Lahore High Court on Section 171 of the Companies Act is expressed thus by the learned Judges at page 765 of the Report. After setting out the language of Section 171, they say :

"The terms of this section are clear and imperative. They create an absolute bar against the commencement, or continuance of a suit or other legal proceeding against the company, except with the leave of the Court. Neither the word suit nor the expression legal proceeding is, however, defined in the Companies Act, the CPC or the General Clauses Act. They have different meanings in different statutes according to the context, but there is no doubt as to their meaning in Section 171. As stated in Section 26, Civil Procedure Code, a suit is a proceeding under the Code, which is instituted with the presentation of a plaint in a Court of original jurisdiction and it is in this sense that this word is used here. The expression legal proceeding in this section is coupled with suit and obviously means proceedings *ejusdem generis*, that is to say, original proceedings in a Court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint. It does not include proceedings taken in the course of the suit nor proceedings arising from the suit and continued in a higher Court like an appeal from an interlocutory or final order passed in a suit. The rule of interpretation to be followed in such cases is contained in the maxim *copulatio verborum indicat acceptationem in eodem sensu* (the coupling of words shows that they are to be understood in the same sense). Reference may, in this connection be made to *Hood Barrs v. Cathcart*, affirmed on appeal by the House

of Lords in *Hood Barrs v. Heriot*, in which a similar provision in the (English) Married Womens Property Act, 56 and 57 Vict., C. 63 Section 2, was so interpreted."

With deference, we must say that we cannot see the justification for placing so restricted a general definition on the words "suit, or other legal proceeding" in Section 171 of the Indian Companies Act as to confine them to "proceedings ejusdem generis" (with a suit) "that is to say, original proceedings in a Court of first instance, analogous to a suit, initiated by means of a petition similar to plaint". In our view, this involves also a misapplication of the "ejusdem generis" principle. Construing the section strictly, as we must, what we find prohibited without leave is the commencement of, or proceeding with, "a suit, or other legal proceeding", that is to say, as we understand the phrase, "a suit, or proceeding (other than a suit) which is of a legal character." Now, it is obvious that, whereas a "proceeding" (simply) may well involve steps which have no legal characteristics at all (as, for example, the disconnection of the consumers supply by a gas or electricity undertaking for non-payment of dues), a "legal proceeding" must ex hypothesi share with a suit a legal character. We can make this clearer by taking two illustrations. Let us imagine a bequest by will to A of "a chair or other piece of furniture out of my sitting room to be chosen by him". Here clearly a chair is a piece of furniture and being a piece of furniture, must necessarily be of the same "genus" as any other piece of furniture. There is no room here for the ejusdem generis rule. Now take a bequest to A of "a chair or other chattel out of my sitting room to be chosen by him." Here the case is quite different. A chair, it is true, is a chattel, but there are many chattels which are not furniture and are not of the same "genus" (i.e. furniture) as chairs; as, for example, books. Here the ejusdem generis rule may possibly apply to limit the construction of the word "chattel" in the context to something of the same "genus" as a chair, i.e., furniture. Applying this reasoning, therefore, to the words of Section 171, the first thing to observe is that the words are "suit of other legal proceeding" and not "suit or other proceeding", which it is interesting to notice, were the words of the Companies (Consolidation) Act, 1908, and are the words of the Companies Act, 1929. The word "legal" has been added in the Indian Act to give further definition to the word "proceeding". The Legislature has, therefore, itself exhaustively defined the "genus" of the alternative by limiting it to "legal" proceedings, and, as we view the matter, we can find no reason for the further application of the ejusdem generis rule. The proceeding must, ex hypothesi, be a "legal proceeding", i.e., a proceeding of the same "genus" as a suit. In our view, therefore, there is no reason, on a strict construction of the section, for limiting any further the character of the "legal proceeding", an expression which by itself already accurately defines the "genus" by confining it to that particular type of "proceeding" which is a "legal" proceeding. It accordingly appears to us that the more accurate construction, and the one which accept the words as they stand, is that the section refers to any "suit, or proceedings (other than a suit) which is a legal proceeding." In short, the word

"other" has no ejusdem generis significance, but is used in a purely alternative sense.

In our view, that is the natural construction of the section apart altogether from its context. But, when we look at its context, as we legitimately may, it becomes a still more natural construction. The policy of the Act, expressed in Section 211, is to secure a pari passu distribution of the assets among the creditors, subject only to those exceptions (Section 230) which the Act itself expressly provides. Section 211 of the Indian Companies Act provides for this pari passu distribution subject only to "the provisions of this Act." These words are important. They appear in Section 247 of the English Act of 1929, but not in Section 264 of the Companies (Consolidation) Act of 1908. They mean, we think, that if exceptions are to be found to the overriding pari passu principle of Section 211, they have to be looked for in the provisions of the Act itself and not from deors. In other words, a construction of Section 171 of the Act which makes it necessary to obtain the leave of the Court for commencing, or proceeding with, all such proceedings (provided they are "legal" proceedings) as protect the assets from the inroads of individual creditors outside the liquidation and serve to give effect to the pari passu principle of Section 211, is a construction which is far more consistent with the general scheme of the Legislature, than one which confines the protection of Section 171 to a relatively narrow and arbitrary kind of legal proceedings of the limited class suggested by the Lahore High Court. The case of *Hood Barrs v. Cathcart* which was approved in the House of Lords in *Hood Barrs v. Heriot* referred to in the Lahore case does not appear to us to have any real bearing on the construction of Section 171 of the Indian Companies Act. The words under construction in these cases were contained in Section 2 of the Married Womens Property Act, 1893, and were "In any action or proceeding now or hereafter instituted by a woman... the court.... shall have jurisdiction... to order payment of costs..." The appellant in each case was the defendant to an action, and the point was whether an appeal by her in an action to which the married woman was a defendant was an "action or proceeding... instituted." The emphasis was throughout laid on the word "instituted" and it was held that it was not. Lord Herschell says : "Unless the proceeding is one which initiates litigation, it seems to me that it is not a proceeding within the true intent and meaning of the clause...." The words of Section 171 of the Indian Companies Act are quite different, and, moreover, there is no such guiding context in the Married Womens Property Act, 1893, as is to be found in the winding up scheme of the Indian Companies Act pointing to the principle of pari passu distribution unless expressly otherwise provided.

In our judgment therefore, the real question we have to consider is not whether the particular proceedings in question are analogous to a "suit", but simply whether they are "legal proceedings" at all. If they are "legal proceedings" at all, they are we think, forbidden without leave by Section 171 of the Companies Act. If they are not "legal proceedings", then they may be freely commenced or proceeded with. We see no reason, either upon strict construction or having

regard to the scheme of the Act, to resort to an unnatural narrowing of the words.

The proceedings we are asked by the applicant in this case to restrain are proceedings u/s 46 of the Indian Income Tax Act, by which the Income Tax Department is equipped with certain special remedies for recovering Income Tax. The particular sub-section of Section 46 which is relevant is sub-section (2), which reads as follows :

The Income Tax Officer may forward to the Collector a certificate under this signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue :

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree."

The question, therefore, is whether the setting in motion by the Income Tax Officer of the machinery of Section 46, sub-section (2), of the Indian Income Tax Act constitutes the commencement of, or proceeding with, "a legal proceeding" within the meaning of Section 171 of the Indian Companies Act, 1913. If the words of Section 171 had been, as they are in the corresponding section of the English Act, "any suit, or other proceeding," there would seem to be considerable authority for a wide construction of the word "proceeding". In *In re Briton Medical and General Life Assurance Association* it was held that a summons in a police Court against a company to recover penalties for alleged offences under the Companies Act, 1962, and the Life Assurance Companies Act, 1870, was a "proceeding" within the meaning of the expression contained in Section 85 of the Companies Act of 1862, "... in any action, suit or proceeding against the company."

In *In re Artistic Colour Printing Company* Sir George Jessel expressed the view that execution under a judgment in an action would be included within the expression contained in Section 87 of the Companies Act, 1862, "no suit, action, or other proceeding shall be proceeded with and in *In re Perkins Beach Lead Mining Company*, Vice Chancellor Bacon held that an execution perfected by seizure before the commencement of the winding-up was a "proceeding" within the meaning of the same section of the Companies Act, 1862. In *In re Lancashire Cotton Spinning Company*, Lord Justice Cotton conceded that the word "proceeding" in section 87 of the Companies Act, 1862, would include "proceedings in the nature of the actions and modes of enforcing claims against the company..." and the only reason why he was doubtful whether a distress of rent was actually included in the section was that it had already been provided

for by being rendered void u/s 163 of the same Act. In *Queen v. London, Chatham and Dover Railway Company*, it was held that taxation of cost fell within the words "no actions, suits, executions, attachments, or other proceedings...." There appears to us, therefore, to be sufficient English authority for concluding that the word "proceeding", apart from a particular context, may have an extended meaning, and we think, therefore, that we must examine briefly the nature of the proceeding u/s 46, sub-section (2), of the Indian Income Tax Act to see whether they are of such a character as to be capable for being described, firstly, as "proceedings" and, secondly, as "legal proceedings".

We find that arrears of land revenue are recoverable under Sections 146 to 188 of the Land Revenue Act (III of 1901). These sections constitute a code of recovery for arrears of land revenue. By section 146 arrears of revenue are made recoverable by one or more of several "process", which include service of a writ of demand or citation on the defaulter, his arrest, the attachment and sale of his property, and various other coercive methods. Section 147 provides that it is obligatory to serve on the defaulter either a writ of demand, calling upon him to pay within a specified time, or a citation to appear. The Collector is given power to resort to various processes of management and sale and it is provided by Section 172 that the person whose land or other immovable property has been sold may, at any time within thirty days from the date of sale, apply to have the sale set aside upon fulfilling certain conditions. u/s 183, whenever proceedings are taken against any person for the recovery of any arrear of revenue, he is permitted to pay the amount under protest, and thereupon to have the proceedings stayed pending a suit by him in which he may give evidence of the amount which he alleges to be due from him. This is not an exhaustive description of the proceedings for the collection of arrears of land revenue, but it is perhaps sufficient to indicate their general character. It has, moreover, to be specially noticed that Section 46 of the Indian Income Tax Act, as amended in 1933, particularly gives the Collector for the purpose of recovering arrears of tax all the powers of a Civil Court in relation to attachment and sale. The question now is whether the proceedings so established can be properly described as "legal proceedings", bearing in mind that, if the construction of Section 171 which we have adopted is the correct one, they need not necessarily be limited to that narrow class of legal proceedings which are strictly ejusdem generis with a "suit." Regarded in this way, we think that proceedings under the Land Revenue Act are "legal proceedings". They may not be proceedings of a judicial nature, but they are, we think, nevertheless legal proceedings (see Section 199 of the Land Revenue Act). We appreciate that, in speaking of legal proceedings, we must not confuse the word "legal" with the word "lawful", which is quite a different thing. Lawful they certainly are. But we think that they are also "legal" proceedings. They owe their origin to a statute which prescribes in great detail a methodical way, based on the provisions of the Code of Civil Procedure, which for many purposes is incorporated in the statute, in which the collector is to proceed to recover. The Collector is an officer with extensive judicial powers and for this

particular purpose he is specially equipped with the powers of a Civil Court. The proceedings are given a completely formal character, in which many of the attributes of strict legal procedure are to be found. The debtor whose property is being dealt with has by law to be given notice. He has a right to come in and stop the proceedings on payment. His property is sold by methods which, if not under, are in strict analogy to those of the Civil Procedure Code. He has, in at least one instance, power to institute proceedings in which he can put an end to the attachment of his property. Looking at all these attributes of the proceedings for the recovery of land revenue, we have come to the conclusion that, upon the ordinary use of language, they must properly be described as "legal proceedings". As we have already said, there are many kinds of proceedings for the recovery of debts which are not legal proceedings at all. We have mentioned the case of a gas or electricity undertaking which exercises a right of disconnecting the supply in order to recover what is due to it. That is a proceeding to recover its debt, but we do not think it is a legal proceeding. A sale by a person who has a lien over property in his possession or by a bailee, is a proceeding to recover what is due to him, but it is not a legal proceeding in the sense we are now discussing. Having given this somewhat difficult question the best consideration of which we are capable, we have, therefore, formed the view, first, that the expression "suit or other legal proceeding" in Section 171 of the Indian Companies Act ought not to be given an artificially narrow construction by confining it to proceedings of the technical nature of a "suit"; and, secondly, that, with reference to the facts before us, resort by the Income Tax Department to proceedings u/s 46 of the Income Tax Act did constitute the commencement of, or proceeding with, a "legal proceeding".

For the foregoing reasons, which we have felt it right to express at some length, we shall allow this petition and we propose to pass the following order. If, however, the respondents are willing to give an undertaking not to proceed with the recovery of the amount due under the assessment in accordance with Section 46 of the Indian Income Tax Act, it would be unnecessary for us to issue a formal injunction. Subject, however, to any such undertaking, our order will be that, u/s 169 of the Indian Companies Act, 1913, the respondents shall be restrained from proceeding without leave of this Court with the subsisting proceeding before the Collector of Allahabad for the recovery of the amount referred to in the assessment dated 25th February, 1943, as an arrear of land revenue in accordance with Section 46 of the Indian Income Tax Act and in pursuance of the recovery certificate in that behalf issued to the said Collector, provided nevertheless that this injunction shall be without prejudice to such application, if any, as the respondents may be advised to make u/s 171 of the Indian Companies Act, 1913, for leave to proceed with such recovery.

The respondents must pay the petitioners, the Official Liquidators of the Shiromani Sugar Mills Ltd., in liquidation, their costs of this petition. We have been asked by the respondents Advocate to certify a special fee in this case, and we think it right to fix his fee at a sum of five hundred rupees.

There will be leave to appeal to the Federal Court.

Application allowed.