

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Wilberforce.

1920

Feb. 17.

DEVI DITTA MAL AND UMAR BAKESH
 (CONTRIBUTORIES)—*Appellants*

versus

OFFICIAL LIQUIDATOR, AMRITSAR BANK,
 LIMITED, IN LIQUIDATION, AND OTHERS—
Respondents.

Civil Appeal No. 311 of 1920.

Companies (in liquidation)—Solvent company—surplus funds after paying creditors in full whether payable to creditors in payment of interest due subsequent to date of winding-up order—Indian Companies Act, VI of 1882, sections 147 and 169—Joint appeal from order dealing with two separate cases—notice of appeal not served within three weeks.

The Official Liquidators of the People's and Amritsar Banks in liquidation paid up 16 annas in the rupee to the creditors, and there remained still a substantial surplus in their hands. The creditors claimed that they were entitled to the surplus in payment of interest accrued due since the dates of the winding-up orders while the contributories claimed that the surplus funds should go to them.

Held, that the Banks under liquidation having turned out to be solvent the creditors whose debts carried interest were entitled to claim out of surplus assets interest subsequent to the date of the winding-up order.

In re *Humber Ironworks and Shipbuilding Co. (Warrant Finance Co's Case)* (1), In re *Duncan and Co.* (2), In re *Whitaker* (3), *Ram Saran Das v. Bakeshar Nath* (4), In re *Pereira* (5), In re *Muhammad Mahmud Shah* (6), and In re *General Rolling Stock Co.* (7), Halsbury's Laws of England, Volume 5, page 512, Lindley on Companies, page 1009, Buckley's Company Law, page 474 (9th Edition), and Stieble's Company Law, page 1222, followed.

Held also that, although a joint appeal against an order dealing with two separate cases is not sufficient, as in this case all the

(1) (1868-9) L. R. 4 Ch. Ap. 643.

(2) (1905) 1 Ch. D. 307.

(3) (1904) 1 Ch. D. 299.

(4) 55 P. W. R. 1907.

(5) (1883) 1 Mad. H. C. R. 217.

(6) (1886) 1 L. R. 13 Cal. 66.

(7) (1872) L. R. 7 Ch. Ap. 646 (649).

parties concerned in both cases were served with notice and the mistake was merely one of form it could be rectified by putting in a properly stamped appeal with the second case.

Held further, that though the respondents did not receive notice of the appeal within three weeks, as provided for by section 169, as the present case did not show any marked want of diligence on the appellants' part, the appeal was properly instituted.

Daulat Ram v. The Woollen Mills Co., Limited, Delhi (1), Tara Chand Jeramdas v. Official Liquidators, People's Bank of India, Limited (2), Hira Lal v. Himalaya Glass Works Co. (3), and Bishan Das v. Liquidator, Doaba Bank, Limited, Amritsar (4), distinguished.

The facts out of which the present appeal arose are as follows :—

In 1913, the Court passed orders for the compulsory winding up of the People's Bank of India, and of the Amritsar Bank, and Official Liquidators were appointed. The Liquidators paid 16 annas in the rupee to the creditors, and there remained still considerable surplus funds (especially in the case of the People's Bank) in their hands.

The creditors of the two Banks claimed before the Liquidation Judge (Mr. Justice Broadway) that they were entitled to those surplus funds in payment of interest accrued due since the dates of the winding-up orders. Mr. Rustomji, a shareholder and contributory of both the Banks, objected and prayed for a declaration that the creditors were not entitled to any further payment by way of interest and that the Official Liquidators should be directed to distribute the surplus assets among the contributories.

Mr. Rustomji at his request was appointed representative of the general body of contributories in the case of both the Banks, and Lala Har Gopal, Vakil, was appointed representative of the general body of creditors of the People's Bank, and Lala Ohhaju Ram representative of the general body of creditors of the Amritsar Bank.

1920

DEVI DITTA
MALv.
OFFICIAL LIQUIDATOR,
AMRITSAR BANK,
LIMITED.(1) 95 P. B. 1908.
(2) 45 P. R. 1915.(3) 176 P. L. R. 1911.
(4) 42 P. L. R. 1916.

1920

DEVI DITTA
MAL

v.

OFFICIAL LIQUI-
DATOR, AMBIT-
SAR BANK,
LIMITED.

The Liquidation Judge framed the following issues:—

(1) Are the creditors or the contributories entitled to receive the surplus ?

(2) Can the creditors claim interest on their claims subsequent to the date of the winding-up order.

And held that the contributories were not entitled to be paid anything out of the surplus assets in the two Banks so long as the creditors whose debts carried interest had not been paid the interest payable on their debts subsequent to the date of the winding-up order. In his judgment the learned Judge cited the following rulings: In re *Duncan and Co.* (1), In re *Humber Ironworks and Shipbuilding Co. (Warrant Finance Co.'s Case)* (2), in re *Pereira* (3), In re *Muhammad Mahmud Shah* (4), *Ram Saran Das v. Bashesar Nath* (5).

A joint appeal was preferred by Sheikh Umar Bakhsh and Lala Devi Ditta Mal, though the latter was not a contributory of the People's Bank. The judgment of the trial judge was dated the 28th October 1919. Application for copy of judgment was made on the 31st October 1919, and copy was attested on the 6th November, and was ready for delivery on the same day, but delivery was actually taken on the 12th November 1919. The appeal was filed on the 13th November with the request that as the service of the summonses was to be effected within three weeks the time might be sufficiently extended. The appeal was admitted to a Division Bench on the 19th November with the remark that the time for service of notice was extended. The process fees were deposited on the 21st November and Lala Har Gopal was served on the 10th December 1919, Lala Chhajju Ram on the 11th December 1919, and the Official Liquidators on the 8th January 1920.

Appeal under section 169, Indian Companies Act 1882, from the order of Mr. Justice Broadway, dated the 28th October 1919.

SANTANAM, for Appellants.

MOTI SAGAR AND BALWANT RAI, for Respondents,
and Official Liquidator in person.

(1) (1905) 1 Ch. D. 307.

(2) (1868-9) L. R. 3 Ch. Ap. 643.

(3) (1863) 1 Mad. H. C. R. 217.

(4) (1886) I. L. R. 13 Cal. 66.

(5) 55 P. W. R. 1907.

The judgment of the Court was delivered by—

WILBERFORCE, J.—The facts of this case are simple. Briefly, in the matter of the liquidation the People's and Amritsar Banks the Official Liquidator has been able to pay off the creditors in full. Considerable assets, however, remain; the amount in the case of the People's Bank being stated to be about 16 lakhs. The surpluses have been claimed by the creditors, whose debts were carrying interest, on one side, and by the contributories on the other. Mr. Justice Broadway, after referring to English and Indian authorities, has decided that the contributories are entitled to nothing as long as creditors, whose debts carried interest, have not been paid up in full. The result of this order, it is said, will be in the case of the People's Bank that the creditors will receive some three annas in the rupee interest, while nothing will be left for the contributories. Against this decision Mr. Santanam, on behalf of the contributories, preferred an appeal which he presented on the 13th November and, after an objection regarding Court-fee, presented again on the 14th November. The judgment of Mr. Justice Broadway was dated the 28th October.

Mr. Moti Sagar, on behalf of the creditors, raises two preliminary objections. In the first place, he objects that as Mr. Justice Broadway's order dealt with two separate cases, two appeals were necessary, while only one had been presented. To this Mr. Santanam replies that he appeared in the trial Court and received one fee for the two cases which he therefore considered to have been consolidated. We are not impressed by this argument, and consider that separate appeals should certainly have been presented. As, however, all the parties concerned in both cases were served with notices in respect of the one appeal and as the mistake was merely one of form, we decided to allow Mr. Santanam to rectify his error by putting in a properly stamped appeal to deal with the second case. The second objection taken by Mr. Moti Sagar was that the provisions of section 169 of the Companies Act of 1882 had not been complied with, inasmuch as the respondents did not receive notice of the appeal within the three weeks provided for in that section. They

1920

DEVI DITTA
MAL
v.
OFFICIAL LIQUIDATOR,
AMRITSAR BANK,
LIMITED.

1920

DEVI DITTA
MALv
OFFICIAL LIQUIDATOR,
AMRITSAR BANK,
LIMITED.

applied for extension of the period on the 19th November to a Judge of this Bench and this was granted subject to just exceptions. Mr. Moti Sagar, however, urges that in view of the inexcusable delay and laches of the appellants no indulgence should be granted. He points out that there was in the beginning much delay in applying for copies of Mr. Justice Broadway's judgment, and that for no reason the appellants wasted the period from the 6th to 12th November in waiting for these copies after they had been prepared. He next points out that, although process-fees were put in on the 21st November, proper addresses were not supplied till the 28th November with the result that Lala Hargopal was not served till the 10th December, Ohhaju Ram till the 11th December and the Official Liquidator till the 8th January. He refers to *Daulat Ram v. The Woollen Mills Company Limited, Delhi*, (1), *Tarachand Jeramdas v. Official Liquidators, People's Bank of India Limited* (2), *Hira Lal v. Himalaya Glass Works Co.* (3), and *Bishen Das v. Liquidator, Doaba Bank, Limited, Amritsar* (4), as authorities that no concession should be allowed to the appellants who have shown such want of diligence. To these objections Mr. Santanam replies that the three weeks' period laid down in section 169 has been omitted from the present Act of 1913, an indication that the Legislature considered this period unduly short for the circumstances of this country, and he also urges that he was not to blame for some of the delay. He points out, for instance, with justice that no elaborate addresses were necessary for such well-known persons as Lala Hargopal and Lala Ohhaju Ram, and that the office therefore was not justified in keeping back the issue of notices for further particulars. He also states that his clients did not take the leading part in the proceedings before Mr. Justice Broadway in which the contributors were represented by Mr. Rustomji and that his clients therefore expected Mr. Rustomji to appeal. He finally contends that the circumstances in the authorities relied on by Mr. Moti Sagar were totally different from those in the present case. In *Daulat Ram*

(1) 91 P. R. 190.
(2) 48 P. R. 1915.

(3) 176 P. L. R. 1911.
(4) 42 P. L. R. 1918.

v. *The Woollen Mills Company, Limited, Delhi*, (1), for instance, the order of the District Judge was passed on the 26th February and the appeal was not instituted till the 17th May and notice of appeal was not issued till the 31st July. In *Bishen Das v. Liquidator, Doaba Bank, Limited, Amritsar* (2) no extension of time was even applied for. In *Tarachand-Jeramdas v. Official Liquidators, People's Bank of India Limited* (3) the order of the District Judge was passed on the 21st August 1914 and the appeal was not filed till the 5th October and process-fees for issue of the necessary notices were not paid till the 5th January. We agree with Mr. Santanam that the present case does not show any marked want of diligence and we, therefore, overrule his objection and hold that the appeal is properly instituted.

1920
 DEVI DINTA
 MAL
 v.
 OFFICIAL LIQUIDATOR,
 AMRITSAR BANK,
 LIMITED.

As for the merits of the appeal, Mr. Justice Broadway's decision was largely based upon the assumption that the Banks in question have now become solvent companies as their creditors have been paid off in full. He referred to many authorities that in such a case such creditors could claim interest accruing after the date of the winding-up order. Mr. Santanam opened his arguments by strongly contesting the view that the Banks in question were now solvent companies. Solvency meant a power to discharge all liabilities. He contended that in this view neither Bank was yet in a position to discharge all its liabilities and pointed out that they have only arrived at their present position owing to the delay in liquidation and from interest accrued on moneys received and from calls on shares realised from contributories. We are not impressed by this argument and have no difficulty in agreeing with Mr. Justice Broadway that the Banks in question having paid off their liabilities which existed at the date of the winding up order have become solvent. This is the criterion of solvency which has been accepted in all English authorities and Mr. Santanam is unable to refer to any authority to the contrary.

(1) 95 P. R. 1908.

(2) 42 P. L. R. 1913.

(3) 46 P. R. 1915.

1920

DEVI DITT
MALOFFICIAL LIQUIDATOR,
AMRITSAR BANK,
LIMITED.

Mr. Santanam next urged that under section 147 of the Indian Companies Act of 1882 the assets of a company could only be applied in discharge of liabilities "existing at the date of the said order," i.e., the winding-up order. He laid much stress upon the words "existing at the date of the said order," and pointed out that these words did not appear in the English Companies Acts and had been omitted from the Indian Act, VII of 1913. He further contested the view taken by Mr. Justice Broadway that any of the ordinary bankruptcy rules could be applied to companies in liquidation. He pointed out that a special provision had now been made in the Act of 1913 in section 229, and that in the same way in English Law bankruptcy rules had been made applicable to companies by the Judicature Act of 1875. On this point again we have no difficulty in agreeing with the decision of Mr. Justice Broadway. Even before the passing of the Judicature Act of 1875 English Courts applied certain rules of bankruptcy to the case of companies in liquidation. The leading case on this point is *In re Humber Ironworks and Shipbuilding Company (Warrant Finance Company's case)* (1), in which it was held that in the case of there being a surplus creditors could claim subsequent interests. This decision in no way conflicted with previous English decisions and the Judicature Act of 1875 was not rendered necessary by this judgment. The same rule has been followed in other judgments. There are two recent decisions *In re Duncan and Co.* (2), and *In re Whitaker* (3). There is also the unanimous opinion to the same effect of all the leading authorities on Company Law, see for instance Volume V, "Halsbury's Laws of England," page 512, "Lindlay on Companies," page 1009, "Buckley on Company Law," page 474, 9th Edition, "Stibel on Company Law," page 1222, and others. Indian Courts also have followed the same rule and applied Insolvency Law to such cases in judgments quoted by Mr. Justice Broadway. The judgments *Ram Saran Das v. Bashed-shar Nath* (4), *In re Pereira* (2), and *In re Mahomed*

(1) (1868-9) L. R. 4 Ch. Ap. 643.

(3) (1904) 1 Ch. D. 299.

(2) (1905) 1 Ch. D. 307.

(4) 55 P. W. R. 1907.

(5) (1863) 1 Mad. H.C.R. 217.

Mahmud Shah (1) are specially applicable. We consider, therefore, that the trial Court was undoubtedly correct in applying ordinary insolvency rules to this case. The words "existing at the date of the said order" from which Mr. Santanam has attempted to derive advantage appear, as a matter of fact, to have been hardly necessary. They did not exist in the English Act of 1862, but it was always taken for granted that the liabilities to be discharged were those existing at the time when the winding up order was made (see, for instance, *In re General Rolling Stock Company* (2)). There is no force in our opinion in the argument that the inclusion of these words in the Indian Act in any way detracts from the value of English decisions.

For the above reasons we agree with the judgment of the trial Court and dismiss the appeal.

Mr. Raghunath Sahai on behalf of Lala Harkishan Lal as a creditor of the Bank complained that the order of the trial Court was defective, inasmuch as it did not fix the rate of interest to be paid to the creditors. This matter, however, as we understand the judgment appealed against, has not yet been considered by the trial Court and we are not therefore in a position to deal with the question involved. The prayer for a uniform rate of interest can be made to Mr. Justice Broadway. We dismiss the cross-objection.

A. N. C.

Appeal dismissed.

1920

DEVI DITTA
MAL
v.
OFFICIAL LIQUIDATOR,
AMRITSAR BANK,
LIMITED.