

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Bevan-Petman.

GHANSHAM DAS—*Appellant,*

versus

HINDUSTAN BANK, LTD. (IN LIQUIDATION),

THROUGH LIQUIDATOR—*Respondent.*

Civil Appeal No. 1008 of 1919.

Indian Companies Act, VI of 1882, section 169—order of liquidating Judge reducing the remuneration of an employee of the official liquidators fixed by the predecessor of the Judge—whether open to appeal.

Held, that section 169 of the Companies Act of 1882 is not applicable to an order of the liquidating Judge reducing the remuneration of an employee of the official liquidators sanctioned by the predecessor of the Judge, and consequently no appeal from such an order can be entertained.

Miscellaneous first appeal from the order of N. H.

Prenter, Esquire, District Judge, Lahore,

dated 2nd May 1919.

HARGOPAL, for Appellant.

NIRANJAN PARSHAD, for Respondent.

BEVAN-PETMAN, J.—This is an appeal under section 169 of Act VI of 1882 from an order of Mr. Prenter, liquidation Judge, disallowing a sum of Rs. 200 alleged by the appellant to be due to him under a previous order of Mr. Ellis, the then liquidation Judge. Preliminary objections are raised that the appellant, being neither a creditor nor a contributory, has no *locus standi* to appeal, that Mr. Ellis had no power or jurisdiction to pass the order relied on inasmuch as the appellant was merely an employee of the respondent and other liquidators of companies in liquidation under an arrangement made by them and sanctioned by the liquidation Judge for the time being, and that, in any event, Mr. Prenter's order is a ministerial and not a judicial one, that this Court cannot interfere in a matter purely within his discretion, and that if it is alleged that there has been any breach of a contract on the part of the respondent the appellant has his remedy by suit.

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For the appellant it is contended that section 169 of the Act gives an unrestricted right of appeal from all orders of the liquidation judge not only in respect of the nature or subject matter of the order, but in respect of the person aggrieved by such order, that Mr. Ellis' order was based on a previous order of *Rai Bahadur* Damodar Das, liquidation judge, to the effect that the appellant was to receive half of the respondent's remuneration as official liquidator, that Mr. Ellis' order was final inasmuch as, though a review from his order was competent, such review was governed by the provisions of the Code of Civil Procedure and the limitation of 21 days provided in section 169 of the Indian Companies Act of 1882, that therefore Mr. Prenter was not competent to review Mr. Ellis' order which, in any case, was time barred, no notice having been served on the appellant within 21 days, that the appellant was by virtue of section 166 of the Act executing the order of Mr. Ellis, that Mr. Prenter, as executing judge, had no power to question, or go behind, that order and that the appellant had been appointed Superintendent of the liquidation office direct by the Court and not by any private arrangement of the respondent and other official liquidators.

It appears that the appellant was expressly appointed by *Rai Bahadur* Damodar Das, then liquidation Judge, who made an arrangement whereby the work of the official liquidators of several companies in liquidation was carried on in a central office and the pay of the appellant and other staff was made from a fund to which all the liquidators contributed. The judge himself fixed the salaries. The "main file" shows that on the 6th July 1917 the judge made a long note on the affairs of the Hindustan Bank and paragraph 12 of this note is to the effect that the appellant had worked well, and that he also holds a Power-of-attorney from the official liquidators of the Hindustan Bank and that he intended giving the appellant a substantial reward at the close of the liquidation. In October 1917 the appellant made an application to Mr. Ellis, who had succeeded as liquidation Judge, in which he laid claim to certain pay, alleged to be due to him as

Superintendent of the Central Office, and also brought to notice that originally he had, in addition to other work, been acting under a power-of-attorney given him by the two official liquidators of the Hindustan Bank, and that when *Rai Sahib Pandit Wazir Chand*, one of them, resigned he had been nominated by the creditors of the Bank as a joint liquidator, but that, as an understanding had been arrived at, with the approval of the Court, between him and the respondent, the remaining liquidator, whereby he was to continue to act under the power-of-attorney and receive half of the respondent's remuneration, he was not specifically appointed liquidator. He claimed therefore that the respondent should be made to carry out the arrangement made. He later attached a memo. obtained by him from *Rai Bahadur Damodar Das* which supported his allegations. On the 5th November 1917, Mr. Ellis, holding that *Rai Bahadur Damodar Das* had intended giving the appellant a bonus of Rs. 1,000, and that there was an understanding that the appellant should share the respondent's remuneration, wrote as follows:—"I have considered his claims and think every one will be fairly dealt with by awarding him an immediate bonus of Rs. 500 to be deducted from the official liquidator's ultimate remuneration."

This order was communicated to the respondent on the 10th November 1917. On the 5th December 1918 the appellant applied to the respondent for the payment of the Rs. 500 when respondent wrote a note objecting to the money coming out of his remuneration. The matter was laid before Mr. Harrison, liquidation judge, who, on the 7th December, ordered that the money was not to be paid at present, and again on the 21st December the same judge wrote that Mr. Ellis' order "so far as the question of the funds from which it will be paid is concerned will probably have to be revised and the question will also have to be considered whether a whole-time employee like Ghansham Das can be paid a bonus at all." The matter was finally disposed of by Mr. Prenter by his order, dated the 24th January 1918.

Enough facts have, I think, been stated to make the position clear. Section 169 of the Indian Companies

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Act, 1882, does not relate to all orders that a liquidation Judge may pass. The words "all orders" are restricted by the words "in the matter of the winding up of a company" in the same section. It has, therefore, to be seen in the first place whether Mr. Ellis' order is one "in the matter of the winding up." I do not think it is. There are apparently no authorities on the point, but it appears to me that the appellant must be regarded as an official of the Court. The Court's sanction had to be obtained to the establishment entertained, its personnel and the salaries to be paid. In the present case the Court itself appointed the appellant and fixed his salary. It was so alleged by the appellant. The Court had the power of reducing or increasing salaries or of dismissing one of the staff. Such exercise of power cannot be regarded as judicial acts or orders given in the matter of the winding up of the company. Does a servant, who is dismissed, or has his pay reduced from Rs. 10 to Rs. 9, have the right to appeal to the High Court by virtue of section 169 of the Act simply because he is an aggrieved person. Nevertheless, it is argued that the appellant, as an aggrieved person, has the right. I hold, therefore, that the order of Mr. Ellis was not one within the meaning of section 169, and that it was always open to revision and reconsideration, whether by himself or by a successor. In his original application to Mr. Ellis the appellant had asked that the respondent should be compelled to carry out the arrangement come to with him by the respondent. On this finding it becomes unnecessary to deal with the contention that the review of Mr. Ellis' order was time barred. For the same reason it is unnecessary to discuss the contention that by virtue of section 166 of the Act the later applications of the appellant for payment must be regarded as in execution of Mr. Ellis' order, and that as an executing court Mr. Prenter had no power to go behind that order.

The appellant finally seeks to fall back on the merits of Mr. Prenter's order. But that order is based on discretionary powers with the exercise of which this Court will not interfere, even in the case of judicial orders, unless a great injustice has been done. After

a consideration of the facts, though one of the reasons given may not be sound, Mr. Prenter decided that the appellant should not be given the bonus of Rs. 500, and with that order I refuse to interfere. It may be that the appellant has a remedy against the respondent based on the agreement alleged, but that is a separate matter. I dismiss the appeal with costs.

Appeal dismissed.

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APPELLATE CIVIL.

Mr. Justice Abdul Raoof and Mr. Justice Martineau.

Musst. RAJ KARNI (DECREE-HOLDER)—
Appellant,

versus

KARM ILAHI (JUDGMENT-DEBTOR)—
Respondent.

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June 6.

Civil Appeal No. 230 of 1919.

Civil Procedure Code, Act V of 1908, sections 47, 104 (h) and order 21, rule 40—execution of decree—order disallowing an application for the arrest of the judgment-debtor—whether open to appeal.

Held, that an appeal is competent from an order made under rule 40 of order 21 of the Code of Civil Procedure disallowing an application by a decree-holder for the arrest and imprisonment of his judgment-debtor, such an order coming within the purview of section 47 of the Code.

Sewa Singh v. Dhaukal (1), Abdul Rahiman v. Mahomed Kassim (2), Nayana Naikan v. Syed Ghulam (3), and Subbarama Ayyar v. Arunachellam (4), referred to.

Miscellaneous second appeal from the order of G. L. Dundas, Esquire, District Judge, Jhelum, dated the 8th October 1917, affirming that of Lala Diwan Chand, Senior Sub-Judge, Jhelum, dated the 11th July 1917, dismissing decree-holder's application for arrest of judgment-debtor.

TEK CHAND, for Appellant.

NEMO, for Respondent.

The judgment of the Court was delivered by—

ABDUL RAOOF, J.—The facts out of which this miscellaneous appeal has arisen are simple and the point for decision is a short one.

(1) 69 P. u. 1895.

(3) (1909) 6 Indian Cases 909.

(2) (1897) I. L. R. 21 Mad. 29.

(4) (1915) 32 Indian Cases 731.