

(2002) 08 CAL CK 0030

Calcutta High Court

Case No: C.O. No's. 1235, 1238 and 1259 of 2002

Narendra Mohan Lakhotia

APPELLANT

Vs

Pinaki Bhusan Sinha

RESPONDENT

Date of Decision: Aug. 16, 2002

Acts Referred:

- Companies Act, 1956 - Section 446
- Constitution of India, 1950 - Article 227
- Consumer Protection Act, 1986 - Section 3

Citation: (2003) 45 SCL 423

Hon'ble Judges: Narayan Chandra Sil, J

Bench: Single Bench

Advocate: P.P. Banerjee, K.L. Yadav and Rajesh Upadhyay, for the Appellant; Probal Kumar Mukherjee, for the Respondent

Judgement

Narayan Chandra Sil, J.

All these three revisional applications under Article 227 of the Constitution of India are taken up together for the purpose of disposal as the questions involved for determination in all those three revisional applications are same and similar.

2. The C.O. No. 1235 of 2002 was directed against the impugned order No. 14 dated 18-4-2002 (although in the Cause Title the date of the impugned order has been shown as 23-4-2002) passed by the learned District Consumer Disputes Redressal Forum (hereinafter referred to as "Forum"), South 24 Parganas arising out of Execution Case No. 19 of 2001. The C.O. No. 1238 of 2002 was directed against the impugned order No. 14 dated 23-4-2002 passed by the said Forum arising out of Execution Case No. 18 of 2001. The C.O. No. 1259 of 2002 was directed against the impugned order No. 9 dated 23-4-2002 passed by the learned Forum arising out of Execution Case No. 59 of 2001.

3. It appears from the record that the O.P. No. 1 was a depositor with the O.P. No. 2 and it was alleged before the Forum by the O.P. No. 1 that the O.P. No. 2 was not paying the sum even after the maturity period. It is also stated that the O.P. No. 2 is a Public Limited Company under the Companies Act, 1956 and an official liquidator has been appointed by the Hon'ble Company Court presided over by the Hon'ble Mr. Justice Ronojit Kumar Mitra. But the claim petition was not filed before the official liquidator. It is also alleged in the revisional application that the petitioner was the Managing Director of the O.P. No. 2 company but due to winding up order passed by the Hon'ble Company Court the petitioner has ceased to be the Managing Director of the O.P. No. 2 and the entire management of the Company and its assets vested in the official liquidator. It is also alleged that no person would have the right to enforce any claim against the O.P. No. 2 except with the leave of the Company Court. But despite all this the O.P. No. 1 sought to enforce such claim against the petitioner qua managing director of the O.P. No. 2 in a proceeding to which the petitioner was not a party, The proceeding was instituted before the District Forum and the impugned order was passed by the Forum. It is also pointed in the revisional application that the Forum in total disrespect to the position of law or the process of the Hon'ble Court had observed that merely because the Hon'ble High Court passed a winding up order, the hands of the Forum had not been tied and this the learned Forum exercised jurisdiction not vested in it by law by passing an order impugned threatening the present petitioner qua Managing Director to comply with the earlier order passed by the Forum.

4. At the very outset when the revisional applications have been taken up for consideration the question of maintainability of these revisional applications has been challenged by the O.P. No. 1 and accordingly the maintainability point of these revisional applications has been taken up for consideration.

5. Mr. Protik Prakash Banerjee, the learned counsel appearing for the petitioner has taken me through the provisions of Section 446 of the Companies Act, 1956. He submits further that the present petitioner is not a company and he was only the erstwhile Managing Director of the O.P. No. 2, Mr. Banerjee has also taken me through the various provisions of the Reserve Bank of India Act, 1934. It is also pointed out by him that one of the depositors filed petition for winding up the company and the order was accordingly passed. Mr. Banerjee tries to impress upon me that in terms of the provisions of Section 446 of the Companies Act, no Court can take up any proceedings for consideration. Mr. Banerjee then argues before me that the refund of money of the depositors deposited with the company after maturity does not amount to service in terms of the Consumer Protection Act, 1986 and as such the learned Forum acted beyond its jurisdiction in passing the order impugned. It is also submitted by Mr. Banerjee that the Forum being an inferior authority to the Court the petition under Article 30 of the Constitution of India is quite maintainable even keeping in view the provisions of appeal contained in the said Act.

6. In order to substantiate the case of the petitioner Mr. Banerjee has referred to the ratio decided in the case of Gouri Sankar Chatterjee v. Howrah Municipal Corporation 1998 (1) CLJ 500 in which his Lordship the Hon"ble Mr. Justice Tarun Chatterjee was pleased to hold that the High Court in exercise of its power under Article 30 of the Constitution of India can entertain a petition against an order which is found to be on the face of it without jurisdiction. His Lordship was further pleased to hold that even in view of the availability of an alternative remedy by way of an appeal under the Consumer Protection Act, the application under Article 30 of the Constitution is maintainable against the order impugned. Mr. Banerjee has also referred to the ratio decided in the case of [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), in which it was inter alia held that the existence of alternative remedy is not a constitutional bar to the High Court's jurisdiction under Article 226 of the Constitution. It was also held by the Hon"ble Apex Court in that case that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution.

7. Mr. Probal Kr. Mukherjee, the learned counsel appearing for the O.P. No. 1 submits before me that the questions which has been raised by the petitioner before this Court should have been raised before the authority i.e., the State Forum. It is also pointed out by him that when the execution order was passed by the Forum, the winding up order was not passed by the Company Court so the provisions of Section 446 of the Companies Act does not come to play any role in the instant case. In this connection Mr. Mukherjee has referred to the decision made in C.O. No. 1086 of 1995 by his Lordship Hon"ble Mr. Justice N.K. Bhattacharya reported in [Binod Behari Das Vs. Smt. Soma Roy and others](#), , But it appears that the Hon"ble Judge in considering the revisional application under Article 30 of the Constitution of India held that despite the provisions of Section 17 of the Consumer Protection Act, 1986 the application under Article 30 of the Constitution is maintainable. Mr. Mukherjee has also referred to the ratio decided in the case of Prudential Capital Markets Ltd. v. State of A.P. 2001 CLC 685. In the said case the learned Single Judge observed that there are three categories of cases. The first category of cases are those where the depositor filed a consumer dispute case before the competent District Forum for refund of the deposit made by the depositor with the company (i.e., in that case Prudential Capital Market Limited in short PCML) and on the District Forum allowing the application, the petitioner approached the State Commission which dismissed the appeal filed and whereupon the depositor approached District Forum u/s 27(1) of the Consumer Protection Act, 1986 by filing penalty petition. The second category of cases are those where the depositor filed a penalty petition before the District Forum for implementation of the order in consumer dispute case and there the petitioner did not approach the State Commission which (sic) the Appellate Forum. The third category of cases are those where the orders of the Appellate Forum are challenged by the petitioner. One of the points for consideration in that case was whether the provisions of

Reserve Bank of India Act and the Companies Act oust the jurisdiction of the District Forum/State Commission to give redressal to a depositor who complains "Deficiency in service" given by the NBFC (Non-Banking Finance Company). In finding the answer the learned Judge interpreted the provisions of Section 3 of the Consumer Protection Act and came to the conclusion that the provisions of the Consumer Protection Act is not in derogation of any provisions of any other law for the time being in force but in addition to the same and as such despite the provisions of the Companies Act and the Reserve Bank of India Act a depositor may approach the Forum for redressal.

8. Mr. Banerjee in reply to the submissions made by Mr. Mukherjee submits before me that in neither of the cases cited by Mr. Mukherjee the provisions of Section 446 of the Companies Act was the matter of consideration.

9. Now, in view of the submissions made by the learned counsel for the parties and the different judicial pronouncements referred to by them before me the points for determination in the instant case are as follows :

(1) Whether in view of the provisions of the Reserve Bank of India Act and the Companies Act the proceeding initiated by the depositors before the Forum for getting back their deposited money with matured value is maintainable and what is the impact of Section 446 of the Companies Act thereon;

(2) Whether in view of the alternative remedy provided in the Consumer Protection Act itself the proceedings under Article 30 of the Constitution of India is maintainable.

10. I shall take up the first point first. The provisions of Section 446 of the Companies Act reads as below :

"Suits stayed on winding up order.--(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose"

11. During his arguments Mr. Mukherjee, the learned counsel for the O.P. submits before me that the High Court passed the order for winding up of the Company on 11-2-2002 whereas the order of the Forum was passed on 26-2-2002. Mr. Mukherjee tries to impress upon me that since the order of the Forum was passed prior to the order of the Company Court directing winding up of the Company, the execution of the order of the Forum cannot be stalled.

12. I do not find any substance in the submissions of Mr. Mukherjee. The provisions of Section 446 of the Companies Act is sufficient to provide that even any pending proceeding on the date of the winding up of the order cannot proceed without the leave of the Company Court subject to such terms as the said Court may impose.

The ratio decided in the case of Prudential Capital Market Ltd. (supra) as cited by Mr. Mukherjee does not appear to have dealt with the scope of the provisions of Section 446 of the Companies Act and accordingly although the said decision is applicable in the instant case so far the point No. 1 for decision is concerned, but loses its force in view of winding up order passed u/s 446 of the Companies Act. Thus, I am to hold that the provisions of the Reserve Bank of India Act and Companies Act do not stand as a bar in terms of the provisions of Section 3 of the Consumer Protection Act for the depositors to approach the Forum in order to get back their deposited money with matured value. But the position will be otherwise when winding up order is passed by the Company Court u/s 446 of the Companies Act. Accordingly, it appears that the petitioner has got a strong prima facie case to argue for the stay of the proceeding pending before the Forum and so the point No. 1 is decided in favour of the petitioner.

13. Now, I shall take up the second point for consideration. The case laws cited by the learned counsel for both the parties rather go to show that despite the provisions of the Reserve Bank of India Act and even the Companies Act the proceeding of the depositor before the Forum is quite maintainable. I like to make it clear here that Section 446 of the Companies Act deals with the stay of the proceeding pending on the date of winding up order. But in view of my decision as regards the first point hereinbefore I am inclined to hold that despite the alternative remedy provided in the Consumer Act itself, the present proceeding is quite maintainable in view of the provisions of Section 446 of the Companies Act.

14. In fine I am to hold that the proceedings under Article 30 of the Constitution of India are all maintainable in the present Forum.

15. The order passed in C.O. No. 1235 of 2002 shall govern the other C.Os. namely C.O. 1238 of 2002 and C.O. 1259 of 2002.

Order accordingly.