

(1972) 03 DEL CK 0009

In the Delhi High Court

Case No : Letter Patent Appeal No. 369 of 1971

Siri Ram and Others

APPELLANT

Vs

Bulaki Dass and Others

RESPONDENT

Date of Decision : 16-03-1972

Acts Referred:

Citation : (1972) ILR Delhi 530(2)

Hon'ble Judges : Prakash Narain, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : B.I. Singh and Kirhori Lal, for the Appellant;

Judgement

Hardayal Haidy, J.

(1) This appeal under Clause 10 of the Letters Patent is directed against the judgment of a learned Single Judge of this Court.

(2) The appeal arises out of an order dated 4-1-1969 passed by the Additional District Judge whereby he directed the compulsory winding up of the company, namely, Delhi Kiryana Private Limited. The application was filed by some of the creditors of that company u/s 433 of the Companies Act, 1956, (hereafter referred to as the Act) for the compulsory winding up of the company on the ground that it was unable to pay its debts.

(3) The petition was opposed by the company both on the ground that the Court in which the petition was filed had no jurisdiction to entertain the petition and also that the company was unable to pay its debts.

(4) On the first point of jurisdiction the learned Additional District Judge held vide his order dated 9th December 1968, that the Court had jurisdiction. Thereupon the following two issues were framed on merits:-

"1. Whether the respondent is liable to be wound up on the grounds alleged ? 2. Relief."

(5) On a consideration of the evidence led by the parties, the learned Additional District Judge held that the company was not able to pay its debts. He Therefore passed an order directing the compulsory winding up of the company.

(6) Against that order an appeal was filed in this Court being F.A.O. No. 14 of 1969 which was heard by M.R.A. Ansari J. and was dismissed vide his order dated July 14, 1971.

(7) The company and its Directors have now approached this Court under Cl. 10 of the Letters Patent. The appeal was admitted to regular hearing by a Division Bench of this Court on 14-12-1971. In due course the operation of the winding up orders was also stayed by another Bench of this Court, but on 10-3-1972, when the matter came up before this Bench we directed that before any further arguments are heard on this appeal, one of the questions arising for consideration is about the maintainability of this appeal against an order made by M.R.A. Ansari J.

(8) After hearing the counsel for the parties, we are of the view that no second appeal lies under Clause 10 of the Letters Patent and Therefore the appeal is dismissed but without any order as to costs.

(9) Counsel for the appellant invited our attention to a decision of the Supreme Court in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), . That was a case under the Trade Marks Act, 1940 and it was held that 2 H. O. Delhi/72 the rights created by the Trade Marks Act are civil rights for the protection of persons carrying on trade under marks which have acquired reputation. The statute creates the Registrar a tribunal for safeguarding these rights and for giving affects to the right created by the Act and the High Court as such without more, has been given appellate jurisdiction over the decision of this Tribunal. The High Court while exercising this appellate jurisdiction has not to exercise it in a manner different from its other appellate jurisdiction. It is merely an addition of a new subject-matter of appeal to the appellate jurisdiction already exercised by the High Court.

(10) The case does not appear to us to have any bearing on the question before this Court. Section 483 of the Companies Act, 1956 which provides for appeals from orders lays down that appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lied from any order or decision of the Court in cases within its ordinary jurisdiction. The High Court no doubt has the power of hearing appeals but the manner in which and the conditions subject to which appeals lie from any order or decision of the Court is the same as incases within its ordinary jurisdiction. If the original order had been made by a Single Judge of the High Court an appeal un-doubted lies to a Division Bench of this Court under Sec. 483 of the Act. In the present case however, the original order was made by an Additional District Judge and against the decision of the Additional District Judge,

an appeal admittedly lay to the High Court. It was however the first appeal that lay to the High Court and it was heard by a learned Single Judge of this Court. In the present case what the appellant has filed is a second appeal from an appellate order made by a learned Single Judge of this Court. Under Clause 10 of the Letters Patent such an appeal could only lie if the learned Single Judge had granted a certificate declaring that the case was a fit one for appeal. No such certificate having been granted, the appeal is obviously not competent.

(11) The next case referred to by the learned Counsel for the appellant is a decision of the Judicial Committee of the Privy Council in AIR 1948 12 (Privy Council) . What that decision lays down is that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal. The case has no bearing on the question before us. We do not say for a moment whether a right of appeal from the orders in question did not lie under the ordinary rules of procedure to the High Court of Delhi, but it was the first appeal that lay to the High Court against a decision of an additional District Judge and the question in this case is whether a second appeal lay from a decision of the learned Single Judge of this Court to a Division Bench under Clause 10 of the Letters Patent. That question was not raised in the case before the Privy Council.

(12) The other case relied upon by the counsel for the appellants is a decision of the Supreme Court in Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, . The order in that case was by a Company Judge in the High Court of Calcutta and against his decision an appeal was brought before a Division Bench of that Court. The question there did not therefore arise in relation to an order made by a District Judge and confirmed in appeal by a Single Judge of the High Court. The main question raised in that case was whether another made by the Company Judge was a judicial order and if so whether it was a judgment within clause 15 of the Letters Patent of Calcutta High Court and if not whether an appeal lay to the Division Bench. It is in that context that reference was made to Section 202 of the Indian Companies Act, 1913 which in terms is identical with Section 483 of the Companies Act, 1956. That is not the point arising in the present appeal.

(13) We were lastly referred to a Full Bench decision of this Court in The Municipal Corporation of Delhi v. Kuldip Lal Bhandari and others (1969 Plr (Delhi Section) 318)(4). The question raised in that case was in the context of an order made by the Claims Tribunal under the Motor Vehicles Act, 1939 and the right of appeal to the High Court u/s 110-D of the Act. It was held that in hearing the appeal u/s 110-D of the Act, the High Court must be held to be acting as a High Court and not as a Tribunal, inasmuch as the claim for compensation for negligence is a common law right not created by a statute and the claim is considered by the Tribunal in its entirety without limitation with the result that an

appeal to the High Court is filed in its - ordinary civil jurisdiction. The question Therefore turned on the interpretation of the expression "judgment" within the meaning of Clause 10 of the Letters Patent. In the present case, the order complained of is an order of the Court of the District Judge and the appellants had a right of appeal to the High Court because of the ordinary jurisdiction of that Court. What Section 483 of the Companies Act contemplates and provides for is one appeal and Therefore no further appeal lies to the Division Bench of this Court. The case appears to us to be on all fours with the decision of the Punjab Chief Court in Basheskar Nath v. Kanhaya Lal (1913 Punjab Records No. 34)(5). Section 169 of the Indian Companies Act, 1882 was under discussion in that case.

(14) A Bench consisting of Johnston and Chevis JJ. held that u/s 169 only one appeal was competent and if that appeal had been made to the Divisional Court no further appeal lay to the Chief Court. Section 169 of the Indian Companies Act, 1882 read:-

"APPEALS from any order or decision made or given in the matter of winding "up of a Company by the Court may be had in the same manner and subject to the same conditions in, and subject to which, appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction, subject to this restriction, that no such appeal shall be heard unless notice of the same is given within three weeks after which any order complained of has been made."

(15) These provisions are more or less akin to the provisions in Section 483 of the Companies Act, 1956.

(16) We Therefore accept the preliminary objection and hold that no second appeal lay to this Court u/s 483 of the Companies Act, 1956 or under Clause 10 of the Letters Patent.