

FULL BENCH.

*Before Justice Sir Alan Broadway, Mr. Justice Zafar Ali
and Mr. Justice Jai Lal.*

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SANSAR CHAND AND OTHERS, Appellants

versus

PUNJAB INDUSTRIAL BANK, } Respondent.
LTD., LAHORE, (IN LIQUIDATION) }

June 27.

Civil Appeal No. 168 of 1928.

Indian Companies Act, VII of 1913, section 202—Appeals from orders—winding up—misfeasance proceedings—jurisdiction of High Court.

The question submitted to the Full Bench was whether a party aggrieved from an order passed in the course of liquidation proceedings by the District Judge in exercise of his jurisdiction under the Indian Companies Act is entitled to appeal to the High Court irrespective of the provisions of the Civil Procedure Code which restrict the right of appeal to specified orders.

Held, that section 202 of the Indian Companies Act is wide enough to cover appeals against any order made in the matter of the winding up of a Company, provided such an order finally decides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order.

DeSouza v. S. B. Billimoria (1), followed.

Santi Lal v. The Indian Exchange Bank (2), *Madan Gopal Doga v. Sachindra Nath Sen* (3), *Harkishan Lal v. Suraswati Ram* (4), *Amritsar National Banking Co. v. Mohan Lal* (5), *Ram Parshad Khanna v. Union Bank of India* (6), *Levy Brothers v. Subodh Kumar Day* (7), *Charn Das v. Amritsar National Bank* (8), and *Ishwar Das v. Jaggan Nath*, Civil Appeal No. 1688 of 1927 (unpublished), referred to.

(1) 1926 A. I. R. (Lah.) 246.

(5) 13 P. R. 1917.

(2) (1916) I. L. R. 38 All. 537.

(6) 35 P. R. 1917.

(3) (1928) I. L. R. 55 Cal. 262

(7) 1927 A. I. R. (Cal.) 689.

(4) 40 P. R. 1915.

(8) 1927 A. I. R. (Lah.) 282.

Miscellaneous first appeal from the order of J. K. M. Tapp, Esquire, District Judge, Lahore, dated the 6th January 1928, allowing the amendment of the application.

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MEHR CHAND MAHAJAN, for Appellants.

MADAN GOPAL, for Respondent.

The order of Mr. Justice Johnstone, dated 22nd June, 1928, referring the case to a Division Bench :—

JOHNSTONE J.—This order deals with civil appeals Nos. 168 and 903 of 1928 which arise out of certain proceedings under the Indian Companies Act, with regard to the winding-up of the Punjab Industrial Bank in the Court of the District Judge, Lahore. The facts are, briefly, that certain acts of misfeasance were alleged to have been committed on 20th February, 1923, by the Directors of the Bank. The Company went into voluntary liquidation on 2nd June 1924 and an application for the carrying out of misfeasance proceedings was filed on 29th June, 1925. Certain issues were framed, including one which questioned whether the application was within time. It was admitted that the application was made after the prescribed period of two years, but exemption was claimed on the ground that the liquidator mistakenly thought that the period was three years and not two years. It was also alleged that fraud had been committed by the Directors, although it is not denied before me that the alleged fraud was supposed to have been known when the Company went into liquidation. The learned District Judge allowed the application to be amended, the other parties protesting.

In these appeals by the Directors, a preliminary objection has been taken that no appeal lies from the District Judge's order allowing amendment of the

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application, because the provisions of section 202 of the Indian Companies Act do not permit appeals of this nature. The order, it is contended, is merely of an interlocutory nature and is not covered by any section or Order of the Civil Procedure Code. Reliance was placed on *Santi Lal v. The Indian Exchange Bank* (1) and *Charan Das v. Amritsar National Bank* (2). To this argument the counsel for the appellants reply that, if section 202 of the Indian Companies Act is meant to cover only cases in which an appeal would lie under the provisions of the Civil Procedure Code, that section would be more or less meaningless. In order to show that such a narrow interpretation is not accepted, a reference was made to *DeSouza v. S. B. Billimoria* (3), where it was held that refusal to grant copies of statements made by persons examined under section 196 was an appealable order.

The appellant's counsel also pressed the point that, even if no appeal lies, this Court should in the circumstances of the case take action under section 107 of the Government of India Act.

On the merits it was contended that no amendment should be allowed after the period of limitation has expired, that a plea of fraud cannot be allowed to be inserted in an application by way of amendment and that the introduction of an allegation of fraud completely transforms the nature of misfeasance proceedings. Authorities were cited in support of these contentions.

The appeals are of considerable importance for several reasons and I am of opinion that it is desir-

(1) (1916) I. L. R. 38 All. 537. (2) 1927 A. I. R. (Lah.) 282.

(3) 1926 A. I. R. (Lah.) 246.

able that they should be heard by a Division Bench. I accordingly direct that, subject to the orders of the Chief Justice, the appeals be placed before a Bench of two Judges of this Court. An early date may, if possible, be given.

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The order of Mr. Justice Fforde and Mr. Justice Jai Lal, dated 15th March, 1929, referring the case to a Full Bench :—

The facts of this case are sufficiently stated in the order, dated 22nd June, 1928, passed by Johnstone J., referring the case to a Division Bench. We have heard counsel and are of opinion that the order of the District Judge, dated the 6th of January, 1928, should be set aside for reasons which we will give later, if necessary, if it be found that we have jurisdiction to entertain this appeal.

The question of jurisdiction is not free from difficulty. There is a conflict in the judicial decisions on the subject. In *C. M. DeSouza versus S. B. Billimoria* (1), it was held by a Division Bench of this Court consisting of Broadway and Jai Lal JJ. that all orders passed by the District Judge in the course of the liquidation proceedings of a Company are appealable to this Court. In that case the appeal was from an order refusing to give a copy of a document to the appellant. On the other hand, in *Charan Das and others versus Amritsar National Bank, Lahore* (2) Zafar Ali J. held that the right of appeal under section 202 of the Indian Companies Act is co-extensive with the right of appeal conferred by the Code of Civil Procedure. The judgment of the Division Bench referred to above was not ap-

(1) 1926 A. I. R. (Lah.) 246. (2) 1927 A. I. R. (Lah.) 282.

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parently brought to the notice of the learned Judge. In *Ishwar Das and others* versus *Jaggan Nath and others*, Miscellaneous First Appeal No. 1688 of 1927, Jai Lal J. held that an appeal did not lie to this Court from an order of the District Judge passed in liquidation proceedings which was not final. He, however, did not profess to lay down any rule contrary to the decision of the Division Bench referred to above and it seems that the point now involved did not directly arise before him. Zafar Ali J., followed *Santi Lal* versus *The Indian Exchange Bank* (1), and in that case a view contrary to that of the Division Bench of this Court was taken. In *Madan Gopal Doga* versus *Sachindra Nath Sen* (2) it was held that an order made in the winding up of a Company by the Court, in order to be appealable under section 202 of the Indian Companies Act (VII of 1913), must satisfy the requirements of clause 15 of the Letters Patent, 1865, viz., that it must be a "judgment" within the meaning of that clause as understood and explained in various decided cases in the Calcutta High Court from time to time. The appeal in that case was from the order of a learned Judge of the High Court and that might be a possible distinction between it and the present case. The principle underlying, however, seems to be in conflict with the view taken by the Division Bench of this Court.

The question involved is of considerable importance in this province and we consider that it is desirable that an authoritative pronouncement should be given on it. We are consequently of opinion that it should be decided by a Full Bench. The question

(1) (1916) I. L. R. 38 All. 537. (2) (1928) I. L. R. 55 Cal. 262.

is whether a party aggrieved from an order passed in the course of liquidation proceedings by the District Judge in exercise of his jurisdiction under the Indian Companies Act is entitled to appeal to this Court irrespective of the provisions of the Civil Procedure Code which restrict the right of appeal to specified orders.

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We direct that the record be placed before the learned Chief Justice with a view to constitute a Full Bench to decide the question, if he agrees.

During the course of his arguments the appellants' counsel prayed that if it be held that no appeal lies to this Court then he may be allowed to treat the petition of appeal as a petition for revision and the case be decided by this Court in exercise of its revisional jurisdiction. This matter must be deferred till the question referred to the Full Bench has been decided.

Judgment of the Full Bench—

BROADWAY J.—It appears that the Punjab Industrial Bank went into voluntary liquidation on the 2nd June, 1924, and, on the 29th June, 1925, an application was made by the Liquidator under section 235 of the Indian Companies Act, in connection with certain acts of misfeasance said to have been committed by *Rai Bahadur Sansar Chand and Lala Bheri Ram*, two of the Directors of the Bank, on the 20th February, 1923. BROADWAY, J.

The said Directors pleaded that the application was barred by limitation—this was admitted by the Liquidator, who, however, prayed to be allowed to amend the application so as to add an allegation of fraud.

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The learned District Judge allowed the amendment and the two Directors, thereupon preferred separate appeals to this Court attacking the order allowing the amendment of the application.

On these appeals coming up before Johnstone J. objection was taken to their competency by the Liquidator who placed reliance on *Santi Lal* versus *The Indian Exchange Bank* (1), which was followed by Zafar Ali J., in *Charan Das etc.*, versus *The Amritsar National Bank* (2). For the appellants *C. M. De Souza* versus *S. B. Billimoria* (3) was referred to.

Johnstone J. considered that the question involved should be decided by a Division Bench and referred the appeals to one accordingly.

When the cases came before a Division Bench objection was again taken to the competency of the appeals and, having regard to the apparent conflict between the Allahabad and Lahore Courts, the following question was referred to a Full Bench:—

“Whether a party aggrieved from an order passed in the course of liquidation proceedings by the District Judge in exercise of his jurisdiction under the Indian Companies Act is entitled to appeal to this Court irrespective of the provisions of the Civil Procedure Code which restrict the right of appeal to specified orders.”

In order to formulate an answer to the question thus referred it is necessary to consider the terms of Section 202, Indian Companies Act, the relevant portions of which are as follows:—“Section 202—.....appeals from, any order.....made.....in the

(1) (1916) I. L. R. 38 All. 537. (2) 1927 A. I. R. (Lah.) 282.

(3) 1926 A. I. R. (Lah.) 246.

matter of the winding up of a company * * * may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order.....of the same Court in cases within its ordinary jurisdiction.”

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On behalf of the Liquidator it has been urged that the right to appeal under the section is co-extensive with the right to appeal conferred by the Civil Procedure Code—that is to say, if the order complained of could be appealed against if it had been passed under the Civil Procedure Code it could be appealed against under section 202, Indian Companies Act—otherwise not. On the other hand for the appellants it was contended that the language of section 202 was broad enough to cover appeals against all orders passed “in the matter of the winding up of a Company” except purely interlocutory or ministerial orders, and that the words “in the same manner and subject to the same conditions, etc.,” related only to matters of form, *i.e.*, necessary copies—limitation, etc.

Reference was made to section 104 and Order XLIII of the Civil Procedure Code and it was pointed out that practically no order could be passed by a liquidation Court that could fairly fall within the provisions of this section and Order.

It was further urged that there are a large number of orders that may be passed under the Indian Companies Act which are not in the contemplation of the Civil Procedure Code and that, therefore, it is obvious that in enacting section 202 the Legislature intended to give a general right of appeal, restricted as to the *exercise* of that right by the *procedure* laid down for the guidance of the Court in its ordinary

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jurisdiction, and various authorities were cited in which appeals were heard against such orders without any objection. See for example: *Harkishan Lal versus Suraswati Ram* (1), *Amritsar National Banking Company versus Mohan Lal* (2), and *Ram Parshad Khanna versus Union Bank of India* (3), which have, however, no direct bearing on the question before us.

For the Liquidator it was urged that the various orders contemplated by the Indian Companies Act are appealable as *quasi* decrees and attention was drawn to certain authorities dealing with Land Acquisition proceedings. Having regard to the recent amendment of section 26 of the Land Acquisition Act these authorities do not afford any assistance.

Similarly *Lery Brothers versus Subodh Kumar Day* (4) and *Madan Gopal Doga versus Sachindra Nath Sen* (5) are not helpful, for there the question was whether the order appealed against was a "judgment," the right to appeal being dependent under Clause 15 of the Letters Patent on the decision of that question.

After a careful consideration of the authorities it seems to me that the only decisions that have a direct bearing on the question before us are the Allahabad and Lahore Cases referred to above.

In *C. M. Desouza versus S. B. Billimoria* (6), Jai Lal J. and I held that the phraseology of section 202 was wide enough to admit of an appeal against an order refusing inspection and after giving due weight to the arguments advanced at the bar I am still of opinion that the language of section 202 is wide enough to cover appeals against all orders made in

(1) 40 P. R. 1915.

(4) 1927, A. I. R. (Cal.) 689.

(2) 13 P. R. 1917.

(5) (1928) I. L. R. 55 Cal. 262.

(3) 35 P. R. 1917.

(6) 1926 A. I. R. (Lah.) 246.

the matter of the winding up of a Company provided such an order finally decides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order.

Nor do I think that *Santi Lal* versus *Indian Exchange Bank* (1) is in conflict with that view when the facts of that case are taken into consideration. In the course of the liquidation proceedings of the Indian Exchange Bank a certain person was directed to pay a certain sum as a contributory. Under the provisions of section 178 (now section 199) such a payment order was enforceable in the same manner as a decree. In execution of the payment order certain property was attached as belonging to the person against whom the order had been passed.

A third person objected to the attachment, on the ground that the attached property belonged to him. The objection clearly was one under Order XXI, rule 58, Civil Procedure Code and was dismissed under rule 63 of that Order. There being no appeal allowed against an order under rule 63, section 202, Indian Companies Act, could not be invoked in aid and the right to appeal in such circumstances is clearly co-extensive with the right of appeal conferred by the Civil Procedure Code.

As I understand this judgment nothing more was intended to be decided.

Again in *Charan Das* versus *Amritsar National Bank* (2), the facts were the same. The order appealed against was passed under Order XXI, rule 63, Civil Procedure Code and Zafar Ali J., in follow-

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ing *Santi Lal* versus *Indian Exchange Bank* (1), did not lay down the broad proposition contended for by the Liquidator.

I would, therefore, answer the question referred in the affirmative with the reservation above indicated.

ZAFAR ALI J.

ZAFAR ALI J.—I concur.

JAI LAL J.

JAI LAL J.—I concur.

N. F. E.

LETTERS PATENT APPEAL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haidar.

DINA NATH (PLAINTIFF) Appellant

versus

SAYAD HABIB AND OTHERS (DEFENDANTS)

Respondents.

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Jan. 7.

Letters Patent Appeal No. 207 of 1927.

and

Civil Appeal No. 1901 of 1923.

Civil Procedure Code, Act V of 1908, Order XXII—Abatement of appeal—application to set aside—not containing a specific prayer to that effect—Limitation—Indian Limitation Act, IX of 1908, section 5—Extension of time—Letters Patent (Lahore) Clause 10—Appeal from order of Single Judge refusing to consider the application—whether a “judgment”—Libel—civil liability of proprietor of newspaper—proof of his being proprietor—admission by other defendant—damages—section 35: Costs in suits for defamation.

An application made under rules 4 and 9 of Order XXII recited that a respondent had died more than ninety days ago and contained a prayer that in view of the circumstances mentioned the delay in making the application be excused under section 5 of the Limitation Act, but did not, in so many words, ask for the setting aside of the abatement.

Held, that the application was in substance as well as in form, one to set aside the abatement, and ought not to have