

The Calicut Bank Limited (In liquidation) by Official Liquidators Vs. Nekkath alias Eppurath Manakkal Parameswaran Nambudiri's son Narayanan Nambudiri

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Court : Chennai

Decided On : Oct-21-1942

Reported in : AIR1944Mad84; (1943)2MLJ448

Appellant : The Calicut Bank Limited (In liquidation) by Official Liquidators

Respondent : Nekkath alias Eppurath Manakkal Parameswaran Nambudiri's son Narayanan Nambudiri

Judgement :

Kuppuswami Ayyar, J.

1. The only point for consideration in these two appeals is whether the decree-holder should obtain the sanction of the Court which passed orders winding up the Calicut Bank (appellant) under Section 171 of the Indian Companies Act, for the purpose of continuing execution proceedings taken out against that Bank which is now under liquidation.

2. Both these appeals arise out of execution proceedings started by the decree-holders, and in both the appellant Bank was added as a party on the ground that it had obtained a subsequent mortgage of the properties which were sought to be sold in execution of the 'hypothecation decrees obtained by the decree-holders, in the two suits out of which these appeals arise. The Bank was a party to the suits and to the proceedings in execution. It went into liquidation subsequent to the filing of the execution petitions. The contention now is that the execution proceedings cannot be continued without the sanction of the Court which ordered the winding up of the Bank and appointed a liquidator.

3. The first Court held, that, as the Bank was only a puisne mortgagee, there was no relief granted as against the Bank, that the Bank had only a privilege of redeeming but not a liability to pay and that consequently it was not necessary that the sanction of the Court should be obtained and it relied upon the decision of this Court in *Narayanachari v. Annamalai Chettiar* : AIR1940Mad61 . The appellate Court followed the same decision and dismissed the appeals. It however stated that, under Section 80 Civil Procedure Code, it was not necessary that a notice should be sent to a pro forma defendant if no relief is asked against him and that the same principle should be applied to the facts of this case. Hence these appeals by the Bank.

4. The decision in *Narayanachari v. Annamalai Chettiar* : AIR1940Mad61 , was the decision of a single Judge and it has been overruled by a Bench of this Court in *Periaswami Chettiar v. Ramaswami Goundan* : AIR1941Mad113 It is also pointed out in that case that there were several rulings of this Court which held differently from what *Newsam, J.*, held in *Narayanan Chari v. Annamalai Chettiar* : AIR1940Mad61 . In that case it was held that a puisne mortgagee is also a person liable to pay the amount due under the mortgage decree, that he is entitled to have the debt scaled down under the Madras Agriculturists' Relief Act. It cannot therefore be said that the Bank is not a defendant against whom a relief was granted under the decree. The Bank was hence not a mere pro forma defendant.

5. It is urged for the respondents that the proceedings referred to in Section 171 of the Companies Act refers to an original proceeding like a suit started by the filing of a document similar to a plaint and not to execution and for this reliance is placed on the observations in *Shakuntala v. Peoples' Bank of Northern India I.L.R. (1941) Lah. 760* There their Lordships had to consider the question as to whether a suit filed under Order 21, Rule 63 was a suit in respect of which sanction should be obtained under Section 171, and the contention was that the suit was really a proceeding in the nature of an appeal against a summary order passed on a claim petition and was not a suit proper. But it was held that it was a suit as it started with a plaint and therefore sanction was necessary. Reference was made to the meaning of the expression 'proceeding' as used in that section and it was observed that it must be construed as meaning original proceedings similar to a suit. With great respect, I do not think I will be justified in accepting that interpretation of the word 'proceeding.' In *Govinda-spuami v. Rasu : AIR1940Mad61* , Venkatasubba Rao, J., after referring to the meaning of the word 'proceeding' as given by Stroud and in Black's Law Dictionary, points out that the Word need not necessarily relate to an independent originating proceedings, but may also relate to supplemental proceedings. Further it was pointed out in *In re Artistic Colour Printing Co.2* with regard to a similar provision in the Companies Act, 1862, which runs thus,

No suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court.

6. that the word 'proceeding' includes execution under a judgment in an action. Further the object of the section is to enable the Court, which ordered the liquidation or the winding up of a company, to know whether it will be necessary to continue the execution proceedings and whether it will not be advisable to adjust the matter out of Court and to give the necessary instructions to the liquidator.

7. I therefore find that both the lower Courts were wrong in finding that it is not necessary to obtain the sanction of the Court under Section 171 to continue the execution proceedings taken against the Company after a winding up order has been made and a provisional liquidator has been appointed.

8. In the result, both the appeals are allowed, and the petitions are remanded to the Court of First Instance to enable the parties to get the necessary sanction to continue the proceedings. The respondents-decree-holders will pay the appellant costs both in this Court and in the lower appellate Court. Leave refused.

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