

**CIVIL RULE.***Before Jenkins C. J., and Holmwood J.*

1915

Aug. 30.

AMRITA LAL KUNDU

v.

ANUKUL CHANDRA DAS.\*

*Liquidator—Registered company—Property of the company, vesting of—Official Assignee—Distribution of proceeds in Court, when governed by Civil Procedure Code (Act V of 1908)—Release—Companies Act (VII of 1913) ss. 2 (3), 3 (3) 171, 215, 232.*

The liquidator of a registered company differs in this respect from the Official Assignee in that the property of the Company does not vest in him.

The distribution of the proceeds which had come into Court before an application was made (to the High Court) to pass an order in favour of the liquidator, must be governed by the provisions of the Code of Civil Procedure.

RULE obtained by Amrita Lal Kundu, the Liquidator to the Howrah Engineering Co. Ld., petitioner.

This was a Rule issued under section 25 of the Provincial Small Cause Courts Act. In this case one Anukul Chandra Das, a creditor of the Howrah Engineering Co. Ld. (which was a company registered under the Indian Companies Act) had obtained a decree against them in the Small Cause Court at Howrah, and in execution thereof attached and removed some of the working machines of the said company and was about to put them to sale when the shareholders passed a resolution for voluntary winding up, appointing the petitioner sole liquidator. Thereupon the latter sought to stay the sale proceedings and to release the moveables from attachment and

\* Civil Rule, No. 694 of 1915, against the order of A. T. Ghose, Judge, Small Cause Court, Howrah, dated June 19, 1915.

custody of the Court. At the hearing the liquidator failed to produce the Registrar's certificate of liquidation and the Court held it would be unjust to stay the sale under the above circumstances.

*Babu Jnanendra Nath Sarkar* showed cause for the opposite party. These applications were made before the Court of Small Causes—it is not known under what section of the Act—but presumably under section 215 of the Indian Companies Act. But “the Court” referred to in section 215 is the Court having jurisdiction under that Act: *vide* section 2 (3) thereof. Section 3 speaks of the exclusive jurisdiction of the High Court which may be extended to some District Courts but never to Small Cause Courts.

[HOLMWOOD J. Then the Small Cause Court had no jurisdiction to entertain this application. But it has proceeded to make an order on the supposition that it had.]

But there is that saving sub-clause (3) in section 3 which saves me from the control of that section while the petitioner still remains affected by it.

[HOLMWOOD J. Is the Subordinate Judge of Howrah, or even the District Judge of Hooghly empowered under section 3 by the Local Government?]

I am not aware of any notification.

[HOLMWOOD J. Then the petitioner ought to have come to the High Court.]

Conceding for the sake of argument that the application was made in a proper Court, avoidance of an “attachment” is only contemplated in section 232 of the Indian Companies Act. This section does not contemplate the case of voluntary liquidation; and even if it did, it provides for cases of attachment put in force after the commencement of the winding up.

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But in this case the attachment was in force before such winding up.

[HOLMWOOD J. But their case is under section 171 of the Indian Companies Act.]

Section 171 can be of no help in the case of a voluntary winding up where no winding up order has been made by Court. This seems to be the condition precedent, *viz.*, that first an order winding up the company must be made by a competent Court before all the proceedings can be stayed.

[JENKINS C. J. I think the petitioner relies on section 215 of the Indian Companies Act.]

How can that section be made applicable to this case? Section 215 does not give the Court any power which it may exercise, but only lays down the consequences that will follow an order of a Court for the winding up of the company. This has nothing to do with voluntary winding up.

[JENKINS C. J. I think section 215 is quite applicable to this case.]

Granting that the Court could use its discretion under section 215, what occasion was there for the exercise of this discretion? The law is as stated in Halsbury's Laws of England under the head of "Company" in Vol. V, at p. 535: *In re Great Ship Co. Ltd., Parry's Case* (1).

[JENKINS C. J. But is the attaching creditor a secured creditor?]

Yes, as will appear from reading section 64 of the Code of Civil Procedure. This is the law in England: see Halsbury, Vol V, "Company," at p. 519.

[JENKINS C. J. But the law in India, I believe, is different on this point: see Maclean C. J.'s Judgment in the case of *Frederick Peacock v. Madan Gopal* (2).]

(1) (1863) 4 De G. J. & Sm. 63.

(2) (1902) I. L. R. 29 Calc. 428.

That relates to an Insolvency case and is not under the Indian Companies Act. Here the liquidator is seeking to have the attachment released. Is there any express provision of law under which he can get it? Unless there is such an express provision of law laid down anywhere, the Court has no power to release a valid attachment made by a creditor. The decision in *In re Witherensea Brickworks* (1) makes the point clear. In India also, though as a matter of fact, the Provincial Insolvency Act contains a provision for avoidance of attachment even *before* insolvency (*vide* section 35 thereof), the Companies Act does not contain any such provision except in section 232 which only contemplates cases of attachment *after* the winding up of the company.

*Babu Ramani Mohan Chatterjee*, for the petitioner, in support of the Rule. The attachment has become void under section 171. As soon as the company is wound up, all proceedings against it must be stopped by the Court to which an application is made to that effect. The property of the company vests in the liquidator and the Court is bound to release the attachment.

[JENKINS C. J. A company's property does not vest in the liquidator who is in this respect in a different position from the Official Assignee.]

But the liquidator is a trustee for all the creditors among whom the property is to be divided *pari passu* and as such upon the analogy of the principle enunciated in the case of *Frederick Peacock v. Madan Gopal* (2), the property of the company ought to vest in him.

[JENKINS C. J. There is no provision of law to that effect.]

(1) (1880) 16 Ch. D. 337.

(2) (1902) I. L. R. 29 Calc. 428.

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JENKINS C. J. AND HOLMWOOD J. We must discharge this Rule. Though the matter is by no means clear we feel that apart from any defect of jurisdiction the distribution of the proceeds in Court must be governed by the provisions of the Code of Civil Procedure. The proceeds came into Court before the application was made to us to pass an order in favour of the liquidator. The liquidator's argument before us has been to a certain degree based upon the idea that the property of the company vested in the liquidator. It is better that that idea should be at once removed. The liquidator of a company differs in this respect from the Official Assignee in that the property of the company does not vest in him. We are of course leaving out of consideration the possible vesting of the property of an unregistered company under a vesting order.

The opposite party will get his costs of this Rule.

G. S.

*Rule discharged.*