Harinagar Sugar Mills Co. Ltd.

Vs

M. W. Pradhan (Now G. V. Dalvi), Court Receiver, High Court, Bombay

Civil Appeal No. 569 Of 1965

(K. Subha Rao, V. Ramaswami-I, J.M. Shelat JJ)

21.03.1966

JUDGMENT

SUJBHA RAO J. -

The facts that gave rise to this appeal may be briefly stated : On January 3, 1933, Messrs. Harinagar Sugar Mills Ltd., herein after called the company, was incorporated under the Indian Companies Act, 1913 (VII of 1913). Narayanlal Bansilal was the chairman of the boar of directors of the company. He was also the karta and manager of the joint Hindu family consisting of himself, his sons and daughters. As such karta he purchased a large block of hares of the company from and out of the funds of the joint family. the said family also owed a sugarcane farm at Harinagar in the state of Bihar. On March 8, 1956, Narayanlal Bansilal and his three sons sold the said firm to the company for a sum of Rs. 40,00,000. Under the sale deed the company agreed to pay the price in the instalments. Though the company paid a few instalments, a sum of Rs. 25,00,000 still remained to be paid by it to the joint family. In July, 1961, one of the sons of Narayanlal Bansilal filed Suit No. 224 of 1964 on on the Orig

Mr. N. C. Chatterjee, learned counsel for the appellant-company, raises before us the same contention which were advanced unsuccessfully on behalf of the company in the High Court. We shall deal with the said contentions seriatim.

The first contention of the learned counsel is that the court receiver had no power to file a petition in the court for finding up of the company. Elaborating this contention the learned counsel contends that under Order XL, rule 1(d), of the Code of Civil Procedure a court can only a confer on a receiver the power to bring a suit and that the expression "suit" does not take in a petition for winding up of a company.

Order XL, rule 1, of the Code of Civil Procedure reads :

> "Where it appears to the court to be just and convenient, the court may by order - ...
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> (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvements of the property, the collection of the rents and profit thereof, the application and disposal of the such rents and profit, and the execution of doncuments as the owner himself has or such of those powers as the court thinks fit."

In exercise of the said power, the court appointed the respondents as the court receiver on October

20, 1961, of the properties belonging to the joint family in the suit. The material part of the order reads :

> ".... IT IS FURTHER ORDERED that the court receiver be and he is hereby appointed receiver of the properties belonging to the joint family in suit and all the books of the accounts papers and vouchers with also necessary under Order XL, rule 1 of the Code of Civil Procedure, including power to vote and/or exercise all the property rights in respect of share belong to the joint family in the several joint stock companies mentioned in the plaint including power to file suit...."

Under this order all the necessary powers under Order XL, rule 1, of the Code of Civil Procedure were conferred upon the receiver, including the right to till suits. Assuming that a petition for finding u of a company is not a suit within the meaning of Order XL, rule 1(d) of the said Code, the other power mentioned there in are comprehensive enough to enable the receiver to take necessary proceeding to realise the property and debts due to the joint family. Can it be said that the petition filed by the receiver for finding up of the companies not a mode of realisation of the debt due to the joint family form the company ? In Palmers Company Precedents, Part II, 1960 edn., at page 25, the following passage appears :

> "A winding up petition is a perfectly proper remedy for enforcing payment of a just debt. It is the mode of execution which the court gives to a creditors against a company unable to pay its debts."

This view is supported by the decisions in Bowes v. Hope life Insurance and Guarantee Co. 1, In re General Company for Promotion of land Credit and In re National Permanent Building Society. It is true that "a winding up order is not a normal alternative in the case of a company to the ordinarily procedure for the realization of the debts due to it"; but none the less it is a form of equitable execution. Propriety does not affect the power but any its exercise. If so, it follows that interism of clause (d) of rule 1 of Order XL of the Code of Civil Procedure, a receiver can file a petition for winding up of a company for the realization of the properties, movable and immovable, including debts of which he was appointed receiver. In this view, the respondents had power to file the petition in the court for finding up of the company.

That apart under Order XL, rule 1(d) of the code of Civil Procedure the court can also confer on the receiver such of those powers as the court thinks fit. It is implicit in this apparently wide power that it shall be confined to the scope of the receiver administration of the estate. If for the proper and effective managements of the estate of which receiver has been appointed the court thinks fit that it shall confer power on the said receiver to take steps for winding up of the debtors-company it must be confide that the court will have power to give necessary directions to the receiver in that regard.

On November 22, 1963, the receiver obtained the directions of the court empowering him to file the widing up petition against the company. But its is contended that the learned judge made that order without prejudice to the contentions of the members of the joint family and that one of the contentions was that a petition for the winding up of the company was not maintainable at the instance of the receiver. This reservations, no doubt, entitles the appellant to raise the plea of the maintainability of the petition filed by the receiver for winding up of the company. But it does not bear on the question of authorization obtained by a receiver to file the said petition the question of the maintainability of the petition will be dealt with by us at a later stage of the judgment. In this view, also the receiver had the powers to file the petition before the court for winding up of the

company. But it does not bear on the question of authorisation obtained by the receiver to file the said petition. The question o

The second contention of the learned counsel is that the court receiver is not a "creditor" with in the meaning of the relevant section of the Indian Companies Act. The relevant provisions of the Indian Companies ACT read :

> "433. A company may be bound up by the court. - ...
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> (e) if the company is unable to pay its debts;
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> 434. (1) A company shall be deemed to be unable to pay its debts -
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> (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has has served on company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his requiring thee company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum so due and the company has for three weeks thereafter neglected to pay the suit or to secure or compound for it to the reasonable satisfaction of the creditors; ...
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> 439. (1) An application to the court for the finding up of a company shall be by petition presented subject to the provision of this section, - . . .
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> (b) by any creditor or creditors, including any contingent or prospective creditor or creditors; . . ."

A combined reading of these provisions indicates unless the court receiver is a creditor by assignment or otherwise to whom the company is indebted, he cannot maintain an application under section 439 of the Indian Companies Act. In support of the contention that he is not such a creditor strong reliance is placed on the decision in In re Sacker : Ex parte Sacker. The facts of that case, as given in the head-note are as follows : In an action in the Chancery Division a receiver was appointed to collect and receive goods comprised in a charge given to the plaintiffs by one of the defendants, including thereon any balance of the proceeds of the goods so charge in the hands of the other defendant. An order was subsequently made for the payment by the last-mentioned defendant to the receiver of a specific sum, being money received by him in respect of the proceeds of the goods, and comprised in the charge. The Court of Appeal held that the receiver was not a "creditor" entitled to present a bankruptcy petition a

> "The petitioner is a receiver. He is not a trustee. There is not debt due to him from the appellant. He could not sue for this sum of money in his own name either at law or in equity. Even if he could by the authority of the court sue for it in his own name is the money due to him personality either at law or in equity ? At law it is certainly not. The debt was due to another person for whom he is not a trustee. The money will not be his when he has got it. Would it be his in equity ? I apprehend that he would hold it subject to the authority of the court who would deal with it according to the circumstances of the case, but certainly not for his benefit."

Fry L.J. said much to the same effect thus :

> "There is no debt of any kind due from Sacker to the receiver, consequently he is not a good petitioning creditor, and the petition cannot be maintained.
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> Lopes L.J. expressed the same idea thus :
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> "To constitute a good petitioning creditor's debt the alleged debt must be certainly due and payable to the person who represents the petition. There is no debt due to this receiver. He could not maintain an action of debt for this money in his own name."

This decision, therefore, goes to the extent of the holding that there is no debt due to a receiver either at law or in equity, that he cannot maintain an action of debt for the money in his own name and that, therefore, he is not a good petitioning creditors. The scope of this decision was explained by the Court of Appeal in In re Macoun. There, on the dissolution of a firm of the a stock-brokers by the death of one of the partners the partnership assets, including a debt to the late firm in respect of certain stock exchange transactions, were assigned by the surviving partners to L. for the purpose of winding up the partnership, and notice of the assignment was served on the debtor. L. obtained a decree against the debtor. Thereafter, he commenced an action in the Chancery Division for the winding up of the partners assets. The receiver took an assignment of the judgment debt from L., and obtained leave to issue execution. Thereafter, he served a bankruptcy notice on the debtor and ultimately presented a b

> "In these circumstances its seems to me that we ought not to hold that the case of In re Sacker to be an authority for the proposition that a receiver cannot be good petitioning creditor even though the state of things is such that he could maintain an action of law. It is plain that Fry L.J. thought that he could; and Lopes L.J. seems to have taken the same view - that is, the view that if the receiver were the holder of a bill of exchange he could be good petitioning creditor. In the present case the receiver happens to be the assignee of a judgment, and I think that being the assignee of a judgment he can be a good petitioning creditor even though when the money is recovered it is recovered for the purpose of enabling the court of Chancery to deal with it."

A comparison of these two decisions leads to the following legal position : If a receiver could maintain action at law or in equity for the recovery of a debt, he would be good petitioning creditor; and, if he could not he would not be done. In In re Sacker case it was not possible for the receiver to bring an action to recover the debt either at law or in equity where as in Macouns case, the receiver, having obtain the assignment of the debt, would be a good petitioning creditor. In India, the scope of the receiver's is power is governed by the express provisions of the Code of Civil Procedure. It is commonplace that a receiver appointed by court has no estate or interest himself and the scope of his power is defined by the court there under. He is frequently spoken to as the "hand of the court". In exercise of the power under the said clause (d) if a court confers upon the receiver power to bring a suit to release the assets which are the subject matter of the suit, it cannot be denied that the said receiv gous to that of a receiver who can file an action in law or in equity to recover a debt under the English law. If the latter is a creditor in English law in respect of the debt recoverable by him, there is no reason why a receiver empowered to file a suit under Order XL of the Code of Civil Procedure cannot be a creditor. In one case there is voluntary assignment, and in the other there is a statutory assignment.

The relevant provision of the Indian Companies Act also lead to the same position. Section 434 speaks of a creditor by assignments or other wise to whom the company is indebted in a particular sum. Such creditor can file a petition for winding up under section 439 of the said Act. A creditor, therefore, under the Indian Companies Act is any person who acquires that character by assignment or otherwise. The expression "otherwise takes in any person to whom another becomes indebted refer the relationship or credits and debtor is brought about between them. We come back to the meaning of the word "creditor" Stroud's Judicial Dictionary, 3rd edition, vol. I, defines "creditors to mean, a person to whom a debt is payable. Though this is one of the many definions given in the said dictionary, this papers to be the appropriate meaning. A receiver appointed by the court to realise a debt can demand the payment of the debt. If the debtor pays the debt to him, he gets a full discharge; in default of payment, the recei

It is then contended that the notice issued by the receiver was not in the strict compliance with the statutory requirements of section 434 of the Indian Companies Act. Two main defects are pointed out, namely, the notice did not require the appellant to pay the debt to the joint family or the receiver but to the Additional Collector of Bombay, and the said notice put it beyond the reach of the company to secure or compound for the debt to the reasonable satisfaction of the court receiver. Section 434 of the Indian Companies act has been quoted earlier. Under the section before a company shall be deemed to be unable to pay its debts two conditions must toe satisfied namely, (i) the creditors shall have delivered a demand in the prescribed manner on the company to pay the sum due to him; and (ii) the company has for three weeks thereafter neglected to pay the same, or to secure or compound for it to the reasonable satisfaction of the creditor. We have already held that the receiver is a creditor within the me

Nor are there any merits in the second link in the contention. The question is whether, if proceeding were taken aginst the company under section 46(5A) of the Indian Income-tax Act, the company was deprived of the opportunity to pay the sum due to the respondent or to secure or compound for it to the reasonable satisfaction of the creditor within the meaning of section 434(1)(a) of the Indian Companies Act. After the statutory notice the company could pay the sum demanded or secure or compound for it to the reasonable satisfaction of the creditors. The section does not confer a right on a debtor but only gives him an opportunity to discharge the debt in one or other of the ways mentioned therein. The debtor could secure or compounds for a debt only where the circumstances under which the demand is made permit such a mode of discharge. But where as in this case both the debtor and the creditor were under an obligation to discharge the income-tax dues and as the creditor directed the debtor to pay the entire

The next contention is that the appellant had not neglected not to pay the sum to the respondent, as the said amount must be deemed to have been attached by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46 of the Indian Income-tax Act, 1922. In support of this contention reliance is placed upon In re European Banking Company : Ex parte Baylis. There, a petition was presented for winding up of a banking company for a debt of 65 Pounds due to the petition; but the said debt was attached in the Lord Mayor' s Court. The petition was dismissed on the grounds that though the attachment did not asbolutely do away with the debt, it seized the debt into the hand so the Lord Mayor's Court. In that case the demand was that the debtor should pay the amount to the petitioning creditor and because of the attachment of that amount by Lord Mayor's Court the debts could not pay the amount to the creditor. But that judgment cannot possibly be of an help to the appellant, for in the in

Lastly, it is argued the there was a bona fide dispute in respect of the liability of the company to the

joint family. it is said that the company case was that the debt was due to four individuals mentioned in the conveyance, namely, the father and his three sons, whereas the receiver's case was that the amount was due to the joint family and, therefore, in the circumstances it cannot be said that the company neglected to pay the amount to the receiver. In W.T. Henley's Telegraph Works Co. Ltd. v. Gorakhpur Electric Supply Co. Ltd. it was ruled that a mere service of notice of demand of debt by a creditor on a solvent company did not entitle the creditor to a winding-up order if the company bona fide disputed the existence of the debt. In that case it was found that there was a bona fide dispute between the parties and that the notice issued was a vehicle of the oppression and an abuse of the process of the court. But the same cannot be said in the present case. In In re Gold Hill Mines also a winding-up pe

In the present case, Narayanlal Bansilal was not only the karta of the joint family but was also the chairman of the board directors of the company. In the partition suit he filed an affidavit wherein he stated :

> "Referring to paragraph 10(c) of the affidavit I deny there is any manipulation in the balance-sheet of Harinagar Sugar Mills Ltd., as falsely sought to be suggested by the 3rd defendant. No loan of Rs. 25,00,000 had been given by me to the said company. The said amount is the balance of the purchase price payable by the said company to the joint family in respect of Harinagar Cane Farm."

In view of the said affidavit it is manifest that the alleged dispute was not bona fide but was only a part of a scheme of collusion between the company and the karta of the joint family. There are, therefore, no merits in any of the contentions raised by the company.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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