(1935) 03 CAL CK 0023

In the Calcutta High Court

Srt. Shushila Bala Basu APPELLANT

Vs

Anjuman Trading and Banking Co., Ltd. and Another RESPONDENT

Date of Decision : 12-03-1935

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 47
Companies Act, 1956 — Section 153(1)

Citation : AIR 1935 Cal 398

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This is a Rule calling upon the opposite party to show cause why an order of the Subordinate Judge of Dinajpur allowing an objection u/s 47, Civil P C., filed by the opposite party who was the judgment-debtor should not be set aside. The facts are these The petitioner was a depositor of the bank in question. She instituted a suit to recover the money due to her and obtained an instalment decree on 27th September 1932. An attempt on the part of the bank to get that decree set aside by this Court was unsuccessful. On 13th April 1933 a meeting was held by the depositors of the bank in accordance with S 153, Sub-section (1), Companies Act, and then a scheme was approved by this Court on 12th June 1933 and became effective from 13th April 1933. The bank attempted to establish an adjustment in accordance with this scheme and applied without success to have the adjustment recorded under the provisions of Order 21, Rule 2. On 11th January 1934 the present execution case was filed. The bank filed a petition under the provisions of Section 47 on the ground that the petitioner was bound by the scheme approved at the meeting of the depositors on 13th April 1933.

2. The Subordinate Judge held that the petitioner was bound in view of the provisions of Section 153, Sub-section 2. With great respect to his decision he appears to have misunderstood the meaning of that sub-section. It is clear that only the class of creditors who framed the scheme are bound by it. The present scheme was framed by the depositors with the object of saving the bank. The

petitioner was no longer a depositor. She had obtained a decree and was a judgment-creditor. Her interest was not in any way the same as that of the depositors. It would be most unreasonable to hold that the arrangement made by the depositors in their own exclusive interest should be binding upon other persons who have conflicting interests. There is nothing in the sub-section to justify any such view and I need only refer to the case of Dewangunge Bank and Industry 1935 Cal 117 which supports the contention raised by the petitioner in this Rule.

3. The result is that this Rule is made absolute. The order of the learned Subordinate Judge allowing the objection u/s 47, Civil P. C, is set aside and he is directed to proceed with the execution. I make no order as to costs