

will be entitled to raise it on the security of the house or shops. We accept the appeal and reversing the judgment and decree of the Court below pass a decree in the terms stated above and decree the plaintiff's suit with the said reservations. Parties to bear their own costs throughout.

A. R.

Appeal accepted.

LETTERS PATENT APPEAL.

Before Sir Shakti Lal, Chief Justice, and Mr. Justice Le Rossignol.

LIQUIDATOR, UNION BANK OF INDIA
(PLAINTIFF) Appellant

versus

GOBIND SINGH (DEFENDANT) Respondent.

Letters Patent Appeal No. 240 of 1922.

Companies in Liquidation—Indian Companies Act, VII of 1913, sections 186, 234—Recovery of money due by a Firm in which a contributory is a partner—whether the money can be recovered by summary process from that partner—Indian Contract Act, IX of 1872, section 43—Compromise with liquidator—when binding upon the Company.

One G. S. who was a shareholder of the Union Bank of India, was also a partner in the Firm of R. R.-D. R. to whom the Bank had advanced certain money on promissory notes. These notes were signed by G. S. and he got the money. After the Bank went into voluntary liquidation, the liquidator called upon G. S., as a contributory, to pay up the money due on the promissory notes besides a sum due for unpaid calls on the shares. It was objected that there had been a compromise between the liquidator and the Firm and that in any case the debt could not be recovered from G. S., one of the partners of the Firm who had borrowed the money, by summary process under section 186 of the Companies Act.

Held, that a compromise between the liquidator of a Company in liquidation and a contributory is not binding on the Company in a voluntary winding up unless and until sanctioned by an extraordinary resolution of the Company as provided in section 234 of the Companies Act.

Cyclemakers' Co-operative Supply Co. v. Sims (1), distinguished.

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Held also, that the principles of section 43 of the Contract Act were applicable to the present case and that consequently the liquidator could select G. S. from among the partners of the debtor Firm and call upon him as a contributory to liquidate the whole debt and recover it by the summary procedure under section 136 of the Companies Act.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Broadway, dated the 11th November 1922.

PREM LAL, for Appellant.

G. C. NARANG, for Respondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—These cross-appeals arise out of liquidation proceedings in connection with the Union Bank of India, Ltd. The respondent Gobind Singh was a shareholder in the Bank and was also indebted to the Bank on promissory notes. The Bank went into voluntary liquidation in October 1914 and one Pandya was appointed Liquidator. Up to the date when liquidation proceedings commenced the defendant had paid Rs. 1,750 on fifty shares and the Liquidator called upon him under section 136 of the Companies Act to pay the sum of Rs. 3,250 on account of unpaid calls and Rs. 3,547-14-0 on account of promissory notes representing loans by the Bank to the defendant. With the addition of interest the total claim against the defendant amounted to Rs. 9,989-10-6. The learned Judge in Chambers appears to hold that the Liquidator Pandya did enter into a compromise with the defendant; that if he did that compromise would be binding on the Company; that inasmuch as the promissory notes, though executed by the defendant, were executed by him as a partner in a Firm, the debt was not recoverable by summary proceedings under section 136 of the Companies Act inasmuch as the Firm itself was not a contributory. The learned Judge, therefore, accepted the defendant's appeal and held him liable to pay only the calls on his shares amounting to Rs. 3,250 together with interest at 6 per cent. and left the Bank at liberty to sue the defendant's Firm known as Rall

Ram-Daya Ram in respect of the debt due on the promissory notes. Before us there is one appeal on behalf of the defendant in which he contends that on the finding of the learned Judge that a compromise had been entered into by the Liquidator, Pandya, and Gobind Singh and as the terms of the compromise had been fulfilled by Gobind Singh, the defendant should have been discharged from all further liability in the case. The counter-appeal is on behalf of the present Liquidator who contends that the amount due on the promissory notes is recoverable by the summary procedure provided by section 186 of the Companies Act.

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To deal first with the alleged compromise; from its terms it does not appear to be a completed transaction but merely a proposal. On its face, it was conditional on the acceptance of one Ganesh Das who appears to have been Manager of one of the branches of the Bank. This man Ganesh Das has not been called as a witness and we are unable to hold that he gave his consent to the proposed composition. In any case such a compromise, though it might, if proved, be binding upon the Liquidator personally, would not be binding upon the Bank until sanctioned by an extraordinary resolution of the Company, as provided in section 234 of the Companies Act. The defendant relies upon *Cyclemakers' Co-operative Supply Co. v. Sims* (1), but that case is readily distinguishable. In that case the Liquidator had made a compromise in a suit and it was held that until that compromise had been set aside no cause of action remained to the Company, and consequently the second suit did not lie in view of the judgment on the compromise. That case was of a peculiar nature and the general remarks of the learned Judges were made entirely with reference to the facts of that case.

For these reasons we dismiss the appeal of the defendant Gobind Singh with costs.

The next point is the applicability of the summary procedure under section 186 of the Companies Act to the debt due on the promissory notes. Now the loan from the Bank was taken by the firm Rallia Ram-Daya

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Ram of which Gobind Singh is the principal partner. It was Gobind Singh who signed the promissory notes, it was he who got the money. The partners of the firm are jointly and severally responsible on the bills and although the firm is not settled on the list of contributories one of the partners Gobind Singh is so settled and it is open to the Bank to select him from among the partners and call upon him as a contributory to liquidate the whole debt. We see no reason why the principles of section 43 of the Contract Act should not apply to the present case. We accordingly accept the appeal of the Liquidator and hold that the money due on the promissory notes is recoverable from Gobind Singh by summary procedure under section 186 of the Companies Act.

There remains still one question, namely, whether the claim on the promissory notes is within limitation and on behalf of the Liquidator it is contended that the claim was made within time inasmuch as the defendant has paid interest on the debt and also has repaid principal in part and that the requirements of sections 19 and 20 of the Limitation Act have been fulfilled. The learned District Judge has calculated interest on the promissory notes at 10 per cent. but inasmuch as the Official Liquidator did not claim more than 9 *per cent.*, we do not think that the rate should be calculated at more than 9 *per cent.*

With the foregoing directions the case is returned to the learned District Judge for disposal after determination whether the claim on the promissory notes was made within time. Costs to be costs in the case.

C. H. O.

Appeal accepted—

Case remanded.