

(1974) 03 PAT CK 0008

In the Patna High Court

Case No : Civil Revision No's. 1283, 1284 and 1295 of 1970

State of Bihar

APPELLANT

Vs

Syed Anisur Rahman and Others

RESPONDENT

Date of Decision : 28-03-1974

Acts Referred:

Companies Act, 1956 — Section 446

Citation : (1974) 03 PAT CK 0008

Hon'ble Judges : Nand Lall Untwalia, C.J

Bench : Single Bench

Advocate : Birendra Prasad Sinha and P.N. Roy, for the Appellant; S.S. Asghar Hussain, Abdus Salam, Md. Vakiluddin and S.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, C.J.—These are three applications in revision by the State of Bihar, which owed certain money to the United Provinces Commercial Corporation, a private limited company incorporated under the Indian Companies Act. The plaintiff opposite parties in all the three civil revision applications filed three money suits against the said Corporation for realisation of certain amounts of money. The suits were filed in the year 1964. Compromise decrees were made on September 6, 1968. Under the terms of the compromise decrees the Corporation agreed to pay certain sums of money to the plaintiffs. From time to time, under orders of the court, monies due to the Corporation from the State of Bihar were paid to, and realised by, the plaintiffs in pursuance of the compromise decrees." After a lapse of considerable time--on June 8, 1970--the State of Bihar filed applications in the court below asking it to withhold further payments of the money due from it to the Corporation on the ground that the company had gone into liquidation by an order of the Calcutta High Court made on June 4, 1968, about 3 months prior to the passing of the compromise decrees; an official liquidator had been appointed. The court below was asked to stay its hands because of the provision of law contained in Section 446 of the Companies Act,

1956. The learned Additional Subordinate Judge has refused to do so. The State has come up in revision.

2. It is no doubt true that after the defendant-company went into liquidation the suits could proceed with the leave of the winding-up court. Compromise decrees could be passed only after the suits had proceeded with the leave of the winding-up court. But then, for want of leave, the decrees cannot be said to be without jurisdiction. A. N. Ray J., as he then was, has held in *Roopnarain Ramchandra Private Ltd. Vs. Brahmapootra Tea Co. (India) Ltd. and Another*, :

"The only contention on behalf of the applicant was that the decree was a nullity by reason of the court having no jurisdiction to pass the decree and by reason of the appointment of the provisional liquidator. I am unable to accept the contention. The court has full jurisdiction to entertain suits and to pass decrees where the company is a party to the suit and such company is in the course of liquidation. It is true that the provisions in the Companies Act and the Rules thereunder contemplate that if the suit is pending on the date of the presentation of the winding-up petition or on the date of the winding-up order the suit or proceeding is not to be continued except by leave of the court. Leave to proceed with the suit in such circumstances is not similar to leave under Clause 12 of the Letters Patent. In the absence of leave under Clause 12 the court has no jurisdiction. The existence of jurisdiction depends upon leave under Clause 12. In suit or proceeding against the company in the course of liquidation the absence of leave to continue or proceed does not, in my opinion, deprive the court of the jurisdiction to pass any decree. The court has jurisdiction to hear such suits. The existence of jurisdiction does not depend upon any such leave. It is the court which hears the suit, also confers leave to proceed with the suit when leave is asked for. If leave has not been obtained, the decree does not become a nullity for lack of jurisdiction. Leave is asked for to continue the suit. In the present case the plaintiff was not aware of any winding-up order and, therefore, could not ask for any leave. In my opinion the absence of leave is not fatal as to render the decree a nullity. In appropriate cases leave can be given even retrospectively if circumstances of the case justify. "

3. It is also to be pointed out that a company does not lose its corporate character and legal entity merely because it has gone into liquidation under orders of a court or a voluntary one. The corporate status and legal entity of the company remains. Decrees could be passed against the company and so also compromise decrees. It was for the official liquidator of the company to get rid of the compromise decrees and bring the debts due from the State of Bihar to the company in the common pool. No step seems to have been taken by the official liquidator to avoid the compromise decrees. The State as a debtor cannot object to the payment of the money on the ground of the proceedings being bad u/s 446 of the Companies Act. It has made the payments and is required to do so under orders of the court. That is sufficient to discharge it from its liability. It is not its look out whether the money goes to one creditor of the company or the

other. I am, therefore, of the view that the order of the court below is correct and cannot be interfered with in any of these revisions.

4. For the reasons stated above, all the three revision applications fail and are dismissed but I shall make no order as to costs in any of them.