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Court : Allahabad

Decided On : Feb-25-1936

Reported in : AIR1936All808; 165Ind.Cas.790

Appellant : John Bros.

Respondent : Official Liquidator, Agra Spinning and Weaving Mills Co. Ltd.

Judgement :

Bennet, J.

1. This is a Letters Patent appeal by Messrs. John Bros. of Agra against the order of a learned Company Judge of this Court, dated 8th September 1934. The order is that a sum of Rupees 51,266-2-2 should be deposited by Messrs. John Bros. in the Imperial Bank of India at Agra, in the account of the Agra Spinning and Weaving Mills Co. Ltd., within one week from the date of the order, this being the entire amount due to the Company on account of spinning charges. A copy of the order was sent to the District Judge with the directions that if the amount is not paid within a week from the date of the order, immediate execution of the order must be issued, in the manner of a simple money decree under the Code of Civil Procedure. The grounds of Letters Patent appeal allege that the learned Company Judge-had no jurisdiction to pass a decree and direct its execution, and that the order appealed against was illegal and was passed with material irregularity, and that the official liquidator could only file a suit for the realisation of the amount, and

the procedure adopted was illegal. This matter arose from an application by the liquidator of the Agra Spinning and Weaving Mills Co. Ltd , dated 31st August 1934, in which he pointed out that the learned Company Judge had on 17th August 1934 granted time to Messrs. John Bros. to pay the charges, and that Messrs-John Bros. had not paid the charges, and, had on 17th August 1934 executed a mortgage in favour of Govind Ram Nath of all their property. No special prayer was contained in this application, but merely a prayer for directions. Messrs John Bros. filed a reply through their counsel explaining why they had made delay in payment of the charges. The circumstances which gave rise to this matter are as follows:

A contract was approved of by the Court on 21st July 1933 by which the liquidator entered into a contract with Messrs. John Bros. for the working of the mills in question. By that contract Messrs. John Bros. agreed to supply cotton and pay spinning charges as well as to pay the running expenses of the Mills, and Messrs. John Brothers were to receive the produce of the mills as their property.

2. The amount which Messrs. John Brothers had to pay by the 15th of each month would give a profit to the liquidator over and above the amount which the liquidator had to pay for the wages of the operators of the mills and other charges. It would thus be seen that in lieu of letting the mills to Messrs. John Brothers for a fixed rent the liquidator was making certain payments and relying on Messrs. John Brothers to recoup him for these payments made in any given month by the 15th of the following month. Messrs. John Brothers fell behind in their payments and the learned Company Judge on various occasions gave them time to make good the amount which was due from them. Eventually the learned Judge on the application in question passed the order that payment should be made of this amount of about half a lac; and if not made, within a week the order should be executed as a simple money decree. The only question before us is whether the learned Judge had jurisdiction under the Companies Act to make such an order. His order does not state that any such question was raised before him; nor does it purport to be under any section. The learned Counsel for the respondents says that the order is to be considered as based on the Companies Act (Act 7 of 1913), Sections 188 and 199. Section 188 provides as follows:

Power to order payment into Bank.

188. The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof, respectively, to the account of the official liquidator instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

3. Now it may appear on first reading of the section that it would cover the procedure adopted by the learned Company Judge. There is however no precedent' for such a view and the only rulings which have been produced by learned Counsel before us adopt a contrary view in regard to precisely similar provisions in. force at various times in England. Prima facie a matter of this sort would not form the subject of an order in liquidation unless there is some authorization for such a course of action in the Companies-Act. The position of Messrs. John Brothers was merely that of persons who entered into a contract with the liquidator during the course of the liquidation. In the present matter there is no suggestion made that Messrs. John Brothers were in any sense contributories on whose behalf any liability existed which could be enforced by the liquidator. Learned Counsel for the respondents took up the position that any transaction made by the liquidator such as for example the sale of cloth in the case of liquidation of a cloth company could result in an order by the learned Company Judge enforcing the conditions of that sale. That is a somewhat extraordinary proposition, and it is. not clear why the Companies' Act should contemplate such a procedure. Prima facie the Act in regard to liquidation provides a means by which the assets of a company may be realized by the liquidator and claims due from persons in Section 185, contributories, etc., may be realized from those persons by order of the. Court.

4. As regards those matters it is not necessary that the liquidator should file a suit in another Court. The Company Judge has jurisdiction for the purpose of carrying out the liquidation, that is, the realization of the assets of the company and the payment of the creditors, etc. But Judicial decision of matters which may J arise

with third parties owing to the; transactions entered into by the liquidator does appear to be foreign to the jurisdiction of the learned Company Judge. There is prima facie nothing in the matter of liquidation which would call for the exercise of such a jurisdiction. To a great extent the subject of liquidation is similar to the subject of insolvency, and no such jurisdiction exists in an insolvency Court. Now the natural interpretation of Section 188 appears to be that the section is intended as the marginal note states, for a power to the Court to order payment into a Bank instead of payment to a liquidator.

5. We consider that Section 188 means that where an order may be passed against a purchaser to pay to the liquidator it may be passed against the purchaser to pay to the Bank. It is true that the end of the section states: 'and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.' It is claimed by the learned Counsel for respondents that these words give jurisdiction to enforce an order against persons other than contributories, or persons mentioned in Section 185. But it does not appear to us that that meaning can be read into the section. We think that the natural construction to place on these words is that if an order can be enforced, which is an order directing payment to an official liquidator, the same order can be enforced if it directs payment to a Bank. We, therefore, have to see whether the order could be enforced if it directed payment to the liquidator, and for this purpose we must refer to other sections of the Act. It is admitted by the learned Counsel for respondents that there is no other section of the Act dealing with a person in the position of the appellants. The appellants do not come under Section 185 as they are not contributories or trustees, receivers, etc., mentioned in that section. Therefore, if the order had been that they were to pay to the official liquidator, that order could not have been enforced under the provisions of Section 185. We consider, therefore, that the order cannot be enforced under the provisions of Section 188.

6. Considerable argument has been made in regard to the opening words of Section 188: 'The Court may order any contributory, purchaser, or other person from whom money is due to the company.' Now these words undoubtedly cause a considerable difficulty in interpretation. A contributory is a clear reference to a

contributory as defined in the Act in Section 185, and also as regards liability in Section 185, etc. But what is meant by the word 'purchaser,' and what is meant by the words 'other persons from whom money is due?' The word 'purchaser' has appeared in the English Acts dating from the Act of 1862 onwards, and has still continued in the Act of 1929. We think that a purchaser does not mean as learned Counsel contended any person who had purchased any goods from the liquidator or from the company. If the word 'purchaser' had this meaning of the purchaser of goods, we think that the section would have defined it more precisely. The word does not occur in any portion of the Act.

7. We think that the word purchaser must be taken to refer to the word contributory which immediately precedes it, and that it means the purchaser of the interest of a contributory. It is to be noted that in English law purchaser has a wide meaning and includes all persons to whom property passes except by inheritance. As regards the words 'or other person from whom money is due' we think that this has a reference to a person from whom money is due under Section 185 so far as it is intended that an order enforcing payment should be made but as regards other persons from whom money is due it is no doubt open to the Court to pass an order asking the other persons to pay the money into the Bank instead of to the liquidator. The question has been before the English Courts on two occasions. One of these is reported in *In Re: United English and Scottish Assurance Co.: Ex parte Hawkings* (1867-68) 3 Ch App 787. That was a case where a creditor of a joint stock company obtained a garnishee order attaching money of the company in the hands of a banker, and subsequently a petition for winding up of the company was presented; and after presentation of the petition, but before the winding up order, the creditor obtained payment of the money from the banker. The official liquidator then applied under Section 100, Companies Act of 1862, for the creditor to refund the money. The wording of this Section 100 is similar to the wording of Section 185 of our present Indian Companies Act, and Section 103 corresponds to Section 188. The claim of the official liquidator was that the creditor might be considered a trustee within the meaning of Section 100. It is to be noted that the claim was not pressed apparently before the Court that the creditor might come under the wording of Section 103 as a person from whom money was due to the company. The Vice Chancellor passed an order for repayment to the liquidator

and then on p. 790 Sir W. Page-Wood, L. J., stated:

I entertain no doubt that the Court had no jurisdiction to make the order appealed from. Section 100 is as follows (His Lordship read the section). The object of the enactment was to prevent the expense of the company bringing actions against the persons named, who are its own contributories and officers, and ought not to be extended to other persons. I say this the more confidently since the two cases, Hollinsworth's case (1849) 3 De G Sm 102 and Cox's case (1850) 3 De G & Sm 180. As to Section 103 all that it does is to substitute the Bank for the official liquidator. It cannot extend the provisions of Section 100.

8. Sir C.J., Selwyn, L. J., on p. 791, remarked:

I also think that Hollinsworth's case (1849) 3 De G Sm 102 and Cox's case (1850) 3 De G & Sm 180 are conclusive authorities that a constructive trust of this kind is within Section 100, Companies Act of 1862.... In the present case I am of the opinion that the order appealed from having been made without jurisdiction, justice requires....

9. The second time that the matter came before the Courts in England was in *In Re: Vimbos, Ltd.* (1900) 1 Ch 470. This was a case where debenture-holders had appointed a receiver to realize the assets of the company and there was also a proceeding for the liquidation of the company. The receiver of the debenture-holders received certain assets and made payments to the debenture-holders and retained a certain sum as his remuneration. The liquidator called by summons in the winding up for an order to fix the remuneration of the receiver and claiming that the balance should be paid over to the liquidator. It was held by the Court that this was not a matter in which the Court in liquidation had any jurisdiction. The claim against the receiver was one for which the liquidator must bring a suit. On p. 474 the learned Judge stated:

It seems to me that the ordinary course of law would have to be followed, namely an action commenced by the liquidator against the alleged agent (the auctioneer, or stock-broker in the case I put) claiming this money as the money of the company.... I, therefore, without going at all into the merits of this case am bound

to find that I have no jurisdiction and that I must dismiss the summons.

10. We consider that these precedents should be followed. In the Punjab Record (Judicial) Vol. 50 (1915), p. 211, there was a case before two learned Judges of the Punjab Chief Court under the corresponding Sections 149 and 152, Indian Companies Act of 1882, Tarachand Jeramdas v. The Official Liquidator of the Peoples Bank of India Ltd. 1915 Lah 223. In that case it was held that there was no provision in the Companies Act which enables the Court directing the winding up to recover or authorise the recovery of moneys in the hands of the person other than those expressly mentioned in Section 149 by summary process, and that the Court had no jurisdiction to pass orders directing the refund of moneys obtained by the appellants in execution of their decrees before the order for the winding up was passed or authorizing the official liquidators to take action to recover the said moneys under the Act, and that the only course open to the official liquidator was to institute a suit in the regular way. In view of this authority we consider that it has not been shown that the learned Company Judge had jurisdiction to pass an order in the summary manner which he adopted; and therefore we consider that the order was without jurisdiction. Accordingly we allow this Letters Patent appeal and we set aside the order of the learned Company Judge. We make no orders as to costs in view of the fact that the appellants admit that the claim is correct, and that the matter of jurisdiction has not been taken seriously before the learned Company Judge in the form in which it has been taken before us.

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