
(1896) 01 AHC CK 0002
In the Allahabad High Court

The Himalaya Bank Limited	Vs	APPELLANT
Muhammad Yusuf		RESPONDENT

Date of Decision : 15-01-1896

Acts Referred:

Citation : (1896) ILR (All) 198

Hon'ble Judges : Knox, J;John Edge, J;Burkitt, J;Blair, J;Aikman, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

John Edge, C.J.—This is an appeal from the decree of the District Judge of Saharanpur dismissing the defendant's appeal from the decree of the Subordinate Judge of Dehra Dun. The suit was brought to obtain payment of a debt due upon a note which had been discounted by the Himalaya Bank, Limited. Before the suit was brought the Himalaya Bank, Limited, had gone into liquidation, and Mr. W. D. Henry had been appointed official liquidator. As the plaint was filed originally the plaintiff was thus described: "Official Liquidator, Himalaya Bank, Limited, in liquidation, plaintiff:" An objection was subsequently taken on behalf of the defendant that the official liquidator was not entitled to sue describing himself as plaintiff. The plaint was subsequently amended, and the plaintiff was by the amendment thus described: "The Himalaya Bank, Limited, in liquidation, plaintiff."

2. In this appeal on behalf of the appellant it has been contended that the plaint as originally filed was not in compliance with Section 144 of Act No. VI of 1882, which, so far as is material, is as follows: "The official liquidator shall have power, with the sanction of the Court, to do the following things--(a) To bring and defend any suit or prosecution or other legal proceeding, Civil or Criminal, in the name and on behalf of the Company," It was also contended that the alteration in the description of the plaintiff by the amendment constituted a new plaintiff in the suit within the meaning of Section 22 of Act No. XV of 1877, and the judgment of this Court in Ghulam Muhammad v. The Himalaya Bank, Limited ILR

17 All. 292, and of the Queen's Bench Division in England in *In re Winterbottom* L.R. 18 Q.B.D. 446, were relied on.

3. Section 144 of Act No. VI of 1882 is for practical purposes, so far as this case is concerned, the same as Section 95 of 25 and 26 Vict., Cap. 89. In the English case the notice which had been served was headed as follows: "In the matter of John Winterbottom, ex parte Henry Grove Nicholson, liquidator of the Manchester and Oldham Bank, limited." It was held there that although, looking at the body of the notice, the liquidator evidently was proceeding on behalf of the Company in liquidation, and although it appeared to those Judges that there was a substantial compliance with the law, a formal compliance was necessary and the notice was bad. It appears to me that in that case there was not a substantial compliance with the law. The notice was expressly in violation of Section 94 of 25 and 26 Vict. Cap. 89, which corresponds to Section 143 of Act No. VI of 1882, and which prohibited the official liquidator describing himself by his individual name and required that when he acted he should describe himself by his official name, which was "official liquidator." Here Mr. Henry did use his official description and that only. In my opinion there was here certainly substantial compliance with the Act. It appears to me that if the plaintiff had been thus described: "The Himalaya Bank, Limited, in liquidation, by the official liquidator, plaintiff,"--the description would have been unobjectionable. The objection to the plaint as originally framed seems to me to be a purely technical objection. The intention was obviously to comply with the requirements of the Act. Mr. Henry avoided using his individual name. Now who could have brought this suit? The Bank certainly of its own motion could not have brought the suit. Section 143 of Act No. VI of 1882 provides that the official liquidator "shall take into his custody or under his control all the property, effects and actionable claims to which the Company is, or appears to be, entitled, and shall perform such duties in reference to the winding up of the Company as may be imposed by the Court." u/s 144 it is the official liquidator who is entitled to bring or defend a suit. It is true that under Clause (a) of Section 144 when the liquidator does bring or defend a suit he must do so in the name and on behalf of the Company. Although the description in the heading of the plaint as originally framed probably was not quite accurate, still the suit was a suit brought by the official liquidator on behalf of the Company. Now, when the amendment was made, was any new plaintiff brought upon the record? As I have said, the Himalaya Bank, Limited, in liquidation of its own motion could not sue. The plaintiff, that is the person who was pursuing a remedy, was the official liquidator. Although the description of the plaintiff may have been incorrect, as the plaint was originally framed, in my opinion there was one and the same plaintiff all through. It strikes me that the case is somewhat similar to the hypothetical case which I am going to put. We will assume that a promissory note is made payable to John William Smith. Now unless John William Smith has parted with the note he is the only person who can sue on it. He brings a suit on the note describing himself simply as John Smith. The defendant objects that the plaintiff is improperly described, and the

plaint is amended. It appears to me that the amendment by inserting the name William would not alter the plaintiff and would not add or substitute a new plaintiff to the suit. In conclusion, in my opinion, if there was a defect in the description of the plaintiff in the suit originally, the amendment did not bring a new plaintiff into the suit and did not bring into operation Section 22 of Act No. XV of 1877. It is not objected in appeal that the amendment is in itself objectionable; in fact the argument for the appellant has been that the amendment was necessary and provided the proper description of the plaintiff in the suit. I consequently would hold that this appeal should be dismissed.

Knox, J.

4. As one of the Judges who decided the case of Ghulam Muhammad v. The Himalaya Bank, Limited, in liquidation, through the Official Liquidator, plaintiff, I think it necessary to add that, as we then stated, the decision at which we arrived in that case was one to which we came unwillingly. I am now satisfied that in the present suit the plaintiff has been throughout one and the same person and that the pleas taken in appeal fail. The suit was not barred by limitation. At the time of the filing of the suit the official liquidator was the only person who had power to bring the suit. I would dismiss the appeal.

Blair, J.

5. I concur in the judgment of the Chief Justice and in the reasons by which that judgment is supported.

Banerji, J.

6. I also concur in the judgment of the Chief Justice and in the reasons by which that judgment is supported.

Burkitt, J.

7. I also concur in the judgment of the Chief Justice and in the reasons by which that judgment is supported, and have nothing to add.

Aikman, J.

8. As one of the Judges who decided the case of Ghulam Muhammad v. The Himalaya Bank, Limited, I wish to add a few words. I concur with the learned Chief Justice in thinking that the plaint, as framed, substantially complied with the provisions of Section 144 of the Indian Companies Act 1882, but in the English case which has been referred to it was held that a substantial compliance with the law was insufficient, and that there must be formal compliance. In this view an amendment of the plaint was necessary, and that amendment was made in this case. I am satisfied on further consideration that when the plaint was amended no new party was brought upon the record so as to make the suit liable to defeat with reference to the provisions of Section 22 of the Limitation Act, 1877. I concur with the learned Chief Justice and my colleagues in thinking that the appeal should be dismissed with costs.