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AIR 1916 All 174 : (1916) ILR (All) 407

Allahabad High Court

Case No: None

Suraj Bhan and Others	APPELLANT
Vs	
Boot and Equipment Factory	RESPONDENT

Date of Decision: April 5, 1916

Citation: AIR 1916 All 174 : (1916) ILR (All) 407

Hon'ble Judges: Walsh, J; Piggott, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Piggott, J.
This is an appeal by the decree-holders in an execution case. The judgement-debtor is a company registered under the Indian Companies Act (Act VII of 1913). For purposes of this appeal we may take it that this Company has gone into voluntary liquidation. The court of first instance held that this circumstance afforded no reason for staying execution of the decree j but this decision has been reversed by the District Judge on appeal. In the Indian Companies Act (No. VII of 1913), there is no statutory provision as to stay of suits or other legal proceedings in the case of a company which has gone into voluntary liquidation, corresponding to the provisions of Section 171 of the Act, with regard to the consequences of a winding up order. The, learned District Judge points out that it would be open to the present decree-holders to obtain a winding-up order and assumes that this circumstance is in itself sufficient to deprive them of their remedy by way of execution.
We have been referred to the provisions of Section 297, Clause (1), of the Act. It is there laid down that one of the consequences which ensues on the voluntary winding up of a company is that its assets shall be applied in satisfaction of all its liabilities pari passu. These words lay down a direction for the guidance of the liquidator and confer certain rights on all the creditors. The question, however, is on whom does the burden lie under the circumstances now before us of moving the court which has jurisdiction under the Indian Companies Act, to take action with a view to enforcing these provisions?

Undoubtedly the liquidator, or any other creditor dissatisfied with the action taken by the present decree-holders, would be entitled to move the court having jurisdiction under the Companies Act; but the mere existence of this provision in Section 207, Clause (1), does not seem to operate in itself as a statutory bar to the progress of the execution proceedings, unless and until an order has been obtained from a court having jurisdiction under the Companies Act, either for winding up, or for stay of proceedings. The practical importance of the above considerations seems to be illustrated by the facts of the present case, The debtor company purports to have gone into voluntary liquidation, and it has at the same time taken certain steps, the object of which would seem to be, to leave it doubtful whether the court which would have jurisdiction over the affairs of this particular company u/s 3 of Act VII of 1913, should be this Court or the Calcutta High Court. In argument it was conceded before us that this Court would have jurisdiction; but there has been no formal application to this Court by the liquidator or by any other person concerned in the affairs of this Company, which would have the effect of binding such applicant to an admission that this Court was the proper court to exercise jurisdiction. It seems to me therefore under the circumstances that the proper order to pass is one setting aside the order of the District Judge and returning the execution case to the court of first instance, with directions to proceed with the execution, unless and until those proceedings are brought to a close by a winding-up order, or by some order of a competent court exercising jurisdiction under Act No. VII of 1913.

Walsh, J.

2. I agree. I think the Judgment of the District Judge wholly missed the point. There is an express stay in the case of a compulsory winding-up order. That is obviously to prevent a conflict between two courts in two distinct proceedings dealing with the same subject matter. But in spite of the stay provided by Section 171, leave of the court may still be obtained under it on certain terms to continue legal proceedings. That shows that whether a proceeding is to be allowed to continue or not is a matter for the consideration of the court having jurisdiction over winding-up. If the decision of the learned District Judge were to stand, the result would be to give to the district court, or the court from which the decree was obtained, jurisdiction to determine questions arising in a winding-up which the Legislature has entrusted to the court of the place where the company has its registered office. To my mind in a voluntary winding-up before the company itself can obtain a stay it must apply to the court in which the winding-up would take place if it were compulsory. That is obviously the appropriate court to determine any question between the company or its liquidator and any other person.

3. The appeal is allowed, the decree of the lower appellate court is set aside and the execution proceedings are remanded to the court of first instance, through the lower appellate court, to be proceeded with subject to the remarks contained in the order of the Court. The appellants will get their costs in all three courts.