(1963) 11 KAR CK 0018

In the Karnataka High Court

Case No : Civil Revision Petition No''s. 704 and 705 of 1963

The Century Bank Ltd. APPELLANT

Vs

M. Marlingappa and Another RESPONDENT

Date of Decision : 08-11-1963

Acts Referred:
Banking (Regulation) Act, 1949 — Section 45 A, 45 B, 45 C
Mysore Small Cause Courts Act, 1964 — Section 10

Citation : AIR 1965 Kar 68

Hon'ble Judges : D.M. Chandrashekhar, J

Bench : Single Bench

Judgement

(1) These two revision petitions are filed u/s 10 of the Mysore Small Cause Courts Act, against the judgments of the Court of the Small Causes, Bangalore, in S.C. No. 1168/60 and S.C. No. 1739/61.

(2) The petitioner in these two revision petitions, the Century Bank Ltd., Bangalore, (Under voluntary liquidation) represented by the joint Liquidator, was the plaintiff in both the suits before the lower Court. These two suit were filed for recovery of Rs. 450/- and Rs. 230-09 nP. due from the defendants in those suits respectively towards the amounts borrowed by them from the Bank.

(3) The defendants in those two suits (who are respondents before this Court) raised a preliminary objection that the Court of Small Causes had no jurisdiction to try the two suits inasmuch as those two suits relate to claims made by a banking company under liquidation. The trial Court tried this question as a preliminary question and held that it had no jurisdiction to try the two suits. It further directed the plaints to be returned to the plaintiff for being presented to the proper Court having jurisdiction. The plaintiff has come up in revision against the said decision of the trial Court.

(4) The learned trial judge has held that u/s 45-B of the Banking Companies Act, 1949, the suits are triable exclusively by the High Court as they relate to or arise in the course of the winding up of a banking company and that the Court of

Small Causes has no jurisdiction.

(5) Section 2 of the Banking Companies Act, (hereinafter referred to as The ''Act'') provides that its provisions shall be in addition to, and not, save as expressly provided therein, in derogation of the provisions of the Companies Act, 1956, and any other law for the time being in force. A banking company being also a company, the provisions of the Companies Act will still be applicable to such company except to the extent to which special provisions are made in the Act.

(6) Section 425 of the Companies Act, 1956, provides for the following three modes of winding up of a company.

(a) by the Court ; or

(b) voluntary ; or

(c) subject to the supervision of the Court.

(7) It is undisputed that the plaintiff Bank was under voluntary liquidation. There is nothing in the Act which prohibits a voluntary winding up of a Banking Company. Indeed, Section 44 of the Act recognises voluntary winding up as one of the modes of winding up of a Banking Company and provides that certain conditions should be fulfilled before such a voluntary winding up is commenced.

(8) Section 45-B of the Act reads :

"The High Court shall, save as otherwise expressly provided in Section 45C, have exclusive jurisdiction

Power of High Court to decide all claims in respect of banking companies. diction to entertain and decide any claim made by or against banking company which is being wound up (including claims by or against any of its branches in India) or any application made under ''Section 391 of the Companies Act, 1956'' by or in respect of a banking company or any question of properties or any other question whatsoever, whether of law or of fact, which may relate to or arise in the course of the winding up of a banking Company whether such claim or question has been made or is made ''before or after the date of the order for the winding up of the banking company'' or before or after the commencement of the Banking Companies (Amendment) Act, 1953".

(underlining (in single quotation mark here-Ed.) is mine.)

This Section occurs in part III-A of the Act which contains special provisions for speedy disposal of winding up proceedings. Section 45-A of the Act states that the provisions of this part, and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the ''Companies Act, 1956'' or any other law; but that the provisions of such law shall apply in other respects to all proceedings under this part.

(9) It is contended by the learned counsel for the respondents that as these two

suits are filed by a banking company and as they relate to or arise in the course of the winding up of the banking company, the High Court has exclusive jurisdiction and that the Court of Small Causes has no jurisdiction though the suit are of the clause which is cognizable by the Court of Small Causes.

(10) On a careful examination of the section it will be seen that it applies only when there is an order of winding up of a Banking Company passed by the High Court. The words, "before or after the date of the order for the winding up of the banking company". Occurring in Section 45-B are significant. It is only where there is a winding up of a banking company by the Court that the Court will pass an order for winding up. Where the winding up is voluntary, the matter does not come before the Court and there will be no occasion of the Court to pass an order for winding up of the banking company.

(11) The intention underlying Sections 45-B, 45-C and 45-J in Chapter III-A of the Act appears to be to allow the Liquidator to proceed with all proceedings in one Court, namely the High Court and to avoid proceedings in a multiplicity of Courts in matters relating to, or arising in the course of the winding up of a banking company. Where the winding up proceedings are before the High Court, the intention of the Legislature appears to be that all suits and other proceedings which relate to or arising in the course of the winding up of a banking company should also be before the High Court. Since in the case of a voluntary winding up there will be no winding up proceedings before the High Court, no useful purpose would be served in providing that suits and other proceedings which could ordinarily be tried by other Courts merely because such suits have been filed by or against a banking company which is wound up voluntarily without such winding up proceedings coming before the High Court.

(12) In support of his conclusion the learned trial Judge has relied on two decisions Jadunath Roy and Others Vs. Bank of Calcutta Ltd., and Discount Bank of India Ltd., Delhi Vs. Triloki Nath and Others, . On an examination of the facts of these two cases it is seen that in both those cases there were orders of winding up by the Courts. Hence these two cases are distinguishable on facts.

(13) In my view Section 45-B of the Act has no application to a banking company which is under a voluntary liquidation. Similarly, Section 45-C of the Act has also no application to suits and proceedings by or against a banking company voluntary liquidation. There is no other provision in the Act which takes away the jurisdiction of the subordinate Courts to entertain suits which would ordinarily be within their jurisdiction, merely because such suits are filed by or against a banking company under voluntary liquidation.

(14) In the result, these two revision petitions are allowed. The two judgments of the Court of Small Causes, Bangalore, are set aside and the said Court is now directed to take back the two suits on its file and to dispose them of according to law.

(15) There will be no order as to costs.

(16) Revision allowed.

