

U.P. Oil Mills Agency, Kanpur Vs Saraswati Soap and Oil Mills Ltd.

Court: Allahabad High Court

Date of Decision: Aug. 26, 1953

Acts Referred: Companies Act, 1913 " Section 229, 230

Provincial Insolvency Act, 1920 " Section 28, 48

Trusts Act, 1882 " Section 23

Citation: AIR 1954 All 129 : (1953) 23 AWR 566 : (1954) 24 CompCas 450

Hon'ble Judges: Brij Mohan Lall, J

Bench: Single Bench

Advocate: A. Sanyal, for the Appellant; Official Liquidator, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Brij Mohan Lall, J.

This is an application u/s 183 (5), Companies Act (7 of 1913) by the U. P. Oil Mill Agency, Kanpur (hereinafter

described as claimant) against a decision of the official liquidators awarding it interest up to the date of the winding up order. The claimant contends

that interest should be allowed till the date of payment.

2. The claimant had deposited two sums of Rs. 25,000/- and Rs. 15,000/- with the Saraswati Soap and Oil Mills Ltd. (hereinafter described as

Company) while it (the Company) was a going concern. When the Company went into liquidation the claimant filed a claim before the official

liquidators and urged that it was entitled to priority against other creditors. The official liquidators admitted the claim but denied priority to the

claimant. A petition u/s 183(5) was filed by the claimant and the only point argued on that occasion was whether or not it was entitled to priority.

By my order dated 5-12-1952 I held that the claimant was not entitled to priority in respect of the sum of Rs. 25,000/- but was entitled to priority

in respect of the sum of Rs. 15,000/-. As the question of interest was not in issue at that time I was not invited to give a finding on that issue.

It was remarked in the said order that the aforesaid sum of Rs. 15,000/- would be payable as a preferential claim ""together with such interest as

may be"" payable thereon"". When the time-of payment came the official liquidators offered to the claimant interest till the date of the winding up

order. The claimant however maintained, as already stated, that it should be allowed interest till the date of payment.

3. When a company goes into liquidation and an official liquidator is appointed the creditors have to lodge their claims and prove their debts before

the official liquidator. Section 230, Companies Act lays down that certain debts are entitled to priority and interest on those debts is to be paid up

to the date mentioned in Sub-section (5) of that section. The claimant's debt however did not fall u/s 230 of the Act and therefore Sub-section (5)

has no application. The finding in the former litigation was that this sum of Rs. 15,000/-constituted a trust money in the Company's hands and

therefore the claimant was entitled to priority not u/s 230 of the Act but independently of it. Notwithstanding this finding the ordinary rules relating

to the proof of claims and debts govern this claim also. The said claim is subject to the same rule about interest as any other debt provable in the

liquidation proceedings. The mere fact that the debt was trust money should not entitle the claimant to claim any special treatment in the matter of

payment of interest.

Reference was made by the learned counsel for the claimant to Section 23 of the Trusts Act. But this section instead of helping him goes against his

claim. It is provided in this section that the trustee who commits a breach of trust is not liable to pay interest except where he has actually received

interest or ought, or may be fairly presumed, to have received interest or where the breach consists in unreasonable delay in paying trust money to

the beneficiaries. In the present case the official liquidators have not received interest for this sum from any other person. Nor is it a case where

they ought, or may be fairly presumed, to have received interest; nor has any unreasonable delay been made in paying the trust money. Therefore,

if the point in dispute is to be decided by considerations of the Trusts Act only, the claimant is entitled to no interest whatsoever. But the case is not

governed by Section 23, Trusts Act. The relevant provision is that contained in Section 229, Companies Act. It is laid down in this section that:

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and

unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being

under the law of insolvency with respect to the estates of persons adjudged insolvent.

It may be pointed out that the Company in question is an insolvent company in the sense that it is unable to pay its debtors in full. The case of

companies which can pay their debts and yet have some surplus left stands on a different footing. In the cases of such companies the creditors can

be paid interest up to the date of payment even if the shareholders or even the preferential shareholders are left totally unpaid. But the present

Company, as already stated, is not a solvent company. The payment must, therefore, be governed by the rules applicable to insolvency cases.

4. Section 61(5), Provincial Insolvency Act, lays down that:

Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amount of such debts respectively

and without any preference.

Sub-section (6) says that:

Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is

adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule".

It will, therefore, follow that in the absence of surplus amounts interest is payable up to the date of adjudication. Section 48 which is the only other

section relating to payment of interest and Which covers cases in which "interest is not reserved or agreed for," also lays down that interest shall be

paid till the date of adjudication. It is, therefore obvious that the principle underlying the law of insolvency is that interest ceases to run when

adjudication takes place. This view finds support from the following remarks made by Sulaiman, C. J., in -- "Ganga Sahai and Others Vs.

Mukarram Ali Khan, viz.:

As soon as the debtor is adjudged an insolvent, his entire estate vests in the Court or the receiver and his estate becomes liable to distribution at

once. Ordinarily therefore interest ceases to run automatically, and for purposes of dividend the rate of interest for all creditors is uniform rate of 6

per cent. per annum.

5. It is, therefore, obvious that the interest cannot be paid after adjudication and it is not possible to maintain that it should run right up to the date

of payment in the case of an insolvent company. It however remains to determine as to what is meant by the date of adjudication. Section 28(7),

Provincial Insolvency Act, lays down that:

An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

This means that interest should run up to the date of the presentation of the petition in an insolvency case and up to the date of presentation of

winding up petition in the case of an insolvent company.

6. A similar point arose for decision in the case of -- "Ganpati Sheoram v. Balram Ramji AIR 1945 Nag 276 (B) where it was held that: "Under

insolvency the ordinary rule is that all interest ceases once there is an insolvency and no interest is ordinarily permissible to be granted after the

presentation of a petition." A Division Bench of the Rangoon High Court has also dealt with a similar question in the case of -- "Esmail Esoof

Moola v. Chartered Bank of India, Australia and China AIR 1931 Rang 334 (C) and held that:

Section 229 is only applicable to an insolvent company and in the winding up of an insolvent company interest accruing after the commencement

of the liquidation is not a provable debt within Section 229.

Under Section 168, Companies Act "the commencement of winding up" by Court is deemed to take place on the date of presentation of the

petition for winding up. Therefore interest can accrue up to the date of presentation of the winding up petition and not afterwards.

7. The law in England is also to the same effect. In the case of -- "In re The Agricultural Wholesale Society, Ltd.", (1929) 2 Ch 261 (D) it was

held that the amounts proved for by the creditors were to be computed only up to the date of the "commencement of the winding up", which

phrase, as already stated, means the date of the presentation of winding up petition.

8. In the circumstances I am of the opinion that the claimant was entitled to interest up to the date of the presentation of winding up petition only. In

offering to pay him interest till the date of winding up order the Official liquidators have really offered to make an over payment to him. I am not

concerned at this stage with the question whether or not the amount offered to be paid to the claimant can be cut down. All I must hold at present

is that the claimant's demand for interest till the date of payment must be rejected. The application is, therefore, rejected with costs.