

## APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Brown.

1928  
Dec. 4.

I. E. MOOLLA AND ANOTHER

v.

THE OFFICIAL LIQUIDATOR.\*

*Company's costs—Winding up order—Company's appeal against winding up order—Appeal unsuccessful and no order as to costs out of assets—Directors' expenditure on appeal when allowable—Bona fides and reasonableness.*

The Directors of a Company that was ordered to be wound up under the Companies Act retained in their hands certain moneys belonging to the Company and spent them on an appeal filed by the Company against the order of the winding up. The appeal was unsuccessful and there was no order of the Appellate Court (as there was on the Original Side) allowing the costs of the Company's advocates out of the estate.

*Held*, that the Official Liquidator could, under the directions of the Court, allow the expenditure, if incurred *bonâ fide*, and up to a reasonable extent.

*In re Humber Ironworks Company*, L.R. (1866) II Eq. Cases 15—referred to.

*N. M. Cowasjee* for the appellants.

*Clark* for the Official Liquidator.

RUTLEDGE, C.J., and BROWN, J.—This appeal arises out of the liquidation proceedings of M. E. Moolla & Sons, Ltd. An order was passed directing the winding up of the Company under the Indian Companies Act on the 21st of June 1927. The Company appealed against this order and pending the hearing of appeal asked for stay of the proceedings. At that time it appears that the Directors of the Company had in their hands a sum of something over a lakh of rupees belonging to the Company. By consent an order was passed that the Directors should pay over the sum of a lakh of rupees to the Official Liquidator

\* Civil Miscellaneous Appeal No. 57 of 1928 arising out of the order on the Original Side in Civil Miscellaneous No. 78 of 1927.

and should give security for the payment of the balance of about eight thousand rupees, if the appeal failed, and the Court held that the Company or its Directors were not entitled to retain for use this sum for law costs in connection with the liquidation. The appeal was subsequently dismissed and no orders were passed by the Appellate Court as to the costs incurred by the Company in the appeal. The total amount retained by the Directors was Rs. 9,158-0-9. The Official Liquidator called on the Directors to refund this amount. The Directors claimed that they had spent the whole of the amount in expenses of litigation. The Official Liquidator then applied to the Court for an order under section 235 of the Indian Companies Act, calling upon the Directors to refund the amount. The matter was heard *ex parte* so far as the Directors were concerned and an order was passed directing them to refund. It is against this order that the present appeal is filed.

It is contended on behalf of the appellants that in a case such as the present the Company is entitled to its costs in the liquidation proceedings out of the estate, and we have been referred to the case of *In re Humber Ironworks Company* (1). It was there held that, when an order winding up a Company is made, the petitioner and the Company will ordinarily have their costs out of the estate. In his original order directing the Company to be wound up the learned Judge of the trial Court passed orders directing that the costs of the advocates of the Company would come out of the estate. No such order was passed by the Appellate Court, and it is contended on behalf of the respondent that it is not open to the Directors now to make any claim in this connection. We are not satisfied that this by itself

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1928  
I. E.  
MOOLLA  
AND  
ANOTHER  
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LIQUIDATOR.  
RUTLEDGE,  
C.J., AND  
BROWNS, J.

is necessarily an obstacle in the way of the claim now put forward. The Directors are not now asking that the Official Liquidator should make over any sum out of the estate. They are claiming that certain sums of money have been *bonâ fide* expended by them in the interests of the estate and that they are not liable to pay those sums to the estate. The matter was not considered by the Appellate Court at all, and we think it was open to the Official Liquidator under the directions of the Court to allow the payments claimed, if satisfied that they were made *bonâ fide* in the interests of the Company. The Company lost in appeal, and the appeal must therefore be held not in fact to have been in the interests of the Company. But it is difficult to hold that the Directors did not *bonâ fide* at the time believe that they were acting in the interests of the Company and we are therefore of opinion that a reasonable amount might have been allowed to them for their costs. We are quite unable to hold that the claim made by them was a reasonable one. The claim included sums of Rs. 2,000 or over for each of no less than four different advocates, and we are unable to hold that so large an expenditure of money was justified. We do not however think that the learned trial Judge should have rejected the claim of the Directors in its entirety. We think that the Directors might reasonably have been allowed one set of costs as taxed by the Taxing Master. We therefore set aside the order of the trial Judge, and direct that the Directors shall be allowed to deduct from the amount payable by them their costs of appeal in Civil Miscellaneous Appeal No. 127 of 1927, the costs to be taxed by the Taxing Master as between advocate and client. We pass no order as to the costs of this appeal.