## APPELLATE CIVIL.

*Before Costello A. C. J. and Edgley J.*

# BADARGANJ LOAN OFFICE, LIMITED

1937

*June* 8.

*v.*

# SHAHAR UDDIN SHAH.*

*Depositor—Depositors with decree—Sanction of Court, when it takes effect—Estoppel—Scheme—Indian Companies Act (VII of 1913), s. 153 (6)—Indian Companies (Amendment) Act (XXII of 1936).*

The sanction of the Court has a retrospective effect and, therefore, a scheme operates not from the date on which the sanction was given by the Court but from the date on which it was agreed to by the creditors at the meeting for settling a scheme. The agreement becomes binding from the date when it is arrived at subject to subsequent sanction by the Court.

*Raghubar Dayal* v. *Bank of Upper India* (1) referred to.

Where the bank has consented to a decree being passed in a suit brought by a depositor, it is not estopped from taking its stand on the terms of a scheme subsequently sanctioned by the Court, for the principle of estoppel does not operate against the bank in such cases.

*Mahiganj Loan Office, Ltd.* v. *Biharee Lal Chaki* (2) referred to and explained.

Prior to the passing of the Indian Companies (Amendment) Act, 1936, a depositor with a decree stood in a different category from that of a depositor without a decree.

*Rajshahi Banking Corporation* v. *Surabala Debi* (3) followed.

Before the statute law was changed in 1936, a depositor, who had filed a suit for his money but had obtained a decree against the bank subsequent to the date of the creditors' meeting to settle a scheme, was bound by that scheme and could not afterwards avail himself of the advantage which the decree he had subsequently obtained would otherwise have afforded him. On the date of the depositor's meeting such a person was not a judgment-creditor, but only an ordinary depositor, who instituted a suit; *prima facie* he is bound by the scheme and cannot thereafter enforce his decree against the bank.

*Appeal from Appellate Order, No. 69 of 1937, against the order of P. C. De, District Judge of Rangpur, dated Jan. 25, 1937, reversing the order of Maneendra Prasad Singha, Subordinate Judge of Rangpur, dated Sep. 14, 1936.

(1) (1919) I. L. R. 41 All. 566; L. R. 46 I. A. 135.

(2) I. L. R. [1937] 1 Cal. 781.

(3) (1936) 40 C. W. N. 1104.

1937

*Badarganj Loan Office, Limited* v. *Shahar Uddin Shah.*

APPEAL from APPELLATE ORDER preferred by the judgment-debtor.

The facts of the case and the arguments in the appeal appear in the judgment.

*J. C. Gupta* and *Sudhangshu Bhooshan Sen* for the appellant.

*Beereshwar Bagchi* and *Priya Nath Bhattacharjya* for the respondent.

COSTELLO A. C. J. This is an appeal from a judgment of the District Judge of Rangpur, dated January 25, 1937, reversing an order made by the Subordinate Judge of Rangpur dated September 14, 1936. It arises in a matter which is one of a somewhat numerous class of cases which have come before this Court in recent times. It is concerned with a scheme, or more accurately a compromise or arrangement made between a company and a class of its creditors of the kind which is within the contemplation of s. 153 of the Indian Companies Act, 1913. The company was the Badarganj Loan Office, Ltd., and the creditors were the depositors, that is to say, persons who had entrusted money to that company. Like so many other companies of the same kind, it appears to have got into financial difficulties and, accordingly, towards the end of the year 1932, actually on November 21, 1932, respondent to the present appeal—Shahar Uddin Shah—who had a current account with the company—served a notice upon the company requiring them to pay to him the amount then owing to him in respect of his account with them. The company apparently ignored that notice. On December 5th, an order was made by Buckland J. directing that a meeting of depositors should be held for the purpose of agreeing to a scheme, if approved, whereby payments of the debts due to the depositors should be postponed. The scheme was of the kind which is very familiar to this Court, a scheme which

in all its essentials was exactly on the same lines as a dozen other similar schemes which from time to time have received the sanction of this Court. I have pointed out on a previous occasion that all these schemes seem to have emanated from one common source. In consequence of the order of the Court made on December 5, 1932, it would seem that on December 6, 1932, the present respondent caused his legal adviser to serve another notice on the company peremptorily demanding payment of what was owing to him and giving notice that, in default of payment, legal proceedings would be taken. That notice seems to have been without effect. Consequently, on December 18, 1932, a suit was started which in a sense is the origin of the present proceedings. On December 28, 1932, a notice was sent out in accordance with the direction given by Buckland J. on December 5th.

It seems to have been questioned in the Courts below whether or not a copy of that notice ever reached Shahar Uddin Shah. The learned District Judge has said that the plaintiff's case was that no notice was served on him. He found, however, that there was a certificate of posting of the notice on December 30, 1932, that is to say, twelve days after the suit was instituted. What apparently happened was that the company started sending out notices on December 28, 1932; but as far as the present respondent was concerned, the notice was sent out on the 30th of December. The meeting of the depositors was duly held on January 22, 1933, and the scheme was then passed by a requisite majority, that is to say, the majority required by s. 153 of the Indian Companies Act, being a majority in number representing three-fourths in value of the creditors or class of creditors. Two days later, on January 24, 1933, the company appeared in Court to make answer to the suit instituted by Shahar Uddin Shah. On that date they made an application for time within which they should be allowed to file a written statement. Apparently

1937

*Radarganj Loan Office, Limited* v. *Shahar Uddin Shah.*

*Costello A. C. J.*

they had not then filed a written statement, but on February 24, 1933, they put in a written statement in which they admitted the debt and asked that they should be allowed to liquidate it by instalment payments. On the 9th February they made a further application for time and ultimately on February 24, 1933, a decree was made against them in favour of the plaintiff but allowing payment by certain instalments. The first of these instalments became due on April 13, 1933, but the company made default. On May 1, 1933, the matter of the scheme came before Panckridge J. sitting on the Original Side of this Court, and the learned Judge then sanctioned the scheme, as agreed to by the majority of depositors at the meeting held on January 22, 1933. Nothing seems to have been done by Shahar Uddin Shah in the direction of enforcing the decree which he had obtained on February 24, 1933, until June 5, 1935, when the execution proceedings were instituted, out of which this appeal has arisen. It is perhaps not without significance that on March 5, 1934, there came into existence a decision of this Court, that of Buckland J. in *In the Matter of Dewangunj Bank & Industry, Ltd.* (1), where it was 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. Subsequently to the decision of Buckland J. there were a variety of decisions in this Court both on the Original Side and on the Appellate Side dealing with the point whether or not a depositor of the banking companies or loan offices who has obtained a decree was in the same category of creditors as a depositor who was without a decree. Ultimately the point came before the Chief Justice and myself on April 7, 1936, in the case of *Rajshahi Banking Corporation* v. *Surabala Debi* (2) and we then came to the conclusion that a depositor who has obtained a decree and one who has

(1) (1934) 38 C. W. N. 1171. (2) (1936) 40 C. W. N. 1104.

not obtained a decree cannot be regarded as belonging to the same class of creditors for the purpose of s. 153 of the Indian Companies Act and that accordingly a notice sent to such a decree-holder directing him to attend a meeting of the depositors for the purpose of considering a scheme is not binding on him as equally as he is not bound by anything which is decided at such meeting. Nothing that has been said in the course of the appeal before us to-day has in any way caused me to think that the decision which was arrived at in that case was not a correct decision. It follows, therefore, that it must be taken for our present purposes, that at all material times a depositor with a decree stood in a different category from that of a depositor without a decree.

The law has since been altered by the Indian Companies (Amendment) Act, 1936, which has added some words to sub-s. (*6*) of s. 153 of the Act of 1913: so that it now reads:—

> In this section (s. 153) the expression "company" means any company liable to be wound up under this Act, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

We have, however, to decide this appeal under the law as it was prior to the year 1936 and so upon the footing that Shahar Uddin Shah, if he had been a decree-holder at the right moment, would have been in a different category from those of his fellow-depositors who had not obtained decrees against the Badarganj Loan Office. One has to consider the dates. In this matter the chronology is of the utmost importance. The essential dates are these:— the date of the institution of the suit, the date of meeting of the creditors, the date of the decree, and the date of the sanction of the Court. I have already recited these dates. When one looks at them, one at once sees that at the date of the meeting the position was that the suit had been instituted but it had not yet come to trial and there was, therefore, no decree.

1937

*Badarganj Loan Office, Limited* v. *Shahar Uddin Shah.*

*Costello A. C. J.*

At the date of the sanction, however, there was a decree. If the position were that a scheme of arrangement only came into operation on the date when it was sanctioned by this Court, namely, on May 1, 1933, when it would be obvious that there was no scheme in existence at the time when the present respondent obtained his decree. But both the Courts below have proceeded upon the footing that the sanction of the Court has relation back or rather has a retrospective effect and, therefore, the scheme operates not from the date on which the sanction was given but from the date on which it was agreed to by the creditors, namely, the date of the meeting which, in the present instance, was January 21, 1933. At that time Shahar Uddin had not yet obtained his decree: he was merely in the position of a depositor who had filed the suit. The filing of the suit of itself gave him no higher rights, or in any way effected a change in his character as creditor as compared with those of the depositors who had not filed suits. Consequently at the date of the meeting, *i.e.*, on January 22, 1933, he was still in the same class of creditors as all the rest of the depositors and as such he was entitled to receive notice of the meeting (which it must be presumed he did in fact receive) and as found by the appellate Court, he was entitled to attend the meeting had he chosen to attend it. He was entitled to express his opinion and to record his vote in the matter. He did not choose to attend the meeting and so did not vote on the scheme. Nevertheless it must be taken, that he was bound by the decision arrived at by the majority of his fellow-depositors. It follows that *prima facie* at any rate he was bound by the scheme and so could not afterwards avail himself of the advantage which the decree he had obtained on February 24, 1933, would otherwise have afforded him. That the sanction of the Court has a retrospective effect is, in my opinion, a matter which is not open to doubt, having regard to the decision of the Judicial Committee of the Privy Council in the case

of *Raghubar Dayal* v. *Bank of Upper India* (1) where so far as the sequence of the dates was concerned, the matter was very much of the same kind as the present case. The relevant dates were these: On December 19, 1914, the suit was instituted by the creditor against the company. On December 21, 1914, there was an application for sanction. On December 23, 1914, a meeting of the creditors was ordered. The meeting duly took place on March 4, 1915. It is to be observed that up to that date there was no decree. The decree was actually obtained on April, 1915 and sanction was given to the scheme more than a year later, namely, on June 2, 1916. Lord Haldane who delivered the opinion of the Board said in his opening remarks:—

If this was a difficult case, their Lordships would take time before formulating their report.

Then the noble and learned Lord sets out s. 153 of the Indian Companies Act. He thus says:—

The question is whether under s. 153 (which is a section in familiar language, practically identical with the corresponding section of the English Companies Act) the creditor was bound.

Incidentally I may observe that the corresponding section of the present English Act is, curiously enough, s. 153. His Lordship continues:—

The Court of the Judicial Commissioner, agreeing with the Judge who heard the case in the first instance, says that it was so, and it is obvious that it is convenient that it should be so. Otherwise, with the uncertainty as to what the ultimate rule of the Court may be, when a decision has finally been obtained, the door would be open for a race between creditors and persons concerned in administering the affairs of the bank. The Court of the Judicial Commissioner put it very well in its judgment when it said this: "If it had been the intention of the legislature that such an agreement "should not be binding until the arrangement had been sanctioned by the "Court, instead of the words 'if sanctioned by the Court' the words 'when it "'has been sanctioned by the Court' would ordinarily have been used. The "agreement becomes binding from the date when it is arrived at, subject to "subsequent sanction by the Court. If that sanction be refused, the agree-"ment is without effect. But it is not the case that the agreement is to "take effect from the date of sanction. It takes effect from the date when "it is made. Such is our interpretation of the words of the section."

(1) (1919) I. L. R. 41 All 566 (569-70); L. R. 46 I. A. 135 (137-9).

1937

*Badarganj Loan Office, Limited* v. *Shahar Uddin Shah.*

*Costello A. C. J.*

Lord Haldane adds this comment:—

> When you look at the latter part of s. 153, it appears that this is so, because the words there are that if the compromise or arrangement, which is the compromise or arrangement sanctioned by a majority of the meeting, is passed, then the compromise or arrangement, if sanctioned by the Court, is to be binding. It is the proceeding of the meeting that is to be binding, provided only that it does not fail to be subsequently sanctioned. Therefore, not only convenience, but the literal language of the section, is in favour of the view to which the Court below adhered, and their Lordships will humbly advise His Majesty that the view should be affirmed.

In the light of the opinion of the Judicial Committee of the Privy Council, it is clearly not open to us to take any other view of the matter, and therefore we must hold that both the Courts below were quite right in proceeding upon the assumption that the scheme operated as from the date of the meeting, that is to say, from January 22, 1933. I have said that because on January 22, 1933, the present respondent was not a creditor but only an ordinary depositor who instituted a suit, *prima facie* he was bound by the scheme, and he cannot now enforce his decree against the company.

In an attempt, as it seems to me, to meet a hard case, the learned District Judge fell into error. It is hard cases which make bad law, however. Therefore in such cases one has to be particularly careful not to allow one's sympathy with a party (here it is the decree-holder who has obtained a decree for a debt justly due to him) to influence one's decision. Any one who has heard this appeal and/or who is cognizant of the facts of this case is, I think, bound to feel some sympathy with the present respondent: but we have to administer the law as we find it. The learned District Judge in order to assist the appellant before him, that is to say, the decree-holder, erroneously took the view that in some way or other the Badarganj Loan Office were precluded, indeed, were estopped from contending that the decree held by Shahar Uddin Shah was not executable as against the loan office. By some process of reasoning which is not very clear the learned District Judge seems to have

1937

*Badarganj Loan Office, Limited* v. *Shahar Uddin Shah.*

*Costello A. C. J.*

thought that the conduct of the company had been such that they ought not to be heard to say that the decree should not be executed. The exact words used by the learned Judge were these :—

> The course of this suit in the civil Court will throw some light on the respective knowledge of both parties, and in my opinion, the conduct of the bank must be held to be such that it cannot possibly object to the execution of the decree.

Later on he said :—

> "It" (the bank) "is estopped from saying now that the decree cannot be executed."

The learned Judge seems to have found himself able to formulate those two propositions by contemplating the action of the company in putting in a written statement in answer to the claim of Shahar Uddin Shah in which they admitted their liability yet asked for time within which to pay. The learned Judge seems to have thought that because on January 21, 1933, the company did not meet the plaintiff's claim by saying something like this "You cannot "touch us, because we have got a scheme in the mak- "ing. That scheme was put before a meeting two "days ago: you ought to have been present at the "time: you did not appear at the meeting. The "scheme has been passed and now we are going to get "the sanction of the Court and that will shut you out". Because the company did not take that sort of attitude, the learned Judge seems to have thought that in some way or other they were for ever precluded from contending that the decree which was subsequently obtained could not be executed. That line of argument was also stressed by Mr. Bagchi on behalf of the respondent and in support of it he put before us a decision of Nasim Ali and R. C. Mitter JJ. in *Mahiganj Loan Office, Ltd.* v. *Biharee Lal Chaki* (1) which is very similar to the present case. A curious feature of it is that no mention is made of the many and varied

(1) I. L. R. [1937] 1 Cal. 781.

1937

*Badarganj Loan Office, Limited* v. *Shahar Uddin Shah.*

*Costello A. C. J.*

decisions of this Court on the point which was then under consideration. Whether or not any authority was cited to the learned Judges during the hearing of the appeal on 3rd and 9th December, 1936, we do not know. Certainly no authority is referred to in the judgment given on December 10, 1936. The learned Judges seem to have listened to a discussion as to whether or not the obtaining of a decree by a depositor made any difference as if that were a matter of first impression—a point which up to that time had never been decided. We find at the end of the judgment this observation :—

> These facts clearly indicate that the bank all along knew that the scheme was not intended to be binding on the appellant and in fact did not bind the appellant. The word " depositors " in the scheme which was agreed upon in this case and which was ultimately sanctioned by the Court cannot and in fact does not include the appellant before us.

In my opinion, this decision in no way supports the contention that the conduct of the bank in allowing the depositor to obtain a decree precludes the bank from afterwards resisting execution. The learned Judges seem to have founded their decision upon the fact that a depositor with a decree is a different person, or rather is in a different class of creditor from a depositor who has not obtained a decree, and therefore the decree-holder seeking to execute his decree was not bound by a scheme which was agreed to merely by ordinary decreeless depositors, if one may so call them.

As far as one can see, the question of the doctrine of estoppel as a bar to the company's objection to the execution was not discussed in that appeal at all. But if it was, with all respect to the learned Judges, I should be bound to say that I could not concur in any such view of the matter, because it must be borne in mind that s. 153 contemplates an agreement between a company on the one hand and its creditors or a class of its cerditors on the other, and in the present instance one cannot overlook the rights of the other creditors which would necessarily be affected if the

company were precluded from resisting the decree held by Shahar Uddin Shah. Obviously if the company were forced to discharge Shahar Uddin Shah's claim the rights of other creditors in the shape of depositors who had agreed to the scheme would be interfered with, because it is obvious that if this particular creditor be paid in full, the other creditors would suffer. In any case, in my opinion nothing which the company did now precludes them from resisting the decree because at the time when they put in the written statement on January 21, 1933, it had not then been ascertained and therefore it was by no means certain, whether or not the scheme passed and accepted at the meeting of January 22nd, would ultimately receive the sanction of the Court. There was always the possibility that when the matter came before the Court, the Court would refuse to sanction the scheme as has been the case on more than one of such occasions. In those circumstances, it was only reasonable that the company should endeavour to make the best terms it could, with the creditor who was the most closely pressing them. I think, therefore, that there is nothing in the circumstances of the case which shuts out the company from resisting execution.

Therefore although we do so with great reluctance, we are bound to say that the decision of the District Judge is wrong and must be set aside, and the decision of the Subordinate Judge restored.

The appeal is, accordingly, allowed. We make no order as to costs.

EDGLEY J. I agree.

*Appeal allowed.*

G. S.