

## PRIVY COUNCIL

J.C.\*  
1937  
February, 22

BHARAT DHARMA SYNDICATE, LTD. v. HARISH  
CHANDRA

[On appeal from the High Court at Allahabad.]

*Company—Winding up—Fraud—No allegation of fraud in petition—Fraud found on evidence—Practice and pleading.*

Fraud was not alleged in a petition for winding up a company but allegations of fraud were made in an affidavit in support of the petition. The question of fraud was tried without objection and the High Court directed the winding up on the ground, *inter alia*, of fraud. On appeal it was contended that, as there was no charge of fraud in the petition, no order for winding up should have been made on the ground of fraud.

*Held*, that the objection that fraud was not alleged in the petition, if taken at the trial, would no doubt have led to the necessary amendment being made in the petition and that the objection could not be allowed to prevail in appeal.

Litigants who prefer charges of fraud or other improper conduct against persons should be compelled to place on record precise and specific details of those charges even if no objection is taken on behalf of the parties who are interested in disproving the accusations.

Appeal (No. 87 of 1936) from a decree of the High Court (April 29, 1935).

The appellant was a company registered under the Indian Companies Act. The respondent who was the holder of a single ordinary share in the Syndicate presented a petition to the High Court for the winding up of the Syndicate under section 162 of the Companies Act (VII of 1913) on the ground that the Syndicate was unable to pay its debts. In his petition he set out from his point of view certain facts and particulars relating to the position and working of the Syndicate to support the allegation that the Syndicate was unable to pay its debts.

By an affidavit filed on its behalf the Syndicate denied that it was unable to pay its debts and answered the alle-

\*Present: LORD RUSSELL OF KILLOWEN, LORD MACMILLAN and SIR LANCELOT SANDERSON.

gations made by the respondent. The respondent in reply filed an affidavit wherein he made several serious charges of fraud against Swami Gyananand who controlled the Syndicate's affairs.

The petition was heard by a Bench of two Judges of the High Court and they directed the winding up of the Syndicate, finding in their judgment:

"We find that the Bharat Dharma Syndicate, Ltd. is insolvent and unable to pay its debts. We find that the promoters of the Syndicate were guilty of fraud in its flotation. We find that throughout its existence those who controlled the policy of the Syndicate have been guilty of fraud, that they have falsified the books and balance-sheets of the Company and have deceived the shareholders, creditors and the general public. We find that the approval of the High Court to the reconstruction scheme in 1929 was obtained by fraud. We find further that in the opposition to the present application those in charge of the Syndicate's affairs have made false and fraudulent representations. In these circumstances it is the duty of the Court to order the Syndicate to be wound up."

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*Lionel Cohen, K.C., and J. M. Parikh*, for the appellants.

*Sir Herbert Cunliffe, K.C., Pullan and Miss Clark*, for the respondents.

The argument for the appellants was mainly directed to the facts. It was submitted that the Syndicate was not insolvent and there was no evidence that any single creditor applied for payment and was not paid. On the question of fraud, it was submitted that an order for winding up on that ground should not be made for there was no suggestion of fraud in the petition and the findings of the High Court were not justified on the evidence.

The respondents were not called on.

The judgment of the Judicial Committee was delivered by LORD RUSSELL OF KILLOWEN:

This is an appeal from an order of the High Court of Allahabad, by which it was ordered that the appellant

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company, the Bharat Dharma Syndicate Limited, be wound up. The decree was made on the petition of the respondent, who when he presented the petition was the holder of one ordinary share of Rs.25 upon which Rs.12 had been paid up. He deposited the balance of Rs.13 in court during the proceedings.

The petition was heard by two Judges, THOM, J., and IQBAL AHMAD, J. A long and elaborate reserved judgment was delivered, which dealt in great detail with the history of the company from its formation down to the time when the petition was presented, and with the evidence and credibility of the witnesses in the case. The Court came to the conclusion that the company ought to be wound up on two grounds, viz.—(i) that it was insolvent and (ii) that it was just and equitable that it should be wound up, owing (to put it shortly) to its fraudulent flotation and its fraudulent career, and to the consequent advisability (in the interest of the public and all concerned) of bringing its undesirable life to an end.

Their Lordships have had the great advantage of a full argument by counsel for the appellants, in the course of which they made a close examination of the relevant facts, documents and evidence. Nothing could have been more complete. It was contended that no order for winding up on the ground of insolvency should have been made on the evidence, and in no event at the instance of this petitioner; and further that no order should have been made on the "just and equitable" ground, because no charge of fraud had been made in the petition, and no fraud had been established by the evidence in the case.

In regard to the first contention, their Lordships feel no doubt that this company is, and for the greater part of its existence has been, insolvent. Whether an order for winding up on this ground should have been made at the instance of this petitioner is of small importance in view of the fact that in their Lordships' opinion no case has been made out by the appellants which would justify them in interfering with the decision of the High Court.

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The objection that fraud was not alleged in the petition cannot prevail at this stage. The allegations were made in the affidavit evidence, and the whole matter was clearly fought in the High Court on those lines; and apparently without any objection being taken, which had it been taken would no doubt have led to the necessary amendments being made in the petition.

Upon the merits of the case, however, their Lordships feel bound to state—(but without having heard counsel for the respondent on the subject)—that they are not prepared to accept as established by the evidence all the findings of fraud embodied by the High Court in the last paragraph but three of the judgment. They think that it is only right to make this clear in view of the possibility of criminal proceedings which is indicated in the next succeeding paragraph of that judgment. Nevertheless, without pausing to consider in detail whether the unfavourable view taken by the learned Judges of the doings of this company, and of the actions of Gyananand and others who controlled the company's affairs, was completely justified in all respects, their Lordships are satisfied that there was ample material upon which the Judges of the High Court might, in their discretion, reach the conclusion that this company should not be permitted to continue in existence, and that it was just and equitable that it should be wound up.

Their Lordships are not so well qualified, as were the Judges who heard many of the witnesses and observed their demeanour, to form a conclusion as to the effect of the evidence as a whole. They observe however that after all the evidence had been placed before the Court, counsel appearing for the company based his opposition to a winding up order (which, he admitted, must have been made had the company been an ordinary commercial concern) upon the ground of the exceptional and religious or national objects of this company. That

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plea was not advanced before the Board; but the fact that it was raised in the High Court, coupled with the admission which preceded it, throws a strong light on the effect which the whole evidence had produced.

Their Lordships are of opinion that the order for winding up this company was justified both in fact and in law, and that this appeal should fail. They will humbly advise His Majesty accordingly. The appellants will pay the costs of the appeal.

Before parting with this case their Lordships desire to call attention to the great difficulty which is occasioned both to persons charged with fraud or other improper conduct, and to the tribunals which are called upon to decide such issues, if the litigant who prefers the charges is not compelled to place on record precise and specific details of those charges. In the present case the petitioner ought not to have been allowed to proceed with his petition and seek to prove fraud, unless and until he had, upon such terms as the Court thought fit to impose, amended his petition by including therein full particulars of the allegations which he intended to prove. Such cases as the present will be much simplified if this practice is strictly observed and insisted upon by the Court, even if, as in the present case, no objection is taken on behalf of the parties who are interested in disproving the accusations.

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondents: *Douglas Grant & Dold.*

## REVISIONAL CIVIL

*Before Mr. Justice Niamat-ullah*

1937  
*January, 19*

JAGDAMBA SINGH AND ANOTHER (PLAINTIFFS) *v.* RAM  
SARUP AND OTHERS (DEFENDANTS)\*

*Agra Tenancy Act (Local Act III of 1926), sections 44, 230—  
Suit by landlord to eject a trespasser—Whether cognizable  
by civil court—Jurisdiction—Civil and revenue courts.*