
(1921) 02 AHC CK 0012
In the Allahabad High Court

The People's Industrial Bank Limited	Vs	APPELLANT
Govind Das Dube		RESPONDENT

Date of Decision : 10-02-1921

Acts Referred:

Companies Act, 1832 — Section 169

Citation : AIR 1921 All 107 : 63 Ind. Cas. 607

Hon'ble Judges : Walsh, J; Ryves, J

Bench : Division Bench

Judgement

1. This is an appeal by the Official Liquidator against an order passed by the District Judge of Allahabad allowing Pandit Govind Das Dube's objection to be included in the list of contributories. A preliminary objection has been taken which we must notice. The judgment of the learned District Judge was dated the 6th of February 1920. The formal order was dated the 3rd of March 1920. The memorandum of appeal was filed in this Court on the 20th of May 1920. Assuming that time began to run from the 6th of February 1920, this appeal was 13 days beyond time under the Indian Limitation Act, unless the 14 days required to obtain copies of judgment and formal order are excluded. It is urged that u/s 169 of the Indian Companies Act of 1892 the ordinary limit of 90 days is necessarily superseded by the requirements of that section and that according to it the appeal must be filed within three weeks and notice of the same must be given in the manner provided by the CPC within three weeks. If this section is construed literally. The logical conclusion seems to be that arrived at in the case of Daulat Ram v. Woollen Mills Co. 95 P.R. 1908 : 165 P.W.R. 1098 as stated by Mr. Justice Chatterji. If that is the proper and necessary construction, it seems to us that the section is unworkable in practice, because it can very seldom happen that an appeal can be filed in this Court and notice of it served through the Court within three weeks of the date of the judgment under appeal. The judgment of Mr. Justice Johnstone in that same case shows that he himself felt this difficulty because he draws the distinction between the giving notice of the appeal and giving notice of the hearing of the appeal. There is no provision in the CPC that

we are aware of by which notice of an appeal having been filed as distinguished from notice of the hearing of an appeal as laid down in Form No. VI of Appendix G is provided for. There are a number of cases which have been quoted which show that to construe the section in this sense would render an appeal practically impossible. We may note that the Legislature itself has evidently realised this, because in the new Act of 1913 the provisions of Section 169 of the old Act have been completely repealed so far as this rule of three weeks is concerned. It may be noted that in the Punjab case just referred to, the time was, extended. We find that what happened was this. On the very day that the learned Judge pronounced his order the Official Liquidator asked for leave to appeal and that was granted. That was on the 6th of February 1920. On the 16th of February 1920 the Official Liquidator sent to the respondent a typewritten notice formally headed "notice u/s 169 of the Indian Companies Act, VI of 1832," informing him that an appeal would be filed against the order of the District Judge dated the 6th of February 1920 passed against the People's industrial Bank Limited, in liquidation, in upholding his objection for being put in the list of contributories of the said Bank." That notice was sent to the respondent by registered post on the same date. The receipt of that notice is before us. It was signed by Govind Das Dube on the 18th of February 1920. He, therefore, in fact had notice and it seems to us that the Official Liquidator did all he could do in reason to comply with the provisions of the law. Anyhow we think that he has made out a good case for the exercise of our discretion, under the section itself, to extend the time and we do so accordingly. The respondent had notice of this appeal for over a year and has come to Court fully prepared to contest it. On the merits, we are concluded by the decision given in People's Industrial Bank Ltd v. Jalpa Prasad 62 Ind. Cas. 540 : 3 U.P.L.R. 57 First Appeal No. 172 of 1920 decided by us on the 9th of February 1921. The result is that we allow the appeal and dismiss the objection of Pandit Govind Das Dube. We direct him to be placed on the list of contributories in respect of his share. The Official Liquidator will have his costs, in this Court in the amount certified.