

REVISIONAL CIVIL.*Before Kapur, J.*

1952

THE DISCOUNT BANK OF INDIA.—*Petitioner.*

March . 20th

*versus*MR. TIRLOKI NATH, ETC., *Respondents.***Civil Revision No. 41D of 1952**

Banking Companies (Amendment) Act (XX of 1950), Sections 10, 11, 45-A and 45-B—Scope of sections 45-A and 45-B—Suit filed by a Banking Company in a Court subordinate to the Punjab High Court—Banking Company thereafter going into liquidation by an order of the High Court of Bombay—Which High Court has jurisdiction to try the suit.

The Discount Bank of India v. Mr. Tirloki Nath, etc. On the 16th April 1947, Bank D sued T. N. and three others at Delhi for recovery of money, only S. P. appeared and defended the suit. On the 26th June 1951, Bank D went into liquidation by the order of the High Court of Bombay. The Delhi Court was to hear the case on the 19th November 1951, but the date was changed to the 17th December 1951. On that date two applications were made to the Court by the Bank, one of which was under section 45-B of the Banking Companies (Amendment) Act for transfer of the suit to Bombay High Court. The application for transfer of the suit was dismissed on the 19th December 1951. On the 7th February 1952, another two applications were made by the Bank D, one of which was under section 11 of the Banking Companies (Amendment) Act for transfer of the suit to the Bombay High Court. This application was also rejected on the 19th February 1952. The Bank moved the High Court on the revisional side.

Held, that the Banking Companies (Amendment) Act, applies to proceedings which are started before the winding up as also to those which are started thereafter, and sections 45-A and 45-B of the Act cover cases which relate to the winding up of a Banking Company. Institution or carrying on of already instituted suit are matters which relate to the winding up of the Company.

Held also, that under section 45-A only the High Court in which the winding up is pending has jurisdiction to try the suit. The combined effect of sections 10 and 11 of the Act is that suits brought in any other Court shall stand transferred to the High Court in which the winding up is pending.

C. K. DAPHTRY and K. C. CHOPRA, for Petitioner.

S. N. ANDELAY, for Respondent.

JUDGMENT

Kapur J.

KAPUR, J. This is a rule directed against an order passed by Mr Chetan Das Jain, Subordinate Judge, 1st Class, Delhi, dated the 19th February 1952, rejecting an application made by the plaintiff for ordering the transfer of the case to the Bombay High Court under section 11 of the Banking Companies (Amendment) Act, Act XX of 1950.

The Discount Bank of India, Limited, Delhi, which is now in liquidation, brought a suit for the recovery of Rs 1,93,197-7-0 against Tirloki Nath and three others. Only defendant No. 2, Summat Parshad

Jain, entered appearance and defended the suit. This suit was brought on the 16th April 1947. On the 26th June 1951, the plaintiff Bank went into liquidation by an order of the Bombay High Court. From the 11th May 1949, the suit was stayed because of an order passed by the Punjab High Court at Simla on an application made in revision. This revision petition was decided on the 12th July 1951 and the case was to be heard in the trial Court on the 19th November 1951 and was finally fixed for the 17th December 1951.

The Discount
Bank of India

v.
Mr. Tirloki
Nath, etc.

—
Kapur J.

On the 17th December 1951 two applications were made on behalf of the plaintiff Bank, one under Order XXII, Civil Procedure Code, for permission to allow the Official Liquidator to represent the plaintiff Bank and the other under section 45-B of the Banking Companies (Amendment) Act to transfer the case to the Bombay High Court. The application for transfer was dismissed on the 19th December 1951. It has not been stated before me on what grounds this application was dismissed.

Proceedings then went on, and on the 7th February 1952, two applications were made by the plaintiff, one under section 11 of the Banking Companies (Amendment) Act for ordering the transfer of the case to the Bombay High Court and the other under section 171 of the Indian Companies Act for staying of the suit pending the grant of permission to the Liquidator for continuing the suit. The Court on the 19th February 1952 allowed the Official Liquidator to be substituted but dismissed the applications under section 11 of the Banking Companies Act and under section 171 of the Indian Companies Act. The petition for revision was brought by the Liquidator of the Bank against the order of the Subordinate Judge refusing to order the transfer of the suit and rule was issued by me on the 27th February 1952.

The question for decision in the present case is as to whether because of the provisions of the Banking Companies. (Amendment) Act the case shall stand transferred to the Bombay High Court. There is no dispute that the Bank has gone into liquidation by an

**The Discount order of the Bombay High Court and an Official
Bank of India Liquidator has been appointed. The only question is
v. what is the effect of the various provisions of the
Mr. Tirloki Banking Companies Act. Under section 45-A which
Nath, etc. has been inserted in the Act by the Amending Act
— of 1950, 'Court' has been defined as under :—
Kapur J.**

“ 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.

Under section 45-B the powers of the Court are given in the following words :—

“ (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 cognizance of the Court.”

According to section 45-A, no Court other than a High Court has jurisdiction to entertain any matter relating to or arising out of the winding up of a banking company and in section 45-B the words used

are " which may relate to or arise in the course of the winding up of the banking company coming within the cognizance of the Court." In section 11 of the Amending Act a provision for transfer of pending proceedings has been made and the words used there are :—

The Discount
Bank of India
v.

Mr. Tirloki
Nath, etc.

—
Kapur J.

" Where any proceedings 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 proceedings if this Act had been in force on the date on which the proceeding commenced. *
* * * "

The amending Act came into force on the 18th March 1950, when it was published in the Gazette Extraordinary.

The question to be determined in this case is whether a suit, which has been brought by a banking company, to enforce a contract, or as in this case, for recovery of money, is a matter which can be said to arise out of or relate to the winding up of a company.

The object of liquidation of a company, and particularly of a banking company, is that the assets of the company should be realised and the debt paid in accordance with law and as expeditiously as possible. Under section 179 (a) of the Indian Companies Act the Official Liquidator has the power, after getting sanction of the Court, to institute or defend any suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the company; and according to subsection (1) of that section to do all such other things as may be necessary for winding up the affairs of the company and distributing the assets. In a winding up the liquidator acts not merely for creditors but for contributories and for the company also. A liquidator is an agent employed for

The Discount
Bank of India

v.

Mr. Tirloki
Nath, etc.

—
Kapur J.

the purpose of winding up of a company. In some respects he is a trustee ; but he is not a trustee for each individual creditor : See *Knowles v. Scott* (1). His principal duties are to take possession of assets, to make out the requisite lists of contributories and of creditors, to have disputed cases adjudicated upon, to realise the assets subject to the control of the Court in certain matters and to apply the proceeds in payment of the company's debts and liabilities in due course of administration, and, having done that, to divide the surplus amongst the contributories and to adjust their rights. According to *Palmer's Company Law*, page 414, any proceedings necessary for the protection of the property are taken by the liquidator in the name of the company, unless the Court has made a vesting order, in which case he can sue in his official name in respect of property vested in him by the order. Under section 179, he can institute or defend any suit with the sanction of the Court and he can take any other legal proceedings, civil or criminal, also with such sanction.

If these are the powers and duties of the liquidator, it seems to me that realization of debt, whether by instituting a suit or by private negotiations or by carrying on a suit which has already been instituted, must necessarily be a matter relating to the winding up. As I have said, the principal duties of the liquidator are to take possession of and to protect the assets of the company, and if he does not take charge of a suit pending against a third party for the recovery of monies due to a banking company, he will be failing in one of his principal duties. The Bombay High Court have held in an unreported case, which I shall refer to later, that the institution of a suit is a matter relating to, if not arising out of, winding up. Can it be said that carrying on litigation, which is already pending, is not a matter which comes within the powers and duties of a liquidator and therefore relates to winding up ? When a liquidator carries on a proceeding for recovery of money which has already been started, he has to take into consideration whether

(1) (1891) 1 Ch. 717 at p. 723.

he could usefully carry on the proceedings, expend money or compromise or give up the claim. He does by continuing the suit help in the realization of the assets and in the winding up of the affairs of the company and in the ultimate distribution of the assets. And all these are matters which would require the sanction of the Court after due deliberation, and it cannot be said that these are not matters which relate to the realization of the assets of the company and then to distribute them if and when a sufficient amount of assets is realised.

The Discount
Bank of India

v.
Mr. Tirloki
Nath, etc.

—
Kapur J.

It has been held under section 191 of the English Act of 1929, which corresponds to section 179 of the Indian Act, that a liquidator cannot even appoint a solicitor without the sanction of the Court which is to be obtained before such employment. *A fortiori*, if he is to carry on a liquidation, which has already been started, it would be incumbent upon him to get the sanction of the Court.

In a recent unreported judgment of the Bombay High Court in re : *The Associated Banking Corporation of India Limited (in liquidation) v. Messrs Nazaralli Kassambhai & Co.*, (1), the facts were that a suit was brought by the Official Liquidator to recover a sum of money due to the Banking Company from its debtor, and the question that arose was whether such a suit was triable in the High Court where the liquidation was pending or had to be brought in the City Civil Court, Bombay. Shah, J., against whose judgment the appeal was taken to the Appeal Court, had held that the suit could not be tried in the High Court, because there must be a direct connection or nexus between the winding up and the matter which comes for the decision of the Court before section 45-A or section 45-B would be applicable, and as the suit had arisen out of the winding up, that is not by reason of the supervention of the winding up that the Official Liquidator became entitled to recover this amount and the cause of action did not arise by reason of the banking company being wound up, the High Court had

(1) Appeal No. 36 of 1951 of Bombay H. C.

The Discount Bank of India v. **Mr. Tirloki Nath, etc.** no jurisdiction. In considering this argument which was again pressed before the Appeal Court Chagla, C.J. referred to section 179 of the Companies Act and said :—

Kapur J.

“ It is one thing to say that the company before it is wound up is enforcing its contractual right and the contractual obligation of the debtor in filing a suit to recover the debt due to the banking company. It is entirely a different thing to say that the official liquidator with the sanction of the Court is recovering the debt due by the debtor to the company under section 179 because the official liquidator is not concerned with the contractual rights or obligations. He is primarily concerned to wind up the affairs of the company and to distribute its assets. Therefore in filing the suit what he is doing is helping to wind up the affairs of the company and also assisting the ultimate distribution of the assets of the company. Even the Court when it gives sanction approaches the matter from the same point of view. It has got to consider what are the possibilities of recovering the debt, what costs are likely to be incurred, whether from every point of view it is advisable to prosecute the claim, and so on and so forth ; whereas the company before it is wound up would not be in any way fettered by the considerations which would weigh with the liquidator or with the Court under section 179. Therefore a suit filed after the company goes into liquidation by the official liquidator under section 179 must have a relationship with the winding up of the company.”

Discussing the words “ relating to the winding up ” the learned Chief Justice observed :—

“ The expression ‘ relating to winding up ’ is much wider and more extensive than the

expression ' arising out of the winding up '." The Discount Bank of India v.

Continuing the learned Chief Justice said :—

Mr. Tirloki Nath, etc.

" Therefore if the sole purpose and the whole object of this legislation is to wind up the affairs of banking companies as expeditiously as possible, then it stands to reason that the Legislature must have intended that the assets should be realised as quickly as possible, and when the official liquidator files a suit against a debtor of the banking company, all he is doing is to attempt to realise part of the assets of the company ".

Kapur J.

With these observations of the learned Chief Justice I am in respectful agreement and in my opinion they apply to the case now before me.

Mr Daphtary then referred to the Insolvency law in India and the Bankruptcy Law in England. Under section 105 of the Bankruptcy Act of 1914 and under section 7 of the Presidency Towns Insolvency Act as also under section 4 of the Provincial Insolvency Act, Court has full powers to decide all questions whether of title or priority or of any nature whatsoever, whether of law or of fact, which may arise in any case of insolvency within the cognizance of the Court or which the Court may deem expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. It has been held both in England as well as in India that under these sections Insolvency Courts have jurisdiction to try questions of title or of priority or of any nature whatsoever even against strangers including those questions which arise out of a contract with strangers which has been entered into before the insolvency supervenes. These sections do not therefore restrict the jurisdiction of the Insolvency Court to trying only matters which arise by reason of the supervision of the insolvency and if before his insolvency a person had a right which could be enforced the official assignee or receiver can after the insolvency enforce that right under section 7 of the

The Discount Presidency Towns Insolvency Act as also under section 4 of the Provincial Insolvency Act in an Insolvency Court.

v.
Mr. Tirloki
Nath, etc.

—
Kapur J.

It will be noticed that the words of section 45-B, as introduced by section 10 of the Banking Companies (Amendment) Act, are wider than the words used in the similar sections of the Insolvency Act. The words are :—

“ Notwithstanding anything to the contrary contained * * * in any other law for the time being in force, * * * ”

In section 4 of the Provincial Insolvency Act the words are :—

“ Subject to the provisions of this Act * * * ”
so also in section 7 of the Presidency Towns Insolvency Act.

The words used in the insolvency laws are “ a matter which arises in any case of insolvency ” and the language used in the Banking Companies Act is “ matter relating to or arising out of a winding up of a banking company ”. Mr Daphtary's submission is that even if the words in the Banking Companies Act were the same as in the Insolvency Act, that is, that the matter should arise out of a winding up of a company, section 10 of the Amending Act which introduces sections 45-A and 45-B would be a bar to the suit being tried in Delhi Courts. But as the words in the Banking Companies Act are very much wider and they include matters relating to the winding up of a Banking Company *a fortiori* a suit brought to enforce a claim by the Bank would relate to the winding up and it will have to be transferred to Bombay. This submission is not without force.

Section 45-A defines the word ‘ Court ’ and it also mentions that notwithstanding anything contained in any other notification or order for the time being in force, no Court shall have jurisdiction to entertain any matter, and therefore, if the carrying on a suit is a matter which relates to, if not arises out of a winding up proceedings, no other Court, except where the winding up is proceeding, is the Court

which can entertain or proceed with a suit for recovery of money and in this case it is the Bombay High Court. The Discount Bank of India v. Mr. Tirloki Nath, etc.

For the opposite party, it is submitted that the proceedings, which are now sought to be transferred to the Bombay High Court, were already pending, and, therefore it cannot be said that they are covered by the words "relating to or arising out of the winding up of a banking company" as used in section 45-A or by the words "which may relate to the winding up of a banking company" which occur in section 45-B of the Act. In my opinion, as far as section 45-A is concerned the words are not incapable of being made applicable to any matter which was already pending, and there is no reason why the meanings of these words should be narrowed down to exclude "pending proceedings". In a recent bench judgment of the Bombay High Court in *The Fortune Commercial Bank Limited v. Vidyagauri J. Mehta* (1), where a pending application for winding up was sought to be transferred from the Court of the District Judge to the High Court, the Bombay High Court negatived this rather restricted meaning and held that the words would apply even to a pending proceeding. Both the learned Judges, Bavdekar, J., and Vyas, J., gave concurrent judgments on this point. Bavdekar, J., at p. 77 said :—

"The words relating to the winding up of a banking company are wide enough, however, to mean even an application for a winding up order, and the usual rule is that, unless there is any reason to the contrary, if the words have got a wider meaning, that meaning is not to be restricted. * * *"

Vyas, J., at page 74 said :—

"The next contention of Mr. Kotwal is that the words 'any matter relating to or arising out of the winding up of a banking

(1) 58 B. L. R. 72.

**The Discount
Bank of India**
v.
**Mr. Tirloki
Nath, etc.**

Kapur J.

company' occurring towards the end of section 10 of the Amending Act (XX of 1950) refer to a stage after the winding up order is made and do not include an application for winding up. To this also we are unable to agree. We cannot in the absence of any good or sufficient reason, restrict the meaning of the language which is wide and clear, namely, 'any matter relating to or arising out of the winding up of a banking Company', so as to exclude from its operation a winding up application and make it refer only to a stage subsequent to the winding up order."

I am in agreement with these observations and relying on them I am of the opinion that the Banking Companies Amending Act applies to proceedings which are started before the winding up as also to those which are started after.

An argument was next sought to be raised on the wording of section 11 of the Amending Act in which it is provided :—

"Where * * * 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 * * * * *"

The argument was that in this section at least which deals with the transfer of proceedings the words "relate to" are not there, but the Act has to be read as a whole. According to section 45-A of the Banking Companies Act, no other Court has any jurisdiction to try the matter, and if the argument of the opposite party were accepted, the suit will not be triable in any Court. Reading section 45-A of the Banking Companies Act and section 11 of the Amending Act, I am of the opinion, that if the matter relates to the winding up of a banking company, as indeed it does, it shall stand transferred to the Court as defined in the Act.

After considering the arguments addressed by The Discount Bank of India counsel and the precedents quoted by them I hold that :—

v.
Mr. Tirlak
Nath, etc.

—
Kapur J.

- (i) Sections 45-A and 45-B of the Banking Companies Act cover cases which relate to the winding up of a Banking Company.
- (ii) Instituting of a suit or carrying on a suit already instituted are matters which relate to the winding up of the Company. I need express no opinion on the question whether they arise out of winding up proceedings.
- (iii) Under section 45-A of the Act only the High Court in which the winding up is pending has jurisdiction to try such suits and it applies to suits pending before or instituted after the winding up.
- (iv) That section 11 of the Amending Act has to be read with section 10 of that Act and a combined effect of these two sections is that such suits if brought in any other Court shall stand transferred to the High Court mentioned in Section 45-A of the Banking Companies Act.

In my opinion, therefore, the learned Judge was in error in holding that the case could be tried in the Delhi Court. It is unfortunate that the case should be transferred at this stage, but the law being what it is it must have its course and therefore this suit must stand transferred to the High Court of Bombay. I, therefore, set aside the order of the learned Judge, dated the 19th February 1952, holding that the provisions of the Banking Companies Act do not apply to the matter of transfer and order that the case shall stand transferred to the Bombay High Court. The rule is, therefore, made absolute. In view of the fact that the matter was not free from difficulty, I leave the parties to bear their own costs in this Court and in the Court below.