

## ORIGINAL CIVIL.

Before Remfry J.

1934

*In re* JAMBAD COAL SYNDICATE, LIMITED.

Aug. 13, 16.

*Company—Winding up—Debt, if must be presently payable—Petitioner's title—Statutory demand—Lease—Registration—Indian Companies Act (VII of 1913), ss. 162, 163—Transfer of Property Act (IV of 1882 amended by XX of 1929), s. 53A—Indian Registration Act (XVI of 1908 amended by XXI of 1929), s. 49.*

Before an order for winding up of a company can be made, it must be shown that the debt due from the company is presently payable and that the petitioner's title is complete. A petition cannot be supported on the allegation that some debt is due, if that was not the debt for which statutory demand was made.

A landlord cannot, either under section 53A of the Transfer of Property Act or under the amended section 49 of the Registration Act, claim rent in respect of an unregistered lease, if the lease is such as requires registration.

## CREDITOR'S PETITION.

The facts of the case appear sufficiently from the judgment.

*S. N. Banerjee (Sr.)* (with him *N. C. Chatterjee*) for the Ondal Coal Company, Limited, in support of the petition. Under sections 162 and 163 of the Indian Companies Act, where there is a debt exceeding Rs. 500 and there is non-compliance with the statutory demand with the prescribed time, there must be a winding up order. There is no dispute in this case as to the amount due.

[REMFRY J. But the new lease has not yet been registered.]

It has been executed by all the parties and registered by the syndicate and some of the parties. Others, who are creatures of the syndicate, are obstructing the company with a view to help the syndicate by refusing to register. Proceedings have been instituted before the Registrar of Assurance to

compel these others to register. If want of registration is the only objection, this application may be adjourned till the termination of the proceedings before the Registrar. Without registration, there is the written contract and the syndicate is in possession under the contract and has paid rent at the enhanced rate. If the company claims specific performance of the contract under section 53A of the Transfer of Property Act read with section 49 of the Registration Act, the syndicate would have no answer.

*Pugh* (with him *D. N. Sinha* and *Sarat Basu*) for Jambad Coal Syndicate, Limited. Where there is a *bona fide* dispute as to the amount due, as stated in the statutory demand, the application for winding up must be dismissed. See *In re London and Paris Banking Corporation* (1) and *In re Gold Hill Mines* (2). The amount asked for in the statutory notice is not yet payable and is *bona fide* disputed.

*Cur. adv. vult.*

REMFREY J. This is a petition for winding up a public company with limited liability. The ground in the petition is that, after the statutory notice, the syndicate, as the public company is called, has failed to pay a debt of some Rs. 72,000, due for royalties and rent.

For the syndicate it is stated, in the affidavit, that a claim by a third party, who is alleged to have a title paramount to that of the petitioning company, is apprehended, and that, as the lease has not been registered, the petitioners are not entitled to claim rent or royalties.

As far as the first ground is concerned, an alleged apprehension that their possession may be disturbed or ended by a party, said to have a title paramount to that of their landlords, does not justify tenants in withholding their rent.

The other point is more difficult. It appears that, by a consent decree in 1927, the syndicate agreed to

(1) (1874) L. R. 19 Eq. 444.

(2) (1883) 23 Ch. D. 210.

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take a new lease and surrender their old one. This lease has been executed by all the parties and, as the affidavit states,—

The lease was executed by the company and the syndicate and various parties. . . . Registration has not been completed by four persons, who executed the document and summonses have been issued to compel registration.

These four persons appear to be interested in the syndicate.

It may be that, under section 35 of the Registration Act, the company could have completed the registration as regards the parties admitting execution, but that has not been done. The delay, in preparing the lease, has been caused by difficulties in the company's title.

For a winding up order, the debt must be presently payable and the title of the petitioner complete.

Clearly it is insufficient to show that some other debt is due or even that there is something over Rs. 500 due in respect of the claim made, if that was not the sum in respect of which the statutory demand was made.

The law requires that a demand must be made for a debt that is due and it is not permissible to support a petition by alleging that something else is due.

The company, therefore, cannot rely on any admission that Rs. 13,000 and not Rs. 72,000 is due under the former lease if it is in force, nor is it sufficient to allege that Rs. 60,000 is due under the old lease.

The demand was not made for rent or royalties under the old lease.

In my opinion, it is clear that, neither under section 53A of the Transfer of Property Act, nor under the amended section 49 of the Registration Act, can a landlord recover rent under an unregistered lease, if the lease required registration. I cannot accept the argument that, under section 49 of the Registration Act, a claim for rent is permissible when the lease is not registered, for that would be to repeal part of the Act.

It may be that the syndicate would have no defence in a suit for specific performance of the agreement, and, in fact, it is not suggested that the syndicate has ever refused to execute that lease, but the petitioning company is in the unfortunate position that, without completing the registration of the lease, it can only sue for specific performance as a preliminary to a decree for the rent, though doubtless both claims can be made in one suit.

It was argued that the rent was due under the consent decree, and that a consent decree does not require registration. That is so, but only in so far as such decree relates to the subject matter of the suit. The consent decree, however, was not put in, nor the pleadings.

It may be that the terms as to a fresh lease formed the subject matter of the suit, but it is rather difficult to imagine how that could be. Further it does not appear that any demand was made for payment under the consent decree, and to adapt the classical illustration, the petitioner cannot demand payment for beans and then in a petition for winding up the company, prove a debt for the same amount due for peas.

In my opinion, the petitioning company were not in a legal position to make a demand for the rent.

The petition is, therefore, dismissed with costs.

*Petition dismissed.*

Attorneys for petitioner: *Orr Dignam & Co.*

Attorney for syndicate: *Dasarathi Shome.*

P.K.D.

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