
(1927) 02 MAD CK 0015
In the Madras High Court

The Coimbatore Bazaar Bank Ltd.

APPELLANT

Vs

The Union Bank Ltd. and Others

RESPONDENT

Date of Decision : 25-02-1927

Acts Referred:

Citation : 105 Ind. Cas. 246 : (1927) 26 LW 209

Hon'ble Judges : Madhavan Nair, J;Kumaraswami Sastri, J

Bench : Division Bench

Judgement

1. These appeals are against the decision of Spencer, J. The facts are simple. One Srikanta Iyer was the Secretary of a limited concern called the Coimbatore Bazaar Bank, Ltd. He had 100 fully paid-up shares of the value of Rs. 20 each and owed the Bank Rs. 2,200. The Articles of Association made Table A of the Companies Act applicable. Under that table the Bank had no lien in respect of fully paid-up shares. Srikanta Iyer seems to have got involved. He owed money to the Union Bank which Bank filed a suit against Srikanta Iyer and attached his shares. The attachment petition was filed on the 31st of October, 1919, and the attachment was ordered on 15th November, 1919, and was made absolute on 8th December, 1919. The Bazaar Bank by a special resolution resolved that these shares should be set off against the debt of Rs. 2,200. The main contention of Mr. Venkatachariar is that though the resolution was passed subsequently to the attachment, it had retrospective effect and should be deemed to have been in the Articles of Association and consequently the attaching creditor had no right, or, if he had any, that right was taken away by the resolution. We think the learned Judge was right in holding that the effect of the attachment prevented the Bazaar Bank from passing

any resolution which would in effect defeat the attachment. It is difficult to see how prior to the attachment of the judgment-debtor's right to these

shares the Bazaar Bank had any lien. All that can be said is that it had the power to pass a special resolution, the effect of which, if passed, would

be to give it a lien over these shares. The short answer to the appellant's contention is that where there is an attachment, the effect of which is to

prevent the debtor paying the creditor and the creditor receiving from the debtor any money, a creditor has no right by any act of his to defeat the

attachment by putting the property out of the reach of the attaching creditor, which right he had apt had before the attachment. We do not think the

cases cited by Mr. Venkatachariar Daulat ram v. Abdul Kayum 26 B. 497 : 4 Bom. L.R. 132, Rebala Venkata Reddi v. Mangadu Yellappa

Chetty 38 Ind. Cas. 107 : 5 L.W. 234. Kasi Visvanatha Chettiar v. Ramaswami Athitha Nadar 48 Ind. Cas. 123 : 35 M.L.J. 441 : 8 L.W. 582 :

24 M.L.T. 477 and Allen v. Gold Reefs of West Africa Ltd (1900) 1 Ch. 656 : 69 L.J. Ch. 266 : 48 W.R. 452 : 82 L.T. 210 : 16 T.L.R. 213,

have any direct bearing on the question before us.

2. On principle we do not see how it is open to the Bank simply because it had the power if no rights of third persons intervened, to pass a

resolution after the attachment, the virtual effect of which would be to put the money out of the reach of the attaching creditor. It cannot be said

that at the date of the attachment by the respondent Bank the appellant Bank had any right of appropriation which it could enforce either by a suit

or otherwise as regards the shares except by a suit to recover the debt due to it and by attaching the shares like any other creditor. We are,

therefore, of opinion that the appeals fail on this short ground.

3. It is unnecessary to consider the other grounds dealt with by the learned Judge. Both the appeals fail and are dismissed with costs.