

CALCUTTA HIGH COURT

Madan Gopal Daga

Vs.

Sachindra Nath Sen

(C.C. Ghose, J.)

27.04.1927

JUDGMENT

C.C. Ghose, J.

1. In this matter my learned brother Mr. Justice Pearson, made an order on 17th November 1926 by which he directed that two persons, namely, Madan Gopal Daga and H.F. Pilcher, the directors of the abovenamed company should appear before this Court for examination as to their dealings in respect of the affairs of the above company. This order which was made under the provisions of Section 195, Companies Act (7 of 1913) is the subject-matter of the present appeal. It is unnecessary for me to set out the facts involved in the present appeal because the same are to be found in my judgment, dated 22nd June 1925, printed on pp. 37 and 38 of the paper-book and in the judgment of Mr. Justice Pearson, dated 17th November 1926, printed on pp. 23 and 24 of the paper-book. A preliminary question has been raised as to whether the order made by Mr. Justice Pearson on 17th November 1926 is an appealable order.

2. Now the section of the Indian Companies Act relating to appeals from orders is Section 202 and it runs as follows:

Re-hearings of and appeals from any order or decision made or given in the matter of the winding up of a company by the Court 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 or decision of the same Court in cases within its ordinary jurisdiction.

3. From the terms of this section it would appear that an order made in the matter of the winding up of a company to be appealable must come within the meaning of the word "judgment" as used in Clause 15, Letters Patent, and, therefore, the question resolves itself into this, namely, whether the order made by Mr. Justice Pearson is a "judgment." I am not unmindful of the contention which has been advanced on behalf of the appellant, namely, that the words "same manner" and "same conditions" used in Section 202, Companies Act, mean that the procedure as regards

appeals from orders made in the winding up of a company by the Court must be the same as in the case of orders made in cases within the ordinary jurisdiction of the Court and that nothing further was intended or is indicated. That may or may not be so; but in my view an order made in winding up in order to be appealable under Section 202, Companies Act, must satisfy the requirements of Clause 15, Letters Patent as understood and explained in various decided cases in this Court from time to time. If that is so, then can it be said that the order made by Mr. Justice Pearson amounts to a "judgment"? It is urged that it amounts to a "judgment" inasmuch as it amounts to adjudication on the question as to whether the persons mentioned in the order were liable to be examined under the provisions of Section 195, Companies Act, and, that therefore, there has been a determination of a "right" or a "liability." I do not think that is the correct way of looking at the matter. All that was held by Mr. Justice Pearson amounted to this, namely, that a prima facie case has been made out by the liquidator for eliciting information about the affairs of the company from these two persons. Their "liability" has not been determined upon. After the best consideration that I have been able to give to this matter, I am unable to persuade myself that there has been any determination of any "right" or "liability" in this matter by Mr. Justice Pearson. In my opinion, therefore, the order made by Mr. Justice Pearson does not amount to a "judgment" as referred to in Clause 15, Letters Patent. In the view I have taken it is unnecessary for me to go into the merits of the case.

4. The appeal, therefore, is incompetent and as such should be dismissed with costs.

Buckland, J.

5. The section does not give an unqualified right of appeal. It gives such a right, but in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

6. Conditions have to be fulfilled and one of the conditions to be fulfilled in the case of an appeal from an order or decision of a Judge exercising original civil jurisdiction is that the order or decision must be a judgment. That is by virtue of Clause 15, Letters Patent, besides which, in addition to this section, nothing is relied upon as giving a right of appeal. Unless, therefore, the order of Pearson, J. is a judgment it does not fulfill the condition and there is nothing more to be said.

7. The word "manner" in my opinion is intended, primarily at least, to refer to procedure. Whether it connotes anything more is a question which may have to be more fully considered in other circumstances hereafter. Whatever its full and precise significance may be, it cannot assist the appellant on this point.

8. As to the order appealed against being a judgment I agree with the view which my learned brother has expressed and that this appeal should be dismissed with costs.

