

Durga Prasad and ors. Vs. Official Liquidator, Banaras Bank Ltd.

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Court : Allahabad

Decided On : Sep-09-1958

Reported in : AIR1959All196

Judge : O.H. Mootham, C.J. and ;Raghubar Dayal, J.

Acts : [Companies Act, 1913](#) - Sections 178A

Appeal No. : Special Appeal No. 214 of 1956

Appellant : Durga Prasad and ors.

Respondent : Official Liquidator, Banaras Bank Ltd.

Advocate for Def. : D. Sanyal, Adv.

Advocate for Pet/Ap. : Brij Lal Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

O.H. Mootham, C.J.

1. This is an appeal from an order of the learned Company Judge dated 26-7-1956. The facts so far as they are relevant for the purpose of this appeal are these: On 1-7-1940, an order was made for the compulsory winding up of the Banaras Bank Ltd., and thereafter a Committee of Inspection was appointed

pursuant to the provisions of Section 178 of the Indian [Companies Act, 1913](#). The assets of the Bank included two houses, one at Saharanpur which the Bank had purchased in the year 1934 for Rs. 9,200/- and the other house at Hardwar which the Bank had purchased in the same year for Rs. 16,000/-.

On 17-2-1941 an offer was received from one Roshan Lal of Rs. 18,000/- for these two houses. The offer was laid before the Committee of Inspection which, on 19-3-1941, resolved that the Official Liquidator should endeavour to get the offer increased to Rs. 20,000/-, but if he did not succeed in doing so he should accept the offer of Rs. 18,000/-. Sri Roshan Lal refused to increase his offer, and on 1-4-1941, the Official Liquidator reported to the Company Judge that the offer made of Rs. 18,000/- was fair and should be accepted. On 4-4-1941, the Court sanctioned the proposed sale, and on the 2nd August of that year a conveyance of the two houses was executed by the Official Liquidator in favour of Sri Roshan Lal.

2. In the year 1952 the Official Liquidator ascertained that on 6-10-1942, Sri Roshan Lal had executed a deed relinquishing his right, title and interest in the two houses in favour of Sri Durga Prasad, a member of the Committee of Inspection, and that in this deed it was recited that Sri Durga Prasad was the real owner of the houses which had been purchased Benami by Sri Roshan Lal 'for certain reasons'.

Thereafter an application was made to the Court by the Official Liquidator under Section 45B of the Banking Companies Act for a declaration that the conveyance executed by the Official Liquidator in favour of Sri Roshan Lal on 2-8-1941, be declared void and that Sri Durga Prasad be directed to surrender and transfer the two properties to the Official Liquidator and deliver to me latter all documents of title relating thereto; in the alternative, it was prayed that Sri Durga Prasad be directed to pay to the Official Liquidator a sum of Rs. 7,200/- and such further sum as this Court might deem fit. The learned Company Judge by the order which is the subject of the present appeal directed Sri Durga Prasad to transfer the two houses to the Official Liquidator on repayment to him by the latter of the original purchase price of Rs. 18,000/-.

3. Sri Durga Prasad and Sri Roshan Lal now appeal. Two arguments have been advanced on their behalf. The first is that the original purchase of the two houses

by Roshan Lal was not in fact a benami transaction. This argument was not strongly pressed and we agree with the learned Judge that in view of the pleadings it is not an argument now open to the appellants. A reply was filed by Sri Durga Prasad to the Official Liquidator's application and was adopted by Sri Roshan Lal. In paragraph 4 of his reply Sri Durga Prasad says:

'Accordingly for the purposes of the present proceedings it may be assumed that the transaction was benami without prejudice to the right of the opposite party to claim a decision of the real character of the transaction in regular proceedings'.

In our opinion that statement concludes the matter.

4. The second argument is that Sri Durga Prasad, although a member of the Committee of Inspection at all material times, did not stand in any fiduciary relation to the company's assets and was accordingly at liberty to purchase the assets through a third party without making any disclosure to the Liquidator or other members of the Committee.

5. Now it is not seriously disputed that under the English law a member of a Committee of Inspection is in the position of a trustee for sale, but it has been argued that under Indian law the position is different. Our attention has been invited to certain differences in the powers vested in the Liquidator in a compulsory winding up under the Indian [Companies Act, 1913](#), and the English Companies Act of 1948, to be found in Sections 179 of the former and 245 of the latter. Reliance has also been placed upon differences between Rules 161 and 163 of the Companies (Winding up) Rules, 1949, and Rules 65, 82 to 86, 110 and 129 of the Companies Rules to be found in Chap. 28 of the Rules of Court.

These latter rules however came into force only in 1952 and those which they replaced contained no rules corresponding to those to which reference was made by learned counsel. They did however contain a rule, Rule 104, which provided that:

'In cases not provided by these rules or by rules of procedure laid down in the Act the practice and procedure of the High Court of Justice in England in matters

relating to companies shall be followed so far they are applicable and not inconsistent with these rules and the Act.'

6. Such differences as there were between the powers of a Liquidator in a compulsory winding up under the English and Indian Acts are not in our opinion material, and we do not think it necessary to refer to them in detail. What is important is that a Committee of Inspection is appointed under the Indian Act, as it is under the English Act, 'to act with the Liquidator': see Section 178A (1) of the Indian Act and Section 252(1) of the English Act.

7. The argument for the appellants in substance is that no disabilities attach to members of a Committee of Inspection except such as are specifically provided for in the Companies Act or Rules. We are unable to accept this view. In our opinion the liability of a member of a Committee of Inspection rests not on the express provisions of the Act or Rules but is founded on general equitable principles. This is, we think, made clear in *re Bulmer, Greaves v. Inland Revenue Commissioners*, 1937-1 All ER 323. The Court of Appeal in that case considered the position of a member of a Committee of Inspection under the Bankruptcy Act.

The Court pointed out that Bankruptcy Rules Nos. 347 and 348, which correspond to Winding-up Rules 161 and 163 on which reliance has been placed by the appellants, are not intended to be exhaustive but are directed merely to providing a convenient administrative method of dealing with the particular problems that the rules concern. At page 327 of the report Lord Wright, M. R. observes:

'Under the Bankruptcy Act, 1914, Section 20, provision is made for the creditors qualified to vote, at their first or any subsequent meeting by 'resolution, to appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. That means that they are appointed for the purpose of carrying out, or rather assisting the trustee in carrying out, the administration and the realisation of the insolvent's property, and they are, therefore, in the position of trustees for sale. Now, taking that definition of their functions and their duties, it would appear, on general equitable principles, that they would be, like any other trustees in that position, debarred from buying, or trafficking in the trust property.'

8. By Section 20 of the English Bankruptcy Act, 1914, a Committee of Inspection is appointed 'for the purpose of superintending the administration of the bankrupt's property by the trustee in bankruptcy. The purpose of the appointment of a committee of Inspection under the Indian Companies Act is, as we have already pointed out, 'to act with the Liquidator' (Section 178). Section 183 of the Act of 1913 then provides that subject to the provisions of that Act the Official Liquidator of a company which is being wound up by the Court shall in the administration of the assets of the company and in the distribution of those assets among the creditors have regard to, inter alia, any directions that may be given by the Committee of Inspection, subject to the proviso that if there be a conflict in the directions given by the directors or the contributories at a general meeting and those given by the Committee of Inspection, the former shall prevail.

The duties of a Committee of Inspection under the Companies Act bear, therefore a close similarity to those of a Committee of Inspection under the Indian Bankruptcy Act. Its duty in essence is to assist in the administration of the assets in the one case of the bankrupt and in the other of the company in liquidation. The position held by a member of a Committee of Inspection involves confidence so as to impress him. with a fiduciary character. In our opinion the position of a member of a Committee of Inspection under the Companies Act differs in this respect in no way from that of his counterpart under the English Bankruptcy Act.

9. It is said in the case before us that Sri Durga Prasad paid a fair price for the property, but that fact is immaterial for, as is said in Lewin on Trusts, ,15th Ed., page 564, in a passage quoted by Lord Wright in Bulmer's case:

'The rule is now universal, that, however, fair the transaction, the cestui que trust is at liberty to set aside the sale and take back the property'.

10. In our opinion the facts in this case show that Sri Durga Prasad knew quite well that he was not entitled to purchase the assets of the company without making a full disclosure and that it was for that reason that he bought the property in the name of Sri Roshan Lal.

11. In our opinion the learned Judge was right in holding that the Official Liquidator is entitled to the return of the property.

12. It has been urged at for Durga Prasad that, according to his statement made before the learned Company Judge, he has made substantial improvements to the property and that he is entitled to reasonable compensation therefor. This question was not raised in his written statement, no issue was framed with regard to it and the Liquidator in the circumstances adduced no evidence with regard either to the alleged improvements or to what would amount to fair compensation for them. In the circumstances, we are of opinion that the question of compensation for improvements should be the subject matter of separate proceedings, if Sri Durga Prasad is so advised; and that no order about this matter can be made in this appeal.

13. The appeal therefore fails and is dismissed with costs.

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