

State Vs. Official Liquidator

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Court : Kerala

Decided On : Nov-28-1956

Reported in : AIR1957Ker17

Judge : Varadaraja Iyengar, J.

Acts : Banking Companies Act, 1949 - Sections 45D; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 3, Rule 4

Appeal No. : Court Fee Reference No. 1 of 1956

Appellant : State

Respondent : Official Liquidator

Advocate for Def. : K.N. Parameswaran Pillai, Asst. Liquidator; V.G. Bhaskaran Nair and;

Advocate for Pet/Ap. : M.U. Issac, Govt. Pleader

Judgement :

ORDER

Varadaraja Iyengar, J.

1. The office has raised the question whether the various claims covered by a singel list of debtors of a Banking Company which is being wound up should not

each be treated as a separate suit and separate Vakkalaths directed to be filed by the Advocate appearing for the Court Liquidator and similarly whether an Advocate appearing for a debtor against whom several claims are made under a single list should not file separate Vakkalaths for each of the claims.

2. The office note relies upon Rule 18 of the Rules under the Banking Companies Act to say that each claim petition has to be treated as an 'expedited suit' and that each claim must therefore be taken as a separate suit, for which separate Vakkalath has to be filed. Learned Assistant Liquidator would take the other extreme and say that because there is only one Banking Company Liquidation list only one engagement by the Liquidator can be held to be necessary.

3. But, in my judgment, neither view is correct. For, what the High Court is concerned with under Section 45 D Clause (1) of the Act is to settle a list of debtors however numerous the debtors comprised in the list may be, and such lists are from time to time to be settled on application made by the Official Liquidator. The number of claims covered by the list as against particular debtors and covered by the list is important only from the point of view of the issue of notices to the persons affected for the inquiry to be conducted thereon. The ultimate order is only a single one passed under Clause (3) of the section settling the list of debtors. The matter is made further clear by Clause (4) which provides that at the time of settlement of any such list the High Court shall pass an order for payment of amount due by each debtor, it seems to me therefore that importance should not be attached to the facts that the individual claims are in the nature of suits against the debtors concerned or that a number of such claims are comprised in a single list and may necessitate large number of inquiries.

4. It would appear that the practice followed on the Original Side of the Calcutta High Court is that only one warrant of Attorney in respect of each list is required on the analogy of the application by a Bank for 'balance order' against the defaulting contributories, even though the application contains a number of claims of the Bank against the several contributories and prayer is made therein for payment orders against such contributories. The practice in Bombay would also appear to be that the firm of Solicitors appointed by the Liquidator with the sanction of the

Company Judge appears before the Court to prosecute all proceedings in relation to the Company in liquidation including the prosecution of claims against debtors shown in the list filed in Court under Section 45-D and no separate Vakkalathnama is issued by the liquidator in favour of such Attorneys at any stage after the issue of such appointment letter.

5. It follows therefore that the engagements concerned must be estimated with reference to the number of lists filed by the Court Liquidator before the High Court for purpose of settlement and no question of the number of debtors or claims comprised in the list can affect the matter. It must follow similarly that so far as the debtor is concerned, the question must depend upon the number of lists in which he is included and not upon the number of claims made against him under particular list. That is to say, just as no separate Vakkalath need be filed in respect of each claim contained in a single list, separate Vakkalaths need not be filed by the Advocate appearing for the defendant in each of the claims under the same list.

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