

(1950) 10 AHC CK 0025

Allahabad High Court

Case No: Letters Patent Appeal No. 12 of 1950

Vishwapal Sharma and Others

APPELLANT

Vs

Brijendrapal Sharma

RESPONDENT

Date of Decision: Oct. 6, 1950

Acts Referred:

- Companies Act, 1913 - Section 166, 170, 202

Citation: AIR 1952 All 223

Hon'ble Judges: Malik, C.J; V. Bhargava, J

Bench: Division Bench

Advocate: V.D. Bhargava and G. Kumar, for the Appellant; S.C. Khare, for the Respondent

Final Decision: Dismissed

Judgement

Malik, C.J.

This is an appeal under Sections 13 and 15, U. P. High Courts Amalgamation. Order, 1948, read with Clause 10 of the Letters Patent of the Allahabad High Court. An application was filed by Brijendrapal Sharma for the winding up of a company known as Sukh Sancharak Co., Ltd. The matter came up before the learned Company Judge and the case was heard by him at some length. The learned Judge took the view that it was eminently a case in which the parties should reach some sort of a settlement. He, therefore, granted time upto the first Friday after the vacation, or upto such further date as the Judge exercising company jurisdiction might determine, for a settlement. The case had, however, been argued at great length. The learned Judge, therefore, recorded his findings on the various points raised before him, but he did not pass any winding up order u/s 166, Companies Act. So long as the winding up order is not passed, it cannot be said that the rights of the parties have been finally determined. The relevant portion of the learned Judge's order is as follows :

"In the circumstances the order which I propose to make is this--If by the first Friday after the vacation, or by such further date as the Judge exercising Company Jurisdiction may determine, a settlement is not reached, there will be a winding up order in the usual form, and the provisional liquidator, unless the Court otherwise directs, will be the Official Liquidator. In view of the fact that the petition contains a great number of allegations of which some are expressed in very vague terms, some have been abandoned and others have been found to be without substance, as a result of which the hearing has been unnecessarily prolonged, the petitioner will, in the event of a compulsory winding up order being made, be entitled only to half the usual costs."

As the learned Judge was going on long leave, instead of adjourning the case as he could have done without expressing any opinion, he thought it proper to give his findings on the various points raised before him. It cannot be said that by his order dated 24-5-1950, he had finally determined the rights of the parties which could enable the appellants to file this appeal u/s 202, Companies Act. Section 202 is as follows :

"Rehearings 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 oasea within its ordinary jurisdiction."

Appeals to this Court under its ordinary jurisdiction lie only against decrees or against such orders as are appealable under Order 43, Civil P. C. Appeals also lie to a Division Bench from a "judgment" of a learned single Judge. It is now well settled that "judgment" means not an expression of opinion on a point that was argued before a single Judge but an order which finally deter, mines the rights of the parties so far as the single Judge is concerned. u/s 170, Companies Act, the Court had the power to dismiss the application, to grant the same or to adjourn the hearing conditionally or unconditionally. Here, the learned Judge considered it proper to adjourn the case to a future date and to postpone the passing of a final order to that date. In *Chauli v. Meghoo* ILR (1945) ALL 798 a Pull Bench of this Court has held that after return of the findings on issues remitted to the lower Court the Court is not bound by the judgment remitting the issues and can re-decide the whole case.

2. The appeal is misconceived. It does not lie. We allow the preliminary objection and dismiss the appeal with costs.