
Bharati Central Bank Ltd. (in liquidation) Vs Rathindra Nath Sen

Suit No. 2688 of 1949

Court: Calcutta High Court

Date of Decision: Aug. 24, 1950

Acts Referred:

Banking Companies Act, 1949 " Section 45A

Citation: 54 CWN 975

Hon'ble Judges: Harries, C.J; Banerjee, J

Bench: Division Bench

Advocate: Asoke Sen, for the Appellant;

Judgement

Banerjee, J.

The point we have to consider in this case relates to enforcement of orders made in a civil proceeding under the Banking

Companies Act, 1949, as amended by the Act of 1950, and depends on the meaning to be given to certain sections of that Act.

The case came

originally before me sitting as a single Judge on the Original Side, but having regard to the importance of the matter, I referred it to my Lord the

Chief Justice under Ch. V, r. 3 of the Original Side Rules to constitute a Bench for consideration of the matter. This Bench has accordingly been

constituted and we have heard arguments of Counsel on the point under consideration. The facts shortly are these. The bank was directed to be

wound up by an order of this Court dated November 17, 1947. A decree for payment of money was passed in favour of the bank against the

Respondent on September 12, 1949. This decree was sought to be executed by attachment and sale of an immovable property belonging to the

Respondent which is situate in Bhowanipore outside the Original Jurisdiction of this Court. Ordinarily the decree should have been transmitted to a

Court at Alipore for execution, but it is said that the decree amounts to an order within the meaning of secs.45A and 45B of the Banking

Companies Act and by reason of the sections, which I am going to note below, that Court has no jurisdiction to execute the decree.

2. "Court" has been defined in the Banking Companies Act, (sec. 45A). That section occurs in Part IIIA of that Act and is headed "special

provisions for speedy disposal of winding-up proceedings." The definition is this:

In this part and in Part III, "Court" means the High Court exercising jurisdiction in the place where the registered office of the Banking Company

which is being wound up is situated or in the case of a Banking Company incorporated outside India which is being wound up, where its principal

place of business is situated, and notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, (VII of 1913), or in any

notification, order or direction issued thereunder or in any other law for the time being in force, no other Court shall have jurisdiction to entertain

any matter relating to or arising out of the winding-up of a Banking Company.

Next comes sec. 45B:

Power of Courts to decide all claims by or against Banking Companies.-- (1) Notwithstanding anything to the contrary contained in the Indian

Companies Act, 1913 (VII of 1913), or in any other law for the time being in force, the Court shall have full power to decide all claims made by or

against any Banking Company (including claims by or against any of its branches in India) and all questions of priorities and all other questions

whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of the Banking Company coming within the

cognisance of the Court.

3. Sub-sec. (2) makes the orders appealable within the limits defined by the sub-section.

4. It is clear from these two sections that the Court which makes the winding-up order will have jurisdiction to decide all claims by or against the

Banking Company or any question which relates to or arises in the course of the winding-up of the Company. The words "relating to or arising in

the course of" are wide enough to cover an execution proceeding. If these sections were alone in the Act, then there was no doubt that the Court

which makes the winding-up order would alone have jurisdiction to enforce the orders made under the Act. There is another section which must

also be noted. That is sec. 11 of the Act of 1950 which is as follows:--

Transfer of pending proceedings in winding-up to the Court exercising jurisdiction under this Act. Where any proceeding for the winding-up of a

Banking Company or any other proceeding, whether civil or criminal, which has arisen out of or in the course of such winding-up, is pending in any

Court immediately before the commencement of this Act, it shall stand transferred on such commencement to the Court which would have had

jurisdiction to entertain such proceeding if this Act had been in force on the date on which the proceeding commenced, and the Court to which the

proceeding stands so transferred shall dispose of the proceeding as if this Act and the amendments made thereby were applicable thereto.

5. This section says that any proceeding pending before the commencement of the Act which has arisen out of or in the course of the winding-up,

must be transferred to the Court defined in the Act. On these sections it is manifestly clear that the Court making the winding-up order alone has

the power to execute the orders made in any civil proceeding by that Court.

6. And this is so inspite of the Companies Act, under the provisions of which the bank in question was directed to be wound up. Sec. 200

provides that any order made by a Court for or in the course of winding-up of a Company, may be enforced in any other place in British India by

such Court as would have jurisdiction in respect of such Company, if the registered office of the Company had been situated at such other place.

This section must be read along with sec. 199.

7. But there is another section which is important. That section had no counterpart in the Ordinance of 1949 which has been replaced by the Act

of 1950. That section is 45H, introduced into the Act of 1949 by the amending Act of 1950. Sec. 45H is in these words:

Power of Court to enforce orders: All orders made in any civil proceeding by a Court exercising jurisdiction under Part III or Part IIIA may be

enforced in the same manner in which decrees of Court made in any suit pending therein be enforced.

8. Sec. 45H, therefore, provides for the enforcement of orders made under Part III or Part IIIA of the Act and says that should be enforced in the

manner in which decrees of such Court made in any suit pending therein may be enforced.

9. Sec. 45II may be compared with sec. 199 of the Companies Act. Sec. 199 provides that all orders made by a Court under the Companies Act

may be enforced in the same manner in which decrees of such Court made in any suit pending therein may enforced. The orders do not become

decrees; in matters of execution, the orders are treated as if they were decrees and all the provisions of the CPC relating to the execution of

decrees are applicable to the execution of such orders.

10. The CPC provides for the mode and the manner of execution. Sec. 38 provides that a decree may be executed either by the Court which

passed it, or by the Court to which it is sent for execution. Sec. 39 says that the Court which passed a decree may send it for execution to another

Court. Sec. 40 provides for transfer of decrees to Courts in another Province. Sec. 42 defines the powers of Court in executing transferred

decrees and runs as follows:--

The Court executing a decree sent it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying

or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in

executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

11. Counsel argued that as the Banking Companies Act vested in the Court defined by that Act all powers to decide claims by or against the

Banking Company and to decide questions of priority which may relate to or arise in the course of the winding-up the transferee Court cannot have

any power to execute the order inasmuch as the transferee Court has no jurisdiction to execute it. Its jurisdiction has been taken away by the

Banking Companies Act: the words, "the Court executing a decree sent to it shall have the same powers in executing such decree as if it had been

passed by itself" can, therefore, have no meaning in a case like one under consideration.

12. We are unable to read the sections of the Banking Companies Act in the manner Counsel suggests. It seems to us that sec. 45H is an

exception to secs. 45A, 45B and 11 and makes special provisions for enforcement of the orders. It is a well-known principle of construction that a

statute has got to be read in all its parts, as has been said in *Colqhoun v. Brooks* 14 A.C. 698 at p. 506.

13. "It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider

any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not

to be construed as it would be alone and apart from the rest of the Act.

14. Reading, therefore, secs. 45A, 45B, 11 and 45H together it is clear to us that the Court which winds up the Company and passes orders as

referred to in sec. 45H of the Banking Companies Act, 1950 may execute the orders in the manner provided in the Civil Procedure Code. For

example, if necessary, it may transfer the order to any Court for execution.

15. If we accept the suggestion made by Counsel it will lead to mischievous results. Suppose an order is made by this Court for payment of a sum

of Rs. 100 and the property against which execution is to be levied is at Midnapore. If this Court is to execute the order, the cost of execution may

far exceed the amount of the order and in fact, may bear no comparison to that amount. Again, take the case of a Court like the Allahabad High

Court. The Allahabad High Court can make winding-up orders. That Court does not exercise any-Original Jurisdiction. It has no machinery for

executing its orders except by transferring them to other Courts. If Counsel's suggestions were correct how is the Allahabad High Court to

execute its orders ?

16. We are therefore, of opinion that the true construction of these sections is that after orders are passed by the Court which winds up the

company, it may, if necessary, transfer such orders for execution in the manner provided in the Civil Procedure Code. Assuming that the decree in

this case amounts to an order made under the Banking Companies Act, we hold that it may be executed by transferring it to a Court at Alipore.

17. The costs of this application will be added to the claim of the decree-holder.

Certified for Counsel.

The difference between the attorney and client costs and party and party costs will be retained by the liquidator out of the assets of the Company.

Harries, C.J.

I agree.