BALASUNDARA MUDALIAR v. MAHAMED OOSMAN SAHEB.

will abide the result. The Court-fee paid on the appeal memorandum will be refunded to the appellant on his application.

B.C.S.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

1929, April 18.

THE SABAPATHI PRESS COMPANY, LIMITED, (DEFENDANT), APPELLANT,

v.

R. SABAPATHI RAO AND EIGHT OTHERS (PETITIONERS), RESPONDENTS.*

Indian Companies Act (VII of 1913), sec. 166—Petition for winding up—If can be presented by shareholders who have fully paid up their share capital—Sec. 162 (vi)—Nature of circumstances rendering winding up "just and equitable."

A petition for the winding up of a company under section 166 of the Indian Companies Act (VII of 1913) presented by shareholders who have fully paid up their share capital is maintainable.

In re *National Savings Bank Association*, (1866) 1 Ch. App., 547, and In re *Anglesea Colliery Company*, (1866) 1 Ch. App., 555, followed.

Held, further, on the facts found, that circumstances existed which would render it just and equitable for the Court to direct the winding up of the company under section 162 (vi) of the Act.

Loch v. *John Blackwood, Ltd.*, [1924] A.C., 783, referred to.

ON APPEAL from the judgment of Mr. Justice BEASLEY, dated 16th November 1927, and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High

---

* Original Side Appeal No. 10 of 1928.

Court in O.P. No. 94 of 1922. [In the matter of the Indian Companies Act (VII of 1913) and In the matter of the Sabapathi Press Company, Ltd., Bellary].

K. Venkata Rao, Chairman of the appellant-company, in person.

B. Somayya and *T. R. Arunachala Ayyar* for respondents.

JUDGMENT.

RAMESAM, J.—The first point argued in this appeal is a question of law. It has been contended before us by the Chairman of the Sabapathi Press Company, Ltd., who argued the case personally, that this petition for winding up filed by some shareholders who have paid up their share capital fully is not maintainable. Under section 166 of the Companies Act, an application to the Court for the winding up of a company shall be by petition presented either by the company or by any creditor or creditors, contributory or contributories, etc. Section 156 of the Act runs thus:

"In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following . . . "

Clause (iv) lays down the following qualification:—

"In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member."

It is therefore contended before us that a member who has fully paid up his share is not liable to contribute anything under this clause, and therefore he is not a contributory within the meaning of section 166. Section 158 defines the term "contributory." It means

SABAPATHI PRESS CO., LTD. v. SABAPATHI RAO.

RAMESAM, J.

"every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining, and in all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory."

The corresponding sections of the then English Act were the subject of consideration in English Courts in *In re National Savings Bank Association*(1). The question was considered by KNIGHT BRUCE and TURNER, L.JJ., in a case which came up on appeal before them from an order of the Master of the Rolls. Section 74 of the English Act then under consideration is the same as section 158. Section 38 corresponds to our section 156. It was held by the Lords Justices that all past members of the company were liable to contribute and the qualification that a member shall not be liable to pay more than the unpaid amount of his share does not make him the less a contributory in the particular case where his share capital is fully paid up. The case follows another decision in *In re Anglesea Colliery Company*(2) reported in the same volume at page 555. Following those decisions, we hold that this petition is maintainable. In some cases it has been laid down as a matter of practice that the petition by a single shareholder ought not to be allowed, unless it is supported by other shareholders or creditors. In the present case, the petition is supported by no less than 84 shareholders. The petition also alleges that, in the event of winding up, the petitioners have a tangible interest in the surplus assets. We, therefore, do not see any kind of objection to the maintainability of this petition.

The next point related to the grounds on which the company is sought to be wound up. Section 162, clause (vi) says that a company may be wound up by the

(1) (1866) 1 Ch.App. Cases, 547. (2) (1866) 1 Ch.App., 555.

Court, if the Court is of opinion that it is just and equitable that the company should be wound up. Clauses (i) to (v) of the section do not apply. A similar clause was the subject of construction by the Privy Council in *Loch* v. *John Blackwood, Ltd.*(1). Following that case, our brothers, SPENCER and SRINIVASA AYYANGAR, JJ., reversed in *Sabapathi Rao* v. *Sabapathi Press Company, Ltd.*(2), the original order of KUMARASWAMI SASTRI, J., dismissing the petition, and remanded the case back for consideration on the ground that the reasons alleged in the petition will, if made out, be enough to sustain an order of winding up as just and equitable. The learned Judge, our brother BEASLEY, J., has now found that on one occasion, the press was auctioned and leased out to K.V.S.R. & Co. and that on the next day it was sub-leased to Pola Sankariah for Rs. 10,523. Again, in another year, the same press was leased out to Mr. Ramachander, son of the Chairman, Mr. Venkata Rao. It was then sub-leased to Pola Sankariah for Rs. 14,300. The learned Judge observes that the very large profits made by intermediaries make the transactions not altogether proper. The next point the learned Judge relied on is that suits had to be filed against the company for the recovery of dividends. Mr. Venkata Rao sought to explain this fact by saying that sometimes the shareholders would not draw their dividends, so that they might make this complaint, and various other explanations are given in connexion with the other shareholders. But whatever the explanations may be, there is no doubt that there are numerous cases of shareholders having had to sue the company for recovery of their dividends. The learned Judge also referred the matter to the Official Referee on two points,

(1) [1924] A.C., 783. (2) (1924) I.L.R., 48 Mad., 448.

SABAPATHI PRESS CO., LTD. v. SABAPATHI RAO. — RAMESAM, J.

that is, to look into the accounts and also examine certain dividend warrants for the purpose of satisfying himself on the questions as to whether dividends had been paid and whether Mr. Venkata Rao was authorized by the persons whose names appear on the dividend warrants to give an acquittance or receipt on their behalf. On both these questions, the report of the Official Referee was against Mr. Venkata Rao. It is said that Mr. Venkata Rao had no opportunity of explaining these matters. On the other side, it is stated that his Counsel, Mr. Sydney Smith, did not question the correctness of the report. The learned Judge also observes that there are other matters which he need not go into. Having regard to all those circumstances, we think it is not a matter in which we should differ from the discretion of the learned Judge.

We dismiss this appeal with taxed costs, on the higher scale, of the petitioners. The taxed costs of the Official Liquidator will be recovered out of the estate. The costs of the respondents may be paid out of the sum of Rs. 800 which has been deposited by the appellants as security for costs.

B.C.S.