

MISCELLANEOUS CIVIL.

Before Mr. Justice Mukerji.

1928
August, 3.

IN THE MATTER OF THE SARASWATI TRADING CORPORATION, LIMITED.*

Act No. VII of 1913 (Indian Companies Act), sections 207, 215—Voluntary liquidation—Power of enforcing a call by a suit.

A liquidator in a voluntary liquidation can enforce a call either by means of an application to the court under section 215 of the Indian Companies Act or by means of a suit. The power to bring such a suit is not taken away by section 215.

THE facts of the case fully appear from the judgment of the Court.

Munshi *Shiva Prasad Sinha*, for the applicant.

MUKERJI, J. :—Pandit Subhakaran Upadhiya, contributory No. 69, has raised two objections to his being called upon to contribute towards liquidation of the company. The first is that he was sued by a former liquidator in the year 1918 in the city Munsif's court at Jaunpur and he was successful. In the circumstances, the present liquidators have no right to call on him to make the same payment through these proceedings. The second objection is that the present claim is barred by limitation.

It has been contended on behalf of the liquidators that the city Munsif had no jurisdiction to entertain the suit and the decree that was made in the suit in 1918 does not operate as *res judicata*. On the question of limitation it is urged that these proceedings not being a suit, the Limitation Act has no application.

*Miscellaneous Case No. 215 of 1921.

It appears to me that the powers of a voluntary liquidator are defined in section 207 of the Indian Companies Act. On the question of settlement of list of contributories clause (5) of section 207 is applicable and it runs as follows:—"The liquidator may exercise the powers of the court under this Act of settling a list of contributories and of making calls, etc."

The question is, how is a call to be enforced by the liquidator? One method of enforcing such call is furnished by section 215 of the Indian Companies Act, which says that where a company is being wound up voluntarily the liquidator may apply to the court to determine any question arising in the winding up or to exercise, in respect of enforcing calls, all or any of the powers which the court might exercise if the company were being wound up by the court. In the present case the company is not being wound up by the court. It was a voluntary liquidation till the 1st of July, 1921, when an order was passed by this Court bringing the liquidation under its supervision. In 1918, therefore, it was open to the liquidator to make an application under section 215 of the Indian Companies Act to enforce a call. But the question is, was that the only method in which he could enforce the call or could he enforce the call by a suit? The language of section 215 does not indicate that this is the only method open to the voluntary liquidator. The fact that he has been empowered to seek the assistance of the High Court does not mean and cannot mean that ordinary powers that he may have under the law are taken away from him. A liability having arisen when a list of contributories has been prepared, that liability must be open to enforcement in the ordinary way, unless there is some rule of law which prevents the ordinary way from being availed of.

English cases based on older enactments are no sure guide in these circumstances, and I do not propose to rely

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on the case of *Brighton Arcade Company Ltd., v. Dowling* (1), though it supports my view. In my opinion the reading of section 215 leaves little room to doubt the voluntary liquidator's power to enforce the calls by a suit.

Such being the case, the suit of 1918 was not incompetent and the suit was maintainable. The result is that the present petition must fail as against Pandit Subhkaran Upadhiya. The name of Pandit Subhkaran Upadhiya will be removed from the list of contributories and he will receive his costs from the liquidators. The question of limitation does not require determination. The costs paid by the liquidators may be recouped by them from the assets of the company.

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR *v.* NEUR AHIR.*

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Criminal Procedure Code (as amended by Act No. XVIII of 1923), sections 109, 436—Discharge under section 119—Further inquiry by District Magistrate—Jurisdiction—“Offence.”

A District Magistrate has no jurisdiction under section 436 of the Criminal Procedure Code (as amended by Act XVIII of 1923) to take up in revision, and order further inquiry into, the case of a person against whom proceedings under section 109 were taken and who was discharged under section 119. Such a person is not a “person accused of any offence” within the meaning of section 436. *Velu Taji Ammal v. Chidambaravelu Pillai* (2) and *Emperor v. Roshan Singh* (3) followed. *King-Emperor v. Fyaz-ud-din* (4), not followed.

*Criminal Revision No. 593 of 1928, from an order of H. H. Shaw, District Magistrate of Ghazipur, dated the 3rd of July, 1928.

(1) (1868) L.R., 3 C. P., 175. (2) (1909) I.L.R., 33 Mad., 65.

(3) (1923) I.L.R., 46 All., 235. (4) (1901) I.L.R., 24 All., 148.