

# CALCUTTA HIGH COURT

Mahiganj Loan Office Ltd

Vs

Behari Lal Chaki

(R.C Mitter , J.)

26.04.1937

## JUDGMENT

**R.C. Mitter, J.**

1. The question involved in this Rule is whether the opposite party is precluded from executing his decree by reason of scheme sanctioned by this Court in its original jurisdiction under Section 153, Companies Act. The material portions of the scheme are as follows:

(a) The depositors of the company including those who have filed suits and obtained decrees against the company shall not be entitled to demand payment of their dues at once except in terms of the present scheme which shall remain in force for 10 years.

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(e) The company until all depositors are paid off under this scheme set apart and distribute at least three-fourths of the total cash realization after deduction of all necessary expenses and costs among the depositors pro rata to be applied by them in the first instance towards the principal due to them and in the next place to the interest accruing due thereon. Such distributions shall be made as soon as a sufficient sum accumulates and shall be made at least once a year commencing from the year 1811 B.S.

2. This scheme was sanctioned by Buckland, J. on 27th November 1933. A few more facts, which are undisputed, are material: they are as follows: (i) at a meeting of the directors of the company held on 21st May 1933, a resolution was passed for filing an application in this Court under Section 153, Companies Act, on the averments, inter alia, that the gross value of the assets of the company as on 13th April 1932 was Rs. 2,18,530-13-0, that the company had 333 depositors of different kinds, including those who had filed suits and obtained decrees against the company; that the assets of the company were locked up in securities and that the company was desirous of proposing a scheme for arrangement with its aforesaid depositors for gradual payment with reduced interest. (ii) On 30th May 1933, an application with these averments,

made to this Court on the Original Side was allowed and the company was directed to convene a meeting of the depositors of the company in terms of its prayer; that is of depositors who had not filed, suits and obtained decrees as well as those who had done so. (iii) On 2nd July 1933, a meeting of depositors was held and the statutory majority accepted the company's proposal and (iv) in the meantime on 22nd May 1933, the opposite party instituted his suit against the company in the Small Cause Court at Rangpur, for recovery of his deposit money and on 28th June 1933 he obtained a decree payable in instalments of Rs. 150 a year.

3. The application for execution for the balance due under this decree was filed on 6th July 1936, one installment having been paid out of Court. This application was allowed to proceed by the Small Cause Court Judge by his order dated 26th September 1936, which is under review before us. He gave the following reasons for overruling the objection of the company: (i) that the scheme sanctioned by this Court was not intended to be operative against the opposite party, (a) as he was a judgment-creditor before the approval of the scheme by this Court, and (b) as no notice of the meeting convened in terms of the order of this Court under Section 153 dated 30th May 1933 had been served on him and (c) as an installment due under the decree had been paid to him out of Court, and (ii) that the scheme sanctioned by this Court does not bind judgment creditors, as no separate meetings of depositors, who had not obtained decrees and those who had, been convened.

4. We may state that there is no evidence on the record for supporting this last mentioned finding, but for the reasons to be hereafter given, we do not base our judgment upon the said fact. Before us the learned advocate for the opposite party raises an additional ground, namely that as no notice of the meeting convened in terms of the aforesaid order dated 30th May 1933 had been served upon his client, the scheme sanctioned does not bind him and cannot prevent him from executing his decree. In considering the first ground given by the lower Court two fundamental facts must, in our opinion, be kept in sight, namely: (a) that the company proposed the arrangement with all classes of depositors, e.g., those who had sued and obtained decrees as well as those who had not; (b) the arrangement proposed, accepted and sanctioned by this Court under Section 153 in express terms included depositors who had sued and obtained decrees. There is accordingly, in our opinion, no scope for inferences as to what was intended. The first ground given by the lower Court does not accordingly appeal to us. A large number of cases have been cited before us by the learned advocate for the opposite party for sustaining the order complained of on the other grounds mentioned above. These cases divide themselves into two distinct groups e.g.: (1) cases where the jurisdiction of this Court was invoked under the provisions of the Companies Act; and (2) cases, where the effect of a scheme already sanctioned under Section 153 by this Court on execution proceedings has been considered. The cases in *In re Dewanganj Bank and Industry Co.*, *Mihirendra Kishore Dutt v. Brahmanberia Loan Co. Ltd.*<sup>1</sup>, *In re Jalpaiguri Banking and Trading Co., Ltd.* (1935) 39 C W N 875, *Rajshahi Banking Corporation v. Surabala*<sup>2</sup> fall within the first group. In all these cases the Court had to consider whether a scheme is to be sanctioned under Section 153 or a scheme so sanctioned ought to be modified.

The cases in *Sushilabala Basu v. Anjuman Trading and Banking Co., Ltd.* ; *Barisal Loan Office v. Sasthi Charan* , *Serajgunj Loan Office v. Nilkantha Manikganj Trading and Banking Co. v. Madhabendra* , *Noakhali Loan Co. v. Hemendra Narayan Roy and Mahigunj Loan Office v. Behari Lal Chaki* fall within the second group.

5. When this Court is exercising jurisdiction under Section 3, Companies Act, that is, in cases falling within the first group, certain principles must be kept in view before sanction is acceded. Some of these principles I have indicated in my judgment in the case in *Serajgunj Loan Office v. Nilkantha* . The regularity of the meeting of creditors directed by the Court to be held under Section 153(1) would be a very important point for the Court to consider. This would include the question of service of the notice of the meeting and questions relating to the conduct of the meeting. Where the proposal of the company is an arrangement within different classes of creditors, separate meetings of each class must be held and the question whether some creditors form a distinct class by themselves would be a very relevant question, the preponderance of opinion now being that depositors and creditors who have obtained decrees form a distinct class by themselves and cannot be lumped together at the same meeting at which depositors or creditors who have not obtained decrees take part. Where the compromise or arrangement proposed by the company is with creditors and depositors only and the order of the Court is for holding a meeting of theirs, a depositor and creditor who has already obtained a decree cannot be summoned at the meeting and would not be included in the scheme when it comes up for approval of the Court. When a scheme already sanctioned comes up before the said Court for being modified, some of these factors may become important, although on the question as in what precise circumstances the Court would modify a scheme already sanctioned there is divergence of opinion: see *Lort-Williams, J. in In re Mymensingh Loan Office Ltd. (1936) 41 C W N 599*.

6. Where, however, the matter comes up before an executing Court on an objection by the debtor company under Section 47, Civil P. C, different principles in our judgment apply. The executing Court has then to consider only two questions, namely: (1) Whether the execution is affected by the terms of the scheme as sanctioned by the Court exercising jurisdiction under the Companies Act and (2) Whether the order sanctioning the scheme was passed with jurisdiction and subject to this it cannot go behind the sanctioned scheme and consider the question as whether it ought to have been sanctioned in that form. In most of the cases we have noticed above as falling within the second group, a depositor who had already obtained his decree before the scheme was embarked upon was not included within the sanctioned scheme and this Court in those cases accordingly allowed execution to proceed.

7. In the case before us the proposal made by the company was to arrange with its depositors, as well with those who had already obtained decrees, the preliminary order under Section 153 was to convene a meeting of depositors who had obtained decrees as also those who had not, such a meeting was held and the scheme accepted at the meeting and sanctioned by this Court included

in its terms the former class. In these circumstances we do not think that non-service of the notice of meeting held in pursuance of the order of this Court under Section 153 and that no separate meeting of the two classes of depositors was held, affected the jurisdiction of this Court when it made the order under Section 153 sanctioning the scheme. This defect ought to have been pointed out at the time when the matter of sanction came up or thereafter, but to the Court which had sanctioned the scheme and this is the only way in which the opposite party could have moved. This is the view expressed by Buckland, J. in Dewangunj Bank's case *In re Dewangunj Bank and Industry Co.* and by my learned brother Nasim Ali, J. in which I concurred in *Mahigunj Loan Office v. Behari Lal Chaki*, which was a case between the same parties and on the same scheme which we are considering in this case. In the last mentioned case we no doubt found as a fact that notice of the meeting had been served upon the judgment-creditor, but the principles on which we proceeded in dealing with the second ground raised before us in that case covers the case where no such notice has been served. "An irregularity", says Macnamara, in its most general sense, is the technical term for every defect in practical proceeding or the mode of conducting an action or defence. It is the want of adherence to some prescribed rule or mode of proceeding, and in its mere limited and common sense, and the one in which we shall henceforth use it, it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unreasonable time or improper manner. A defect is here supposed, but one does not take away the foundation or authority for the proceeding or apply to its whole operation. This distinguishes an irregularity from a nullity, which is the highest degree of the irregularity in the most extensive sense of that term, and is such a defect as renders the proceeding in which it occurs totally null and void, of no avail or effect whatever and incapable of being made so: Macnamara on Nullities and Irregularities in Law, p. 2.

8. The principles laid down in the aforesaid passage would, in our judgment, apply to the case before us, having regard to the fact that this Court in its original jurisdiction had jurisdiction over the subject matter. We accordingly hold that the order sanctioning the scheme was made with jurisdiction and the defects pointed out to us by the learned advocate for the opposite party were at most irregularities in the exercise of jurisdiction. We accordingly hold that the opposite party's application for execution is not maintainable and dismiss it. The Rule is accordingly made absolute with costs, hearing fee being assessed at one gold mohur.

**S.K. Ghose, J.**

9. I agree.

Cases Referred.

1 *In re Melanda Loan Office Ltd.* (1935) 39 C W N 690

2 (1936) 40 C W N 1104 and *In re Mymensingh Loan Office Ltd.* (1936) 41 C W N 599