ORIGINAL CIVIL.

1936

May 25.

Before Lort-Williams J.

In re NATORE KAMALA BANK, LTD.

Company—Scheme of compromise—Depositor who has obtained decree, if belongs to same class as other depositors—Indian Companies Act (VII of 1913).

For the purposes of s. 153 of the Indian Companies Act, 1913, depositors of a bank who have already obtained decrees form a distinct class from others who have not obtained decrees.

Rajshahi Banking Corporation v. *Surabala Debi* (1) followed.

Serajganj Loan Office, Ltd. v. *Nilkantha Lahiri* (2); *Barisal Loan Office Ltd.* v. *Sasthi Charan Bhattacharjee* (3) and In re *Jalpaiguri Banking and Trading Company, Ltd.* (4) approved of but not followed.

Under s. 153 of the Indian Companies Act, the Court may either sanction or refuse to sanction a scheme approved by the company and its creditors or its members. It has no power to modify or alter the scheme unless the company and its creditors or members have had an opportunity of considering the scheme again along with the suggested modifications and have agreed thereto.

Mihirendrakishore Datta v. *Brahmanbaria Loan Company, Ltd.* (5) followed.

Persons whose interests are affected by a scheme but who have not opposed it at a meeting or appeared at the hearing of the petition for sanction cannot appeal without leave.

In re *Securities Insurance Company* (6) followed.

COMPANY MATTER.

This was an application by a depositor of the bank who had obtained a decree in respect of his deposit money for cancellation of a scheme of compromise, or in the alternative for a modification thereof. The facts are fully set out in the judgment.

(1) (1936) 40 C. W. N. 1104.
(2) (1935) 39 C. W. N. 1199.
(3) (1935) 39 C. W. N. 1198.
(4) (1935) 39 C. W. N. 875.
(5) (1934) I. L. R. 61 Cal. 913.
(6) [1894] 2 Ch. 410.

J. C. Sett for the applicant. Creditors who have obtained decrees belong to a separate class from those who have not obtained decrees. *Rajshahi Banking Corporation* v. *Surabala Debi* (1); In re *Dewangunj Bank & Industry, Ltd.* (2). Therefore, in order to make the scheme binding on decree-holders a separate meeting of the decree-holders should have been held. In the absence of such meeting the applicant is not bound by the scheme which has already been sanctioned. In the circumstances the application should be granted. The case of *Rajshahi Banking Corporation* (1) governs this case.

Susil C. Sen for the company. If the applicant claims not to be bound by the scheme the proper course for him is to execute his decree and the matter can be decided in execution.

Decree-holders and depositors alike belong to the class of unsecured creditors and there need be no separate meetings: In re *Jalpaiguri Banking and Trading Company, Ltd.* (3); *Barisal Loan Office, Ltd.* v. *Sasthi Charan Bhattacharjee* (4); *Serajganj Loan Office, Ltd.* v. *Nilkantha Lahiri* (5).

The Court has no jurisdiction to modify a scheme which has been sanctioned by a meeting of creditors: *Mihirendrakishore Datta* v. *Brahmanbaria Loan Company, Ltd.* (6).

In any event, this application should not be granted in view of the inordinate delay in moving the Court. As a result of the Court sanctioning the scheme the company has worked accordingly and many creditors have changed their positions legally.

LORT-WILLIAMS J. The petitioner was a depositor in the Natore Kamala Bank, Ltd., and instituted a suit for realisation of the sum of Rs. 425-5, being

(1) (1936) 40 C. W. N. 1104.
(2) (1934) 38 C. W. N. 1171.
(3) (1935) 39 C. W. N. 875.
(4) (1935) 39 C. W. N. 1198.
(5) (1935) 39 C. W. N. 1199.
(6) (1934) I. L. R. 61 Cal. 913.

1936

In re *Natore Kamala Bank, Ltd.*

Lort-Williams J.

his deposit money. A consent decree was made on June 21, 1933, whereby the bank was ordered to pay to the petitioner Rs. 87-2-6 within a month, and a balance of Rs. 400 by two equal instalments in September-October 1933 and March-April 1934. In default of such payment the entire decretal amount became due. Pursuant to the decree the company paid to the petitioner the sum of Rs. 87-2-6, as the first instalment.

On July 18, 1933, a notice was sent to the petitioner by the secretary of the bank intimating that by an order of July 10, 1933, Ameer Ali J. had directed that a meeting of the depositors of the company should be held on August 11, 1933, for the purpose of considering and, if thought fit, approving, with or without modification, a scheme of arrangement proposed to be made between the company and the depositors. A copy of the scheme of arrangement was annexed to the notice. Part of the scheme provided as follows:—

> The depositors (which expression also includes depositors who have filed suits or obtains decrees against the company) will not be entitled to withdraw their deposits or otherwise demand payment of their dues for a period of 12 years.

The petitioner did not attend the meeting, and the scheme was approved. By order of August 28, 1933, Ameer Ali J., acting under the provisions of s. 153 of the Indian Companies Act, sanctioned the scheme and ordered that it should be binding on the depositors of the company.

Before making this order, Ameer Ali J. heard the petitioner in opposition. From the evidence it appears that he argued in the first place that he had not received notice of the meeting, and in the second place generally against the scheme on the ground that he expected to get more of his money back if the company went into liquidation. His objections were overruled by the learned Judge.

1936

In re *Natore Kamala Bank, Ltd.*

Lort-Williams J.

In his present petition, he asks that the scheme either be cancelled, or in the alternative that the words "which expression also includes depositors "who have filed suits or obtained decrees against the "company" be expunged, and the scheme modified accordingly. He further asks for an order that he be at liberty to execute his decree.

His grounds for the petition are that at the time when the scheme was sanctioned, he had ceased to be a depositor and had become a judgment-debtor, by reason of the decree. Therefore, he ought not to have been, and cannot be treated as being within the class of depositors, and that the Court ought not to have allowed the company to get over this difficulty by adding the words that he seeks to have expunged, which in effect have roped him in within the class of depositors.

The first thing to be observed is that he has waited for nearly three years, after the scheme was sanctioned, to bring this petition, and it being a matter of discretion, I refuse for that reason alone to grant it.

But as I have been referred to various decisions of this Court I desire to make some remarks about them.

In In the matter of *Dewangunj Bank & Industry, Ltd.* (1) Buckland J. had occasion to deal with a similar set of facts. He held that a depositor who obtains a decree against a banking company before any scheme is embarked upon by the latter ceases to be a depositor and becomes a decree-holder. That when an order is subsequently obtained from the Court directing that a meeting of depositors be held for the purpose of considering a scheme, such decree-holder, though notified, is not bound to attend the meeting, and is not bound by any scheme adopted thereat: that such a meeting has no power to pass a scheme which includes among creditors to be bound thereby persons who have obtained decrees prior to

(1) (1934) 38 C. W. N. 1171.

1936

In re *Natore Kamala Bank, Ltd.*

Lort-Williams J.

any steps being taken towards the framing of the scheme: and even though the Court may sanction such a scheme *per incuriam*, or because the circumstances are not properly explained, it may afterwards, at the instance of the decree-holder affected, make an order modifying the scheme sanctioned, by expunging the provision affecting prior decree-holders, and the learned Judge made an order expunging that part of the scheme.

Similarly, in the matter of *Rajshahi Banking Corporation* (1) an order was made by Panckridge J. on July 31, 1935. The learned Judge held that decree-holders were clearly not depositors, and that the meeting of depositors which had been held was not a meeting of which the petitioning decree-holder ought to have received notice, and that she rightly disregarded that notice, because such a meeting had no power to pass resolutions affecting the interests of persons who were not depositors.

There was an appeal against that decision and it was confirmed; the Court sitting in appeal held that the contention that the petitioner upon obtaining a decree had ceased to be a depositor and had passed into another class was sound, on the ground that a depositor was a person who had rights arising out of contract created by his deposit with the company, whereas a decree-holder's rights depend upon the decree, in which the contract debt has become merged. He is entitled to be treated as belonging to a different class under s. 153 of the Companies Act.

On this point there are conflicting decisions of this Court. In *Serajganj Loan Office, Ltd.* v. *Nilkantha Lahiri* (2) R. C. Mitter J., in what was apparently a carefully considered judgment, held that—

for the purposes of s. 153, creditors of a certain class (*e.g.*, unsecured creditors), who have already obtained decrees, do not form a distinct class from others of the same class who have not obtained decrees.

(1) (1936) 40 C. W. N. 1104. (2) (1935) 39 C. W. N. 1199.

1936

In re Natore Kamala Bank, Ltd.

Lort-Williams J.

and the learned Judge agreed with the decision of Guha and Lodge JJ. in the case of *Barisal Loan Office, Ltd.* v. *Sasthi Charan Bhattacharjee* (1) to the same effect. In re *Jalpaiguri Banking and Trading Company, Ltd.* (2) Cunliffe J. gave judgment to the same effect. The learned Judge after referring to the dictum of Bowen L. J. in the case of the *Sovereign Life Assurance Company* v. *Dodd* (3) said—

> Applying that test, I have to ask myself whether the interests or the right of an unsecured creditor with a decree behind him are so dissimilar from the interests of an unsecured creditor without a decree behind him, that it is impossible for them to consult together in common interest in the company and to bring about a prolongation of its life. In my opinion, an unsecured creditor who is also a decree-holder is not, within the purview of the section, entitled to force those who manage the company to regard him as one of a defined and distinct class of persons, as opposed to an unsecured creditor who has not got a decree.

On the whole I find myself in agreement with the last three decisions; nevertheless sitting as I am on the Original Side, I am bound on this point by the judgment of the Court sitting in appeal to which I have referred.

It seems to me, however, that a much more serious difficulty is raised by the procedure which was adopted in the cases decided by Buckland J. and Panckridge J.

In the first place the Court's powers under s. 153 are strictly limited. The Court may either sanction or refuse to sanction a scheme approved by the company and its creditors or its members. It has no power to modify or alter the scheme unless the company and its creditors or members have had an opportunity of considering the scheme again along with such suggested modifications and have agreed thereto. This was decided by this Court sitting in appeal, in the case of *Mihirendrakishore Datta* v. *Brahmanbaria Loan Company, Ltd.* (4).

(1) (1935) 39 C. W. N. 1198.
(2) (1935) 39 C. W. N. 875.
(3) [1892] 2 Q. B. 573, 583.
(4) (1934) I. L. R. 61 Cal. 913.

1936

In re *Katore Kamala Bank, Ltd.*

Lort-Williams J.

I cannot conceive, therefore, what power this Court can have, upon an application such as the present, to alter a scheme, which has not only been sanctioned by the Court but has been agreed to at a meeting convened under the provisions of s. 153, without giving the parties who came to that agreement an opportunity of considering the scheme, in the way the Court proposes that it shall be modified and agreeing thereto. This seems to me an insuperable objection to the action which the Court adopted in the cases to which I have referred.

Moreover, such orders seem to me improper for the reason that Courts do not interfere in such a way where such interference is unnecessary because a more appropriate remedy has been provided by law. Persons whose interests are affected by a scheme under this section, but who have not opposed it at a meeting, or appeared at the hearing of the petition, cannot appeal without leave: but they can with leave, as can those, and without leave, who have opposed it at the meeting, or have appeared in opposition at the hearing of the petition. See s. 202, Indian Companies Act; In re *Securities Insurance Company* (1).

In my opinion, the petitioner's remedy in this case was to have appealed against the order made by Ameer Ali J. on August 28, 1933.

A third objection is this—a matter which does not concern the Court sitting to hear company matters. If the petitioner's contention be correct, and he is not a depositor within the meaning of the scheme, and he is not affected by it, as he had argued before me, then he has every right to execute the decree which he has obtained. It is upon execution that this point ought properly to be decided. For all these reasons, and especially the delay in making the application it is dismissed, with costs.

Application dismissed.

Attorney for petitioner: *P. B. Bhattacharjya.*

Attorneys for the company: *Dutt & Sen.*

S. M.

(1) [1894] 2 Ch. 410.