
(1970) 04 AHC CK 0024

In the Allahabad High Court

Case No : Company Application No. 40 of 1967 connected with Company Case No. 14 of 1949

Smt. Kanchan Devi and Others

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 29-04-1970

Acts Referred:

Citation : (1970) 40 CompCas 670

Hon'ble Judges : W. Broome, J

Bench : Single Bench

Advocate : S.N. Verma, for the Appellant; A. Banerji, for the Respondent

Final Decision : Dismissed

Judgement

W. Broome, J.—This is an appeal against an order of the official liquidator dated July 31, 1967, rejecting two claims of Gyan Chand Raidani for arrears of rent (and interest thereon) against the Jwala Bank Limited (in liquidation). One claim, relating to the period from October, 1942, to September, 1947, had already been decreed by the Munsif of Mirzapur on March 28, 1949, in Suit No. 457 of 1947 ; while the other, relating to the period from October, 1947, to June, 1949, was afresh claim that had not been the subject of any judicial decision.

2. The Jwala Bank Limited had taken a certain house on rent from Misri Lal Raidani and his sons in the year 1934: but subsequently in 1935 Misri Lal Raidani and his sons executed a usufructuary mortgage in favour of the Jwala Bank Limited in respect of various properties including this same house. As already noted, a decree was obtained against the bank for the rent from October, 1942, to September, 1947, from the court of the Munsif of Mirzapur on March 28, 1949. But a subsequent suit filed in 1950 for the arrears that had accrued from October, 1947, onwards was frustrated because the Jwala Bank Limited had meanwhile gone into liquidation and this court did not permit Gyan Chand Raidani to continue the suit. At the same time it was observed that he would have the right to file his claim before the official liquidator in the course of the

winding-up proceedings; and this is how the matter came before the official liquidator, resulting in the order of July 21, 1967, that has been appealed against.

3. An earlier suit, which had been filed against the bank for the rent accruing between September 1, 1936, and September 30, 1942, was decreed by the Munsif of Mirzapur in 1946 ; and the decree was partially confirmed in appeal by the Civil Judge in 1948. Thereafter, a second appeal was filed in this court by Gyan Chand Raidani, challenging the decision of the Civil Judge in so far as the suit had been dismissed by him ; and in 1955 that second appeal was allowed. But the official liquidator thereupon filed Special Appeal No. 430 of 1955, which was allowed by a Bench of this court in 1963 with the finding that the lease deed of 1934 had ceased to be operative on the execution of the usufructuary mortgage deed and that no suit for the recovery of arrears of rent could therefore be filed on the basis of the lease deed.

4. The claim for the rent accruing between October 1, 1947, and June 4, 1949, which has not been the subject of any judicial adjudication so far, is clearly covered by the decision given in Special Appeal No. 430 of 1955 and has rightly been disallowed by the official liquidator.

5. Learned counsel, appearing for Gyan Chand Raidani, maintains that the claim relating to the rent accruing from October, 1942, upto September, 1947, stands on a different footing, since it is based on the decree already passed by the Munsif of Mirzapur on March 28, 1949, in Suit No. 457 of 1947 and is not affected by the decision in Special Appeal No. 430 of 1955. It is pointed out that the Munsif's decree was allowed to become final, no appeal having been filed against it either by the company or by the official liquidator after he took charge of the company's affairs, and, consequently, it is urged, that that decree must be treated as completely binding not only on the company but also on the liquidator. The latter, however, contends that he is entitled to " examine the decree to find out whether it was validly passed and whether the company really owed any amount to the claimant by way of rent. Once such an examination is allowed, it of course becomes immediately apparent that the decree was passed in error, since it runs counter to the pronouncement made by this court in Special Appeal No. 430 of 1955. The crucial point to be determined, therefore, is whether it is open to the official liquidator to go behind a decree and to consider whether it is valid. In this connection the official liquidator relies on the decision of a learned single judge of this court in *Union Indian Sugar Mills Co. Ltd. Vs. Brij Lal Jagannath*, , in which it was held :

" Where there has been a genuine contest between a claimant or a creditor on the one hand and the company which goes into liquidation later on and the parties have fought out the case, bona fide, it should not be open to the official liquidator to reopen the case and to have, as it were, a fresh trial of strength. But, on the other hand, where the decree rests on something less than a real trial on the merits of the case, the question would arise whether the official liquidator would not be justified in putting the decree aside and asking for what

has been called the "consideration for a judgment".

6. In the present case there was no real contest in the suit that was decided by the Munsif in 1949 : that suit was decreed ex parte, the defence of the bank having been struck off because the bank failed to pay certain costs that were awarded for an adjournment. In these circumstances the official liquidator claims that he is fully entitled to go behind the decree and determine whether it was justified. The principle governing such case has been enunciated by Sir W.M. James L. J. in Ex parte Kibble: In re Onslow [1875] 10 Ch. App. 373, as follows:

" It is the settled rule of the court of bankruptcy, on which we have always acted, that the court of bankruptcy can inquire into the consideration for a judgment debt. There are obviously strong reasons for this because the object of the bankruptcy laws is to procure the distribution of a debtor's goods among his just creditors. If a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all; it is therefore necessary that the consideration of the judgment should be liable to investigation."

7. Similarly, in Ex parte Lennox: In re Lennox [1885] 16 Q.B.D. 315 Lord Esher M.R. observed :

"...it is not true to say that the mere fact of a judgment existing ought to prevent the court at the instance of the debtor at the first stage of the proceedings, viz., when a receiving order is applied for, from inquiring whether there was any real debt as the foundation of the judgment, and, although by consenting to a judgment the debtor is estopped everywhere else from saying that there was no debt due--although the judgment is binding upon him by reason of his consent, and of its being the judgment of the court, yet no such estoppel is effectual as against the Court of Bankruptcy. The court is not estopped by the conduct of the parties, but it has a right to inquire into the debt."

8. An attempt has been made by learned counsel for the claimant to argue that this principle can only apply to cases in which there is some element of fraud or collusion and cannot apply to the present case, in which an ex parte decree was passed, which is not shown to be collusive. But in Official Liquidators, Official Liquidators Electric Supply Co. Ltd. Vs. Siemens (India) Ltd., , a learned single judge of this court permitted the liquidators to go behind an ex parte decree. And all doubt is set at rest by the clear pronouncement of Buckley L. J. in In re Van Laun : Ex parte Chatterton [1907] 2 K.B.D. 23 , which runs as follows:

"If there be a judgment it is not necessary to show fraud or collusion. It is sufficient, in the language of Lord Esher, to show miscarriage of justice, that is to say, that for some good reasons there ought not to have been a judgment."

9. On the basis of these authorities, I am satisfied that it was open to the official liquidator to go behind the decree passed by the Munsif in Suit No. 457 of 1947 and to consider whether it was valid. As already pointed out, once that decree is

held to be open to investigation it at once becomes apparent that it was passed in error, since it runs counter to the decision of this court given in Special Appeal No. 430 of 1955.

10. The official liquidator was thus right in refusing to accept the claims of Gyan Chand Raidani, both for the period between October, 1947, and June, 1949, and for the period between October, 1942, and September, 1947.

11. The appeal is accordingly dismissed with costs.