

MISCELLANEOUS CIVIL

Before Sir C. M. King, Knight, Chief Judge
and Mr. Justice G. H. Thomas

THE PEOPLES BANK OF NORTHERN INDIA, LTD.,
LAHORE (IN LIQUIDATION) THROUGH MR. BHAGWATI
SHANKAR, THE OFFICIAL LIQUIDATOR (APPELLANT) v. THE
LUCKNOW SUGAR WORKS, LTD., LUCKNOW (IN
LIQUIDATION) THROUGH ITS OFFICIAL LIQUIDATOR (RESPON-
DENT)*

1936
May, 7

*Indian Companies Act (VII of 1913), sections 230 and 234—
Creditors referred to in section 230, whether entitled to
priority—Exercise of Court's discretion to order payment in
full to all other creditors, whether reasonable—High Court,
whether should interfere—Mortgagor and mortgagee—Bank
having debenture account and cash credit account on securi-
ties—Securities, crystallising of—Bank, whether entitled to
usufruct of property.*

The creditors referred to in section 230, Indian Companies Act, are persons entitled to priority under the Statute and as of right, but the Court has, under section 234, been allowed a discretion to order payment in full to any classes of creditors other than those referred to in section 230. Where the discretion used by the trial Judge under section 234 of the Act is not capricious or in disregard of any legal principle, the Court of Appeal should be very slow to interfere with the exercise of discretion unless it is satisfied that the discretion was unreasonably exercised.

If a Bank has a debenture account with a company on the security of block and machinery of a sugar mill and a cash credit account on the security of goods, stores and machinery and the securities crystallise on an order of liquidation being made against the company, the Bank is not entitled to the usufruct of the property, e.g., money recovered by leasing out the sugar mill, in that the security of the bank as debenture-holder was limited to block and machinery, and whether it was floating or a fixed security, it created no new rights in the debenture-holder, just as in the case of a simple mortgage of a house the mortgagor has a right to rent it but the mortgagee, who is not in possession, cannot claim the rent.

*Miscellaneous Appeal No. 25 of 1936, against the decree of the Hon'ble Mr. Justice Bisheshwar Nath Srivastava, O.B.E., sitting as a Company Judge, dated the 12th of March, 1936.

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Dr. K. N. Katju and Mr. Bhawani Shankar, for the appellant.

Mr. K. N. Tandon, Liquidator, in person.

KING, C.J. and THOMAS, J.:—This is an appeal against the orders of the Hon'ble Mr. JUSTICE B. N. SRIVASTAVA, dated the 12th of March, 1936, and the 11th of May, 1934.

The facts which are necessary for the purposes of this appeal are that the Lucknow Sugar Works Co., Ltd., which is in liquidation, had dealings with the appellant Bank under the heads of (1) Debenture account on the security of block and machinery and (2) Cash credit account on the security of goods, stores and machinery.

On the 22nd of September, 1933, the Lucknow Sugar Works Co., Ltd., decided to go into voluntary liquidation but as some of the creditors were dissatisfied, they applied to this Court in October and November, 1933, for compulsory winding up and in May, 1934, an order was made to that effect. Several applications were made by the liquidator, appointed in the voluntary liquidation, for the stay of execution and protection of the property which was under attachment, and in December, 1933, the learned Judge directed that attachments should be withdrawn and proceedings in execution be stayed and that the property be handed over to the liquidator who was appointed in the voluntary liquidation. The learned Judge directed the liquidator to lease out the mills. Most of the money which is now in the hands of the liquidator is the money realised from the lease of the mills made from year to year.

The question to be decided in this appeal is whether the appellants can claim any right to a share in this money and whether the security to which they are entitled can extend to it.

The learned Judge by his order dated the 11th of May, 1934, classified the unsecured debts under six heads. No. (1), i.e. arrears of salaries of the staff and

wages of workmen and No. (5) sums due to the Crown for income-tax and to the local authorities, are debts which are entitled to priority under section 230 of the Indian Companies Act. The present dispute is about the items covered under heads 2, 3 and 4. This order of the 11th of May, 1934, was passed without notice to the appellants but was communicated to them by the official liquidator in June, 1934, but they acquiesced in the order and did not question it at any time before the making of the application on the 23rd of April, 1935, i.e. nearly 11 months after the order was passed.

The contention of the learned Counsel for the appellants with regard to the Debenture Account is that the Bank is a secured creditor and therefore all the money should be paid to it. The income must form part of the security and that as soon as the order of liquidation was made the securities were crystallised and it must enure for the benefit of the creditor.

The security of the appellants as debenture-holder is limited to block and machinery, and whether it is a floating security or fixed security it creates no new rights in the debenture-holders. The old security remains which in this case is block and machinery and because the security has crystallised it does not mean that the appellants are entitled to the usufruct of the property. Take the case of a simple mortgage of a house. The mortgagor has a right to rent it but the mortgagee, who is not in possession, cannot claim the rent. We have no doubt that the appellants' security as debenture-holder is limited to block and machinery and it cannot extend to the money realised from the leases. It may be noted that the learned Counsel for the appellants, who appeared before the learned trial Judge, conceded the point that neither of the two securities claimed by the appellants could extend to the money realised from the leases.

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It was next contended by the learned Counsel for the appellants that the learned Judge should not have given priority and ordered payment in full under section 234(1) (i) of the Indian Companies Act to the other creditors whose claim did not fall under section 230 of the Act. It was urged that the intention of this clause could not be to give priority to creditors who could not bring their claims under either of the clauses (a), (b) and (c) of section 230.

We agree with the opinion of the learned trial Judge that the creditors referred to in section 230 are persons entitled to priority under the Statute and as of right, but the Court has under section 234 been allowed a discretion to order payment in full to any classes of creditors other than those referred to in section 230. No authority has been cited by the learned Counsel for the appellants to the contrary. The learned Judge has given very good reasons in his order of the 11th of May, 1934, for allowing payment in full to the creditors mentioned under the different heads. The liquidation will take years and some of the creditors to whom payment has been ordered are entitled to very petty sums. The discretion used by the learned Judge under section 234 of the Act is not capricious or in disregard of any legal principle and this Court should be very slow to interfere with the exercise of discretion unless it was satisfied that the discretion was unreasonably exercised.

The decision of the learned Judge is correct and there are no grounds for interference and we dismiss the appeal with costs.

Appeal dismissed.

King, C.J.
and Thomas,
J.