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EMPEROR
v.
SAT NARAIN

But I find that the view that I have taken is fortified by several decisions of other High Courts. I need only refer to the following cases: *Queen-Empress v. Lakhmidas Makandas* (1), *Emperor v. Bhagubhai Dwarkadas* (2), *Belvi v. Emperor* (3), *Motilal Gangadhar Kabre v. Emperor* (4), *Ashutose Roy v. Harish Chandra* (5), *Abdul Majid v. Nripendra Nath Mazumdar* (6) and *Ponnappa v. Vanamamalai Jeer* (7).

The result therefore is that I allow this application in revision and set aside the conviction of the applicants. The fine, if any, paid by them shall be refunded.

MISCELLANEOUS CIVIL

Before Mr. Justice Allsop

IN THE MATTER OF THE BENARES BANK, LTD.*

1939
August, 17

Companies Act (VII of 1913), section 277N—Applicable when company is only temporarily embarrassed but is essentially solvent—Object of the report from the Registrar.

A company is not entitled to an order under section 277N of the Companies Act for stay of actions and proceedings against the company unless it is established that the company is in an embarrassed position only temporarily and that although it is unable, for the time being, to meet its obligations its financial position is essentially solvent and secure. It is not the intention of that section that a company in an insolvent position should be allowed to continue its operations under the protection of the court and that those who had dealings with the company should be prevented under the orders of the court from seeking legal remedies to which they would otherwise have been entitled. The court could only undertake the responsibility of barring these legal remedies if it was certain within reasonable limits that people would not suffer any real loss by being stopped from claiming them.

The intention of obtaining the report from the Registrar, mentioned in sub-section (2) of section 277N, is that he should examine and lay before the court the true financial position of the company. Where the Registrar's report, in spite of his

*Miscellaneous Case No. 553 of 1939.

(1) (1889) I.L.R. 14 Bom. 165.

(2) (1914) 16 Bom. L.R. 684.

(3) A.I.R. 1931 Bom. 325.

(4) A.I.R. 1931 Bom. 513.

(5) (1924) 29 C. W. N. 411.

(6) (1934) 38 C. W. N. 556.

(7) A.I.R. 1920 Mad. 847.

recommendation for an order under section 277N, showed that the company was not able to meet its obligations, as its assets were much below its liabilities, an order under the section would not be justified.

Mr. B. Malik, for the applicant.

Messrs. Muhammad Husain, R. K. Malaviya, D. Sanyal, J. Swarup, Shah Habib, M. A. Kazmi and Raj Bahadur Jaini, for the opposite parties.

ALLSOP, J.:—This is an application filed on the 11th of July, 1939, that this Court should pass an order under section 277N of the Indian Companies Act staying the commencement or continuance of all actions and proceedings against the applicants for a period of one year with liberty to apply for an extension of time. The application is made on behalf of the Benares Bank, Ltd. A learned Judge of this Court passed an *interim* order during the vacation on the 12th of July, 1939. He had before him a report of the Registrar of Joint Stock Companies as required by sub-section (2) of section 277N. This report recommended that proceedings should be stayed as contemplated by section 277N for a period of four months upon certain conditions and the learned Judge passed an order accordingly, but he directed that notice should be published in certain newspapers which he indicated and that the matter should be put up again before me after a month, so that any creditors or depositors might make objections to the application. He made it clear that the order which he passed was liable to be recalled or modified upon the basis of any objections that might be filed. I may mention that one of the conditions under which the order for stay of proceedings was passed was that the bank should have three representatives of the depositors upon its Board.

The matter is before me now in pursuance of the order passed by the learned Judge on the 12th of July and certain applications have been put in by depositors and creditors. There are three applications on behalf of three persons who request that the

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Board should be directed to pay them sums of money which they deposited in order to obtain drafts on other banks in Bombay. These drafts were dishonoured because the bank suspended payment and it is urged that the money should be paid back. Then there are three applications that the number of directors representing the depositors should be increased from three to six or eight. Learned counsel who appears on behalf of the applicants has, however, in the course of arguments urged that the *interim* order for staying proceedings should be recalled. There is finally an application on behalf of Bata Krishna Das directly urging that the order for stay of proceedings should be withdrawn. This is supported by Mr. Malaviya who has put in vakalatnamas on behalf of a number of other persons who are alleged to be depositors in the bank. I may say at once that I cannot pass any order to the directors to make payments of money deposited in order to obtain drafts for payment upon other banks. This is a matter which must be decided in the proper way in the proper court.

I have to consider the main question whether the order staying proceedings under section 277N of the Indian Companies Act should be withdrawn or whether it should be confirmed under the same conditions or under different conditions. This question really turns upon the answer to the further question whether the bank is entitled to ask the Court to pass an order of this kind. In order to do so it must establish that it is temporarily unable to meet its obligations and I consider that the intention of obtaining a report from the Registrar of Joint Stock Companies is that he should examine and inform the Court of the true financial position of the company. The Registrar's report in spite of his recommendation is on the facts absolutely against the company on this point because he has undoubtedly found that the company is not able to meet its obligations and that its assets are about 7 lakhs less than its

liabilities. It has been argued on behalf of the bank that the Registrar of Joint Stock Companies and the accountants who assisted him have underestimated the assets of the bank and a reference has been made particularly to a sum alleged to be due from a firm called Laik and Banerji. It may be that the estimate of the Registrar of Joint Stock Companies is too conservative, but if I reject that estimate there is nothing else before me which could satisfy me that the position of the bank is essentially secure. Even if it is true that the assets of the company have been underestimated in the report, it still seems at least likely that the capital has been wholly or in part dissipated and that the bank is not really in a solvent condition. In these circumstances I do not think that it can fairly be said that the company is unable to meet its obligations only temporarily. The Chairman of the Board of Directors was present in Court and was permitted to present arguments himself in favour of the company's application. In the course of these arguments he said that the company wished to call meetings of creditors and to enter into some scheme of composition with them. He gave an outline of the scheme. The company is to pay at the rate of $1\frac{1}{2}$ per cent. per annum on sums deposited with them. There are said to be about 4,000 depositors who have sums of Rs.100 or less in deposit with the company. These are to be paid off within two years. The remaining 4,000 depositors who have larger sums in deposit are to be offered payment of $6\frac{1}{4}$ per cent. in 1939 and 1940, $12\frac{1}{2}$ per cent. in 1941 and 1942 and higher percentages in the three following years during which their claims will finally be met. Even on this scheme it is obvious that the company has no hope of meeting all its liabilities for another period of six years and these liabilities are liabilities only to the depositors. It does not appear whether anything will be left over for the shareholders of the company. It may be that the directors and the present Chairman are actuated by the best of motives

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and that they think and hope that their arrangements are those best suited to meet the liabilities of the company, but although that may be so, that is no ground in law for passing an order under section 277N of the Indian Companies Act, unless the Court really is satisfied that the position of the company is embarrassed only temporarily. I am very far from being convinced of this fact from the material before me. I must at least suspect very strongly that the financial position of the company is very far from being secure. It was never the intention, I am sure, of the legislature in enacting section 277N of the Indian Companies Act that a company in an insolvent position should be allowed to continue its operations under the protection of the court and that those who had dealings with the company should be prevented under the orders of the court from seeking legal remedies to which they would otherwise have been entitled. The court could only undertake the responsibility of barring these legal remedies to which people would ordinarily be entitled if it was certain within reasonable limits that they would not suffer any real loss by being deprived of these remedies. I cannot say that I am satisfied that the company is in a solvent condition essentially and therefore I am unable to maintain the order passed for the time being under section 277N of the Indian Companies Act. I direct that the order shall be withdrawn and that the application made by the company shall be dismissed. I make no orders as to costs.