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Court : Allahabad

Decided On : May-12-1924

Reported in : (1924)ILR46All759

Judge : Walsh, Acting C.J. and ;Ryves, J.

Appellant : Hunter

Respondent : Damodar Das and ors.

Judgement :

Walsh, Acting C.J.

1. This is an application, dated the 22nd of April, 1924, by Mr. Hunter, the liquidator of the Bank of Upper India, Ltd., to restrain certain respondents named Damodar Das and P.N.S. Aiyar, from acting as liquidators of the Bank of Upper India, Ltd., and to restrain the two said persons and four others, namely, Piare Lal, F.W. Roberts, N.N. Das and Khan Bahadur Wahid-ud-din Saheb, from pretending to be a committee of share-holders or contributories.

2. The matter came before a member of this Bench on the 22nd of April. Being obviously a matter of urgency and importance, an interim injunction was then granted and notice was given to the respondents to appear on the 9th of May to show cause why the injunction should not be continued. Appear they did in person, with one exception, by showing themselves in Court, but they remained concealed behind their counsel, Dr. Sen, who showed cause by advancing certain

legal arguments. The matter, although urgent and important, is a simple one. The only thing that causes me any surprise or cause for observation is that persons of this kind, professing themselves to be men of business and holding shares in other 'companies, and some actually having been directors of such companies, should be so lost to all sense of decency and business acumen as to launch an attack of this kind, after seven years, upon a liquidator, by the issue of circulars and the holding of meetings, all of which purported to be done according to law, without a shadow of grievance as far as one can see, or without a shadow of a title in law or equity behind them, and should be content to do so in cold blood, and then to come up to the High Court and make piteous appeals through counsel, first for an adjournment, and secondly for the decision of fancy points of law. As to what the real object of these mysterious proceedings may be and what they hoped to gain, the Court is left entirely in the dark. One can only say that their conduct is that of individuals apparently actuated by a vindictive desire to proceed against some concern or company which they wish to injure. There is some suggestion, which we have not gone into, that they have already taken active measures to injure, or defeat, or delay steps that the liquidator is taking in ' accordance with law against some defaulters. Amongst the matters dealt with in the preliminary order was the question of these gentlemen's pecuniary responsibility for their conduct to the liquidator if their conduct proved wrongful, and if any real loss had been suffered. It has been agreed by Mr. O'Connor on behalf of the liquidator, Dr. Sen on behalf of Mr. Damodar Das and Mr. Piari Lal and Saiyid Muhammad Husain on behalf of Dr. N. N. Das, K.B. Wahid-ud-din and Mr. Roberts, that the matter of their pecuniary responsibility should stand over for the present to be dealt with either on an original motion before me, or by a suit at law by Mr. Hunter as he may be advised.

3. The history which gives rise to the content, if it can be designated by that name, which certainly has occupied a totally disproportionate amount of the time of this Court, begins with the voluntary liquidation of the Bank of Upper India Ltd., in 1917, when, by a resolution of the shareholders in June of that year, Mr. Hunter, and his colleague Mr. Stuart, the Secretary of the Alliance Bank of Simla, Ltd., were appointed joint liquidators. In order to remove any misunderstanding, we may point out that the provisions of the Companies Act are adequate to enable any one, or any body of shareholders or contributories, if they are dissatisfied with any

conduct on the part of one or both of the liquidators, to bring the matter before the Judge in winding up. "So if there be any controversy, it can be decided, and the liquidator, if necessary, removed, or directed to conduct himself properly. In the event of a liquidator dying, or resigning, provision is made for the members of the company to appoint a successor. Nothing of this kind happened until February, 1924, and, therefore, it must be taken that the present respondents were perfectly satisfied with the conduct of Mr. Hunter- and his joint liquidator Mr. Stuart, who retired in July, 1923, and that matters so continued from June, 1917, until February, 1924. Indeed, one of these persons, Damodar Das, has been joint liquidator With Mr. Hunter in the Trust of India, Ltd. By an arrangement which was entered into in writing, which Mr. Hunter called an agreement for sale, namely, the document exhibit HH 4, of July, 1917, the Trust of India, Ltd., which seems to have been a sort of roving financial genius exercising control over the Alliance Bank and other companies, took over the assets of the Bank of Upper India. Now the assets of the Bank of Upper India were largely in the form, of mortgages of immovable property, assets which in this country however, healthy they look, undoubtedly take a very long, time to realize and to produce satisfactory results, involving for their realization much persistent litigation the obtaining of decrees, and applications in execution, the length and complexity of which are so familiar and so attractive to the legal profession; and it may be assumed that anybody in possession of 65 lakhs worth of that kind of asset, such as the liquidator of the Bank of Upper India, Ltd. had to realize, might consider himself fortunate if in the course of ten years he realized 50 per cent.

4. The most patient and long-suffering share-holder is apt to get despondent of his chances of getting anything out of a liquidation which depends on this kind of business, and it is not at all remarkable that the agreement which provided for the share-holders in the Bank of Upper India being- compensated by preference shares, which were at that time saleable on the market, in the Trust of India and the Alliance Bank of Simla, should have proved an acceptable arrangement. So far as it is material to this inquiry, it is only necessary to state that the 5 per cent, preference share-holders in the Bank of Upper India took 6 per cent, preference shares in the Alliance Bank of Simla, and that the ordinary share-holders in the Bank of Upper India took half of their holding in 6 per cent, preference shares in

the Alliance Bank and half in 6 per cent, preference shares in the Trust of India. Though the share-holders included the present respondents, the evidence with regard to this matter and its history stand on the uncontradicted sworn testimony of Mr. Hunter himself. In substance he was giving us an account of what he knew, but as regards details he was only able to state, being himself a manager with a large staff, what he believed had been 'carried out by his staff in detail.' With regard to these particular shares and the execution of the agreement by the shareholders, he stated, in the presence of the respondents with the exception of Mr. Aiyar who was, absent, and he was not contradicted, that 'the transaction was carried through, not precisely as it was contemplated by the original provisions in the deed which was drawn up by the lawyers, but that the shareholders in the Bank of Upper India surrendered their shares or scrip and applied through the liquidator to the Trust of India and 'the Alliance Bank of Simla, as the case might be, for the issue to them of the preference shares to which 'they were entitled, and the records of these transactions were kept temporarily by Mr. Laver, under the instructions of Mr. Hunter, and are duly recorded in the books, which, if they were wanted, could be found at Simla. Nobody asked to see the books here before us, and Dr. Sen, very properly on the instructions of his clients, accepted this statement as correct. The result is that the respondents who held this meeting and issued circulars were, from the moment they gave up their shares and took the preference shares in the either companies, no longer share-holders or members of the Bank of Upper India, and had no footing or authority of any kind either for the election of the liquidator or. for any other purpose whatsoever, and unless they knew that, they must be profoundly ignorant of company business and company law. They seemed, in the document which they drew up describing their own character, to be conscious of the uncertainty which surrounded their own position, because they sometimes described themselves as share-holders, and sometimes described themselves as contributories. If the comparison were of any value, it would be 'difficult to say which description was the more inaccurate. Mr. O'Connor gave the final blow to the contributory argument by quoting Sub-section (4) of Section 156, which provides that no contribution is required from any member exceeding the face value of His holding; in other words, the holder of shares, whose shares are fully paid at the time of the commencement of the liquidation, is

not a contributory, and, indeed, he would have a grievance against the liquidator if he were put on the list of contributories. It is, therefore, sufficient for the purpose of this case to hold, what is undoubtedly the fact, that these gentlemen, at the time when they took these proceedings in February, 1924, were not, and had not been for a very considerable time, either shareholders or contributories in the Bank of Upper India. The result is that their proceedings had no legal foundation and were totally misconceived. It is due to their clerical ability, based on the only study of company law of which they have shown signs in these proceedings, to say that the proceedings at the meeting, assuming that the meeting had any legal character or validity, are quite stainless in character and unimpeachable. It would be difficult to find proceedings so utterly without foundation carried out with such perfect order and propriety. We examined the Minute Book, and it is due to them to say that they did their best in a hopeless state of things to make their position secure from attack.

5. Out of respect for the vigorous argument of Dr. Sen, we have to take notice of his contention that, as a matter of fact, in the legal sense of the word, we are back in the year 1917, and that when these gentlemen exchanged their shares, and even took proceedings or raised objections as preference shareholders in the Trust of India, Ltd., they were living in a fool's paradise, and were really all the time share-holders in the Bank of Upper India and had no concern whatever with either the Trust of India, Ltd., or the Alliance Bank of Simla. All this is based upon the contention that there was no transfer of property in the terms of Section 54 of the Transfer of Property Act, and that the agreement of sale (Ex. HH 4) had no validity or legal effect, in spite of its having been carried out, so far as these gentlemen are concerned, in every particular. By way of parenthesis one may say that there is a small residue of share-holders who have not been heard of during the liquidation, and are never likely to be seen again, who have been unable to accept or repudiate the provisions of this deed, because the liquidator was unable to find them; and to that extent the agreement for sale is unexecuted, but it is so far as these respondents are concerned, it has been duly executed and performed. The argument of Dr. Sen raises a question which is much debated in the courts of India, as to how far transactions which do not purport to comply with statutory requirements, although in every other way the object ' to be achieved by the

transfer or exchange has been executed, can be recognized in law, or rather at equity so as to bind the parties by their conduct so irrevocably as to make it impossible for them to reopen the transactions or retrace their steps. I doubt whether this question really arises, but as Dr. Sen has argued it, it is only right that it should be dealt with. I am content to answer it in the 'same way that I answered it in my judgment in the case of *Salamat-uz Zamin Begam v. Masha Allah Khan* (1917) I.L.R. 40 All. 187, obeying what I believe to be the positive direction given to the courts in India by the Privy Council in *Mahomed Musa v. Aghore Kumar Ganguli* (1914) I.L.R. 42 Calc. 801. That is to say, that apart from any action under the Companies Act, the rights which have arisen out of the execution of this deed of July, 1917, are as binding on the parties holding the benefits which they have taken thereunder, as if it had been decided to effect the transaction by a formal transfer, that is to say, a registered deed, as required by Section 54 of the Transfer of Property Act. My reason for holding that Section 54 has no application is that there was no transfer. The Trust of India had power to ask for one and the Bank of Upper India undertook to execute one. If the Trust of India did not demand one, as, in fact, it never did, the question does not arise. The exchange has been made; the masters have passed into history and the legal rights of the parties have been settled without the necessity of a formal document.

6. The result of this decision is that the whole of the proceedings of the 3rd of February, 1924, were void and inoperative, and we so declare them. The effect of this is that as regards Mr. Aiyar, the absent respondent, his so-called appointment as joint liquidator with Damodar Das is a nullity; and he will take any proceedings, or profess himself to be the joint liquidator of the company, at his peril. But inasmuch as we were compelled to direct service upon him in Lahore outside our own jurisdiction, we are not satisfied that he has been served in accordance with law in the sense that enables us to make a final order against him in the way in which we are doing as against the other respondents. But that will in no way prevent him from coming here, on due notice to Mr. O'Connor and Mr. Hunter, at such time and date as the Court may find convenient to fix to hear him, in order to repair the omission caused by his absence to-day; and even, if he should desire, to set a good example to his colleagues by going into the box and submitting himself on oath to cross-examination. We, therefore, continue against him the ex

parte interim injunction granted on Mr. Hunter's application, which is to continue until further order, with liberty to him after due notice to the other side to come and show cause why it should be set aside.

Ryves, J.

7. I agree with the order of my learned colleague. I base my decision on one short point. All the respondents were shareholders in the Bank of Upper India, Ltd. The shares were fully paid up. After that the Bank went into liquidation: they surrendered their shares to the Trust of India, Ltd., and in lieu thereof received preference shares in the Trust of India, Ltd., and in the Alliance Bank' of Simla, Ltd. From that moment it seems to me that they ceased to be members of the Bank of Upper India, Ltd., and, therefore, they had no authority, on the 3rd of February, 1924, to hold the meeting which they called as share-holders or contributories of the Bank of Upper India, Ltd., and that the resolutions which they passed at that meeting were consequently altogether invalid and inoperative. On the serious question of law. which was argued, I prefer to give no opinion.. It may be that the parties inter se are estopped from disputing the transfer, although in law no valid transfer has taken place so far as immovable properties or securities on such immovable properties of over Rs. 100 in value are concerned. To illustrate what I mean, if Mr. Hunter as liquidator of the Trust of India were to sue to recover mortgage money as an assignee of the Bank of Upper India, Ltd., it might be held that he could not do so because, there was no assignment valid in law according to Section 54 of the Transfer of Property Act. But' what he did was to sue on behalf of the Bank of Upper India, Ltd., the mortgagee, as liquidator, and having got a decree and realized the money, paid that money over to the Trust of India, Ltd.

8. The order of the Court is that we make the interim injunction granted on the 22nd of April against the five respondents other than Mr. P. S. N. Aiyar permanent. We declare that the meeting of the 3rd of February, 1924, was null and void and of no effect; and that the appointments of Mr. Damodar Das and Mr. Aiyar as joint liquidators were illegal; as also the appointment of Messrs. N.N. Das, Piari Lal, Roberts and K.B. Wahid-ud-din as a Committee to control the actions of Mr. Hunter.

9. The five respondents who appear jointly and severally must pay the certified costs of Mr. O'Connor's client.

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