

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

S. NATARAJAN AND OTHERS (RESPONDENTS 2 TO 4),
APPELLANTS,

v.

1929.
August 23.

V. NARASIMHA AYYANGAR, OFFICIAL LIQUIDATOR OF THE CITY HYGIENIC MILK SUPPLY CO., LTD., MADRAS (PETITIONER), RESPONDENT.*

Indian Companies Act (VII of 1913), ss. 3, 187, 199, 200 and 201—Order made by High Court on a contributory to pay a call—Application to a District Court to enforce the order—Jurisdiction of the District Court to enforce the order—Procedure.

The District Court of a place where a contributory has property has no jurisdiction to entertain an application for enforcement of an order of the High Court directing him to pay a call, as such an order could be enforced under section 200 of the Companies Act, 1913, only by the Court which would have had jurisdiction over the company if its registered office was situate at such place; and that Court under section 3 (1) of the Act was the High Court.

Section 3 (3) of the Act, cannot validate the proceedings of the District Court in such a case, if the objection to its jurisdiction was taken therein at the very commencement and at the proper time. *Kayastha Trading and Banking Corporation v. Jai Karan Lal*, (1926) I.L.R., 6 Pat., 132, followed.

APPEAL against the order of the District Court of West Tanjore in E.P. No. 166 of 1928 in O.P. No. 62 of 1922.

This appeal arises out of an application for execution, made to the District Court of West Tanjore, of an order made by the High Court of Madras calling upon a contributory to pay a call. The applicant was the Official Liquidator of the respondent company; he produced the order of the High Court, before the District

* Civil Miscellaneous Appeal No. 237 of 1929.

NATARAJAN
v.
NARASIMHA
AYYANGAR.

Court, as the contributory had property within the jurisdiction of the latter Court, against which the liquidator could proceed. The appellants contended in the lower Court that the Court had no jurisdiction to entertain the application. The Court overruled the contention and ordered execution. The respondents in the lower Court preferred this appeal to the High Court.

N. Suryanarayana for the appellants.—This is an appeal in execution proceedings for the enforcement of an order passed by the High Court of Madras, directing a contributory to pay a call under section 187 of the Indian Companies Act, 1920. The relevant sections are sections 3, 199 to 201 of the Act. Under section 3 (1) the Court which has jurisdiction to entertain the application is the High Court. Section 200 refers back to section 3 (1) in effect; under the latter section, it is the High Court which has jurisdiction. There was no transfer of the decree from the High Court to the District Court in this case. The liquidator simply produced the order of the High Court along with his application for execution. Section 201 only points out the procedure, if the Court had jurisdiction. Only the High Court can execute the decree or order. See *Kayastha Trading and Banking Corporation v. Jai Karan Lal*(1), as to the scope of sections 200 and 201 of the Act.

C. S. Venkatachari for the respondent.—The District Court had jurisdiction under section 200 of the Act. Section 201 shows that production of the order of the High Court before the District Court is enough to empower the latter Court to order execution of the order of the High Court. Otherwise no effect could be given to section 200 of the Act.

In any event, under section 3 (3) of the Act, the proceedings taken before the lower Court, are rendered valid, though taken in a wrong Court. Section 3 (3) of the Act is similar in its effect to section 11 of the Suits Valuation Act.

The JUDGMENT of the Court was delivered by

VENKATA-
SUBBA RAO, J.

VENKATASURBA RAO, J.—The short question is; what is the effect of sections 199, 200 and 201 of the Indian Companies Act read with section 3?

An order was made by the High Court under section 187 ordering the payment by a contributory in respect of a call. He has property in the district of Tanjore against which the liquidator can proceed. The latter accordingly produced the order before the District Judge and applied for its execution. The Judge overruling the objection of the contributory held that he had jurisdiction to enforce the order.

NATARAJAN
v.
NARASIMHA
AYYANGAR.
—
VENKATA-
SUBBA RAO, J.

We have to decide whether the order of the District Judge is right. It is stated by both sides that the only relevant provisions of the Act bearing on the question are the four sections to which we have referred. To them, therefore, we propose to confine our attention. The decision really turns on the meaning of section 200 read in the light of section 3. The relevant portion of the former sections runs thus :—

“ Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place.”

Let us apply the section to the facts of this case. The order was made by the High Court in the course of the winding up. It is sought to be enforced in Tanjore. Under the section, which is the Court that can enforce it? The answer is “ the Court that would have had jurisdiction in respect of such company, if its registered office had been situate at Tanjore.” What then is that Court? The answer to this question is furnished by section 3, which reads thus :—

“ The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.”

In other words, if the registered office of this company is situate at Tanjore, the Court having jurisdiction

NATARAJAN
v.
NARASIMHA
ATTANGAR.
—
VENKATA-
SUBBA RAO, J.

under the Act would be the High Court. From the foregoing statement, it follows that the only Court that can enforce the order in question against property at Tanjore is the High Court of Madras. We do not propose to decide the question, in what manner, in the event of an application being made to the High Court, the order is to be enforced, by direct action or by its being transmitted to the Tanjore Court? That is a point which does not arise at present. We fail to see how sections 199 and 201, relied upon by Mr. Venkatachari, support his contention. The section that confers jurisdiction is section 200 and the other two sections referred to by the learned Advocate merely deal with the mode of enforcing the orders. This, in our opinion, is the proper construction of these previous sections.

The view we have taken receives support from *Kayastha Trading and Banking Corporation v. Jai Karan Lal*(1). Mr. Venkatachari asks what purpose then does section 200 serve? The answer is simple. It obviously can apply to a case where an order made by the High Court of one province is to be enforced in another province; and, as the Patna High Court in the decision we have cited has pointed out, in such a case, it can only be enforced by the High Court of that other province.

Lastly, Mr. Venkatachari seeks to support the order of the lower Court by relying upon section 3, clause 3, which says,

“Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.”

It is very doubtful whether this clause applies to a case of this kind. In any case, it can have no application, as the Patna case has decided, when the

objection was taken at the very commencement and at the proper time.

This appeal is allowed with costs.

The act of the Official Liquidator in applying to the lower Court is *bona fide* and we, therefore, allow him to take his costs out of the estate.

K.R.

NATARAJAN
B.
NABASIMHA
AYYANGAR.

VENKATA-
SUBBA RAO, J.

APPELLATE CIVIL.

Before Mr. Justice Sundaram Chetty.

SRISALADI NAGABUSHANAM (PLAINTIFF), APPELLANT,

v.

1929,
September
18.

VARDHINIDI VENKANNA (DEFENDANT), RESPONDENT.*

Madras Elementary Education Act (VIII of 1920), ss. 34 and 36 and rules under section 36—Education-cess, levied and collected from the landholder—Right of landholder to recover any portion of the cess from his tenants.

A landholder, from whom an education-cess under the Madras Elementary Education Act (VIII of 1920) was collected by the Government, is not entitled to recover from his tenants any portion of the cess so collected.

Although the education-cess is recoverable as an addition to land-cess under the rules framed under section 36 of the Act, yet the former cess does not become land-cess for all purposes, and there is no statutory right given to the landholder to recover any portion of the education-cess from the tenant, as in the case of land-cess.

SECOND APPEAL against the decree of the District Court of West Gōdāvāri in Appeal Suit No. 41 of 1927 preferred against the decree of the Court of the Sub-Collector of Narasapur in Summary Suit No. 98 of 1926.

* Second Appeal No. 1671 of 1927.