

M/s. Sulakhan Singh-Mool Chand *v.* Messrs. Banka Mal-Naranjan Das *v.* The Central Bank of India, Ltd. (1), is not correctly decided.

*v.*  
The Central Bank of India, Ltd.  
I would, therefore, allow this petition, set aside the order of the learned Senior Subordinate Judge and make the rule absolute. In the circumstances parties will bear their own costs in this Court.

Kapur, J. Parties have been directed to appear in the trial Court on the 27th of July 1953.

CIVIL ORIGINAL.

*Before Harnam Singh and Kapur, JJ.*

THE FEDERAL BANK OF INDIA (PB.), LTD. (IN LIQUIDATION),—*Petitioner.*

*versus*

SHREE DURGA DASS KAPUR,—*Respondent.*

Civil Original No. 192 of 1950

1953  
July 3rd

*Indian Companies Act (VII of 1913)—Sections 221 and 225—Banking Companies Act (X of 1949) as amended by Act XX of 1950—Section 45F—Order for winding up under supervision of Court—Whether an order for winding up by the Court for purposes of Section 45F.—Period of limitation—Exclusion of one year under section 45F—Whether allowable.—Banking Companies Act (X of 1949)—Section 38—Whether restrictive of or an addition to the provisions of sections 162 and 271 of the Indian Companies Act.*

*Held, that, by virtue of section 225(2) of the Indian Companies Act, the order made by the Court under section 221 of that Act is an order of the Court for winding up of the company by the Court for the purposes of section 45F of the Banking Companies Act, 1949, as amended by Act XX of 1950, and the Banking Company, which is being wound up under the supervision of the Court, is entitled to exclude one year immediately preceding the date of the order of supervision while computing the period of limitation for a suit or an application by the Banking Company.*

*Held further, that the provisions of section 38(1) and (2) of the Banking Companies Act, are not restrictive of the provisions of section 162 and 271 of the Indian Companies Act. That section amends sections 162 and 271 to this extent that where a banking company is unable to pay its debts, the company shall be wound up by the Court, and adds a seventh clause that if the Reserve Bank applies a similar result shall follow.*

*Emperor v. Sibnath Banerji and others* (1); *State of Bombay v. Pandurang Vinayak and others* (2); and *East End Dwellings Co., Ltd., v. Finsbury Borough Council* (3); relied on.

*This case was received on transfer from the Court of the Senior Subordinate Judge, Amritsar.*

K. L. GOSAIN AND A. M. SURI, for Petitioner.

B. R. TULI, for Respondent.

#### ORDER

HARNAM SINGH, J. In order to appreciate the point of law that arises for decision in Civil Original No. 192 of 1950, the facts of the case may be set out in some detail. J

On the 10th February 1948, the Federal Bank of India, Limited, hereinafter referred to as the banking company went into voluntary liquidation under section 203 of the Indian Companies Act, 1913, hereinafter referred to as the Act.

On the 6th of August 1948, this Court made an order under section 221 of the Act that the voluntary winding up of the banking company shall continue subject to the supervision of the Court.

On the 10th of March 1949, the Indian Banking Companies Act, 1949, hereinafter referred to as the Act of 1949, came into force.

On the 19th of September 1949, Part III-A was added to the Act of 1949 by Ordinance No. XXIII of 1949. That Ordinance was replaced by Act No. XX of 1950.

On the 7th of October 1949, the banking company instituted Civil Suit No. 304 of 1949, against Shri Durga Das Kapur for the recovery of Rs. 9,766-5-9.

On the 26th of November 1949, Shri Durga Das, defendant, put in written pleas.

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(1) A.I.R. 1945 P.C. 156  
(2) A.I.R. 1953 S.C. 244  
(3) (1952) A.C. 109

The Federal Bank of India (Pb.), Ltd., (In liquidation) v. Shree Durga Das Kapur

On the 14th of March 1950, the Court fixed the preliminary issues set out hereunder:—

- (1) Has the plaintiff got *locus standi* to file this suit?
- (2) Whether the value of the suit for purposes of court-fee and jurisdiction is correct?

Harnam Singh,  
J.

On the 17th of May 1950, Shri Durga Das basing himself on the provisions of section 45-A of the Act of 1949, objected to the jurisdiction of the Court to entertain the suit.

Finding that under section 45-A of the Act of 1949, High Court has exclusive jurisdiction to try the suit the Court ordered on the 17th of May 1950, that the suit stood transferred to the High Court under section 11 of Act XX of 1950.

In the High Court the plaint in Civil Suit No. 304 of 1949, together with the relevant papers was received on the 15th of June 1950. On the 4th of August 1950, Mr. Kundan Lal Gosain appeared for the banking company in this Court and applied for attachment before judgment of the monies payable to the defendant by Shri Hans Raj Sayal. In this Court Civil Suit No. 304 of 1949 was registered as Civil Original No. 192 of 1950.

On the 21st of September 1951, the banking company applied under section 151 of the Code of Civil Procedure asking for extension of time under section 14 of the Indian Limitation Act. On the 2nd of November 1951, this Court fixed the following issues:—

- (1) Whether the present proceedings can be continued in this Court, for the Court from which these proceedings have been transferred had no jurisdiction to entertain the suit?
- (2) In case issue No. 1 is found in favour of the bank whether the facts and circumstances of the case bring the case under section 14 of the Indian Limitation Act?

From what I have said above it is plain that the question that arose for decision was whether section 45-A of the Act of 1949 prohibits the institution of a suit in a Court other than the Court exercising jurisdiction in the place where the registered office of the banking company which is being wound up is situate. In no decided case the point raised was considered. That being so, action was taken within proviso (b) to rule I, Chapter 3, Part B, High Court Rules and Orders, Volume V.

The Federal Bank of India (Pb.), Ltd. (In liquidation) v. Shree Durga Das Kapur Harnam Singh, J.

Mr. Kundan Lal Gosain urges that regard being had to the provisions of section 45F of the Act of 1949 the suit is within time. Mr. Bal Raj Tuli appearing for the defendant urges that section 45F of the Act of 1949 does not govern the suit. In arguments it is said that section 38 of the Act of 1949 prohibits the voluntary winding up of a banking company under section 203 or the making of a supervision order under section 221 of the Act.

Section 45F of the Act of 1949 reads:—

“Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded.”

Section 2 of the Act of 1949 provides, *inter alia*, that the provisions of the Act shall be in addition to, and not, save as hereinafter expressly provided in derogation of the Act. That being so, the Act of 1949 should be read as supplemental to and a part of the Act.

Section 38(1) of the Act of 1949 provides:—

“38(1) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913 (VII

The Federal  
Bank of India  
(Pb.), Ltd.  
(In liquidation)  
v.  
Shree Durga  
Das Kapur

of 1913), and without prejudice to its power under section 37, the Court shall order the winding up of a banking company if it is unable to pay its debts and the Court shall also order the winding up of a banking Company if the Reserve Bank applies in this behalf to the Court."

Harnam Singh,  
J.

From a perusal of the provisions of section 38 of the Act of 1949 it is plain that the provisions of that section are not restrictive of the provisions of the Act contained in sections 162 and 271 of the Act, as indeed is expressly stated by the words "without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913". From the words used in section 38 of the Act of 1949 it cannot be sustained that a banking company cannot be wound up by the Court under clauses (i), (ii), (iii), (iv) and (vi) of section 162 of the Act. By section 38 (1) of the Act of 1949 provision was made for the winding up of a banking company if it refuses to meet a lawful demand at one of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made at any other place. Section 38(2) of the Act of 1949 authorises the Reserve Bank to apply for the liquidation of a banking company if it appears from the results of an inspection under section 35 of the Act of 1949 that its affairs are being conducted to the detriment of the interests of the depositors. In my judgment the provisions of sections 38(1) and (2) of the Act of 1949 are not restrictive of the provisions of the Act contained in sections 162 and 271 of the Act. In this connection reference may be made to *Emperor v. Sibnath Banerji and others* (1).

Then it is said that under section 221 of the Act no order for the winding up of a company is passed. Section 221 of the Act reads:—

"When a Company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an

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(1) A.I.R. 1945 P.C. 156

order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court and generally on such terms and conditions as the Court thinks just.”

The Federal Bank of India (Pb.), Ltd. (In liquidation) v. Shree Durga Das Kapur

Section 225 (2) of the Act provides *inter alia*:— Harnam Singh, J.

“Except as provided in subsection (1), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes including the staying of suits and other proceedings be deemed to be an order of the Court for winding up the company by the Court. \* \* \* \* \*”

As stated above the provisions of the Act of 1949 should be read as supplemental to and part of the Act. If so, the order passed by the Court under section 221 of the Act shall for the purposes of section 45F of the Act of 1949 be deemed to be an order of the Court for the winding up of the company by the Court. In *State of Bombay v. Pandurang Vinayak and others* (1), Mahajan, J., said:—

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.”

In deciding the point Mahajan, J., cited with approval the observations of Lord Asquith in *East End Dwellings Co., Ltd. v. Finsbury Borough*

(1) A.I.R. 1953 S.C. 244

The Federal Council (1). In that case Lord Asquith said at Bank of India page 132:—

(Pb.), Ltd.  
(In liquidation)

v.

Shree Durga  
Das Kapur

—  
Harnam Singh,  
J.

“ If you are bidden to treat an imaginary State of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

Applying the rule of construction laid down in *State of Bombay v. Pandurang Vinayak and others* (2), to the present case the conclusion is irresistible that the order made by the Court under section 221 of the Act is an order of the Court for winding up of the company by the Court for the purposes of section 45F of the Act of 1949. That being the position of law, in computing the period of limitation for Civil Original No. 192 of 1950 the banking company is entitled to the exclusion of one year immediately preceding the date of the order passed by this Court under section 221 of the Act on the 6th of August 1948.

Admittedly, Civil Suit No. 304 of 1949 was within time when instituted in the Court of the Senior Subordinate Judge on the 7th of October 1949. That being so, that suit would be within time if instituted on the 7th of October 1950. In this Court the suit was instituted on the 4th of August 1950.

Finding as I do that the suit is within time, it is not necessary to decide the point as regards the meaning to be assigned to the concluding clause of section 45-A of the Act of 1949.

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(1) (1952) A.C. 109

(2) 1953 S.C. 244

In the result I find that Civil Original No. 192 of 1950 is within time.

Having regard to the fact that the question that arose for decision in Civil Original No. 192 of 1950 was untouched by authority I would leave the parties to bear their own costs in these proceedings.

KAPUR, J.—I agree and because of the importance of the point I have given my reasons.

The Federal Bank of India (Punjab), Limited, went into voluntary liquidation on the 10th February 1948, but a supervision order was made under section 221 of the Indian Companies Act on the 6th August 1948.

On the 7th October 1949, the Liquidator Alakh Parshad filed a suit against Durga Das Kapur, defendant, for recovery of Rs. 9,766-5-9 alleging that the defendant while acting as Cashier and Guarantee Broker of the Bank at Amritsar, opened a current account with the Bank on the 6th June 1945, with an initial deposit of Rs. 500 and then overdraw Rs. 3,000 on the 19th January 1946, in collusion with the local Branch Manager, and without the knowledge and consent of the authorities again withdrew Rs. 20,000 on the 10th October 1946, and that inclusive of interest on the account there was due from him Rs. 9,766-5-9. Along with the plaint the Liquidator filed a copy of the account. On the 26th November 1949, the defendant filed his written statement in which the allegations were denied, and the replication was filed on the 14th March 1950.

On the 10th March 1949, the Banking Companies Act (No. X of 1949) was enacted. On the 19th September 1949, Part III-A was added by Ordinance No. XXIII of 1949 which was replaced by an Act, No. XX of 1950, which received the President's assent on the 18th March 1950.

On the 17th May 1950, the defendant objected to the jurisdiction of the Court of the Subordinate Judge, First Class, Amritsar, who ordered on that

The Federal  
Bank of India  
(Pb.), Ltd.

(In liquidation)  
v.  
Shree Durga  
Das Kapur

Kapur, J.



The Federal Bank of India (Fb.), Ltd. (In liquidation) v. Shree Durga Das Kapur, J. Kapur, J.

very date that no objection having been raised to the application of the defendant by the plaintiff the case stood transferred to the High Court under section 45-A of the Banking Companies Act. The file was received in this Court on the 15th of June 1950. On the 4th August 1950, Mr. Kundan Lal Gosain appeared for the Liquidator and applied for attachment before judgment. Harnam Singh, J., ordered the attachment of certain moneys in the hands of Hans Raj Sayal on that very date and the case was adjourned to the 13th of October 1950. On the 20th April 1951, Mr. Bal Raj Tuli urged that on the date the suit was filed in the Court of the Subordinate Judge, Amritsar, that Court had no jurisdiction.

On the 21st September 1951, the Liquidator made an application under section 151 of the Code of Civil Procedure asking for extension of time under section 14 of the Indian Limitation Act. Two issues were framed on the 2nd November 1951 and the Liquidator was examined on the 10th October 1952, when he stated that he did not know of the existence of the Banking Companies Ordinance or of the Act.

When the case was heard by the Bench, counsel for the Liquidator raised two points—(1) even if the suit be taken to have been instituted on the date when he first appeared in this Court, i.e. 4th August 1950, the suit is within time, and (2) it would be also within time because the suit was based on a mutual, open and current account and was governed by Article 85 of the Limitation Act. The argument has proceeded on the premises which was accepted by both parties that the suit must be taken to have been instituted on the 4th August 1950, when Mr. Gosain appeared for the Bank and applied for attachment before judgment.

In order to determine the first point, i.e. whether the suit would be within time on the 4th August 1950, reliance has been placed on section

45F of the Banking Companies Act which The Federal Bank of India provides:—

“Notwithstanding anything to the contrary (Pb.), Ltd. contained in the Indian Limitation Act, (In liquidation) 1908 (IX of 1908), or in any other law for v. the time being in force, in computing Shree Durga the period of limitation prescribed for Das Kapur any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded.”

Kapur, J.

If, therefore, the order passed by this Court on the 6th August 1948, ordering the voluntary liquidation to be continued under the supervision of the Court comes within the order for the winding up of the banking company then the plaintiff is entitled to exclusion of one year before the order of the winding up. That is, if the suit was within time on the 4th August 1949, it will be within time on the 4th August 1950. In order to determine this a reference may here be made to certain provisions of the Indian Companies Act and Banking Companies Act.

Section 155 of the Indian Companies Act prescribes the mode of winding up as follows:—

“155 The winding up of a company may be either—  
 (i) by the Court; or  
 (ii) voluntary; or  
 (iii) subject to the supervision of the Court.”

Section 170 deals with compulsory winding up. Section 208 provides for voluntary winding up and section 221 winding up subject to the supervision of the Court. Section 225 deals with the effect of supervision order and 225(2) is relevant for the purposes of this case and is as follows:—

“225 (2) Except as provided in subsection (1), and save for the purposes of section 196, any order made by the Court for a

The Federal  
Bank of India  
(Pb.), Ltd.  
(In liquidation)  
v.  
Shree Durga  
Das Kapur  
—  
Kapur, J.

winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings be deemed to be an order of the Court for winding up the company by the Court and shall confer full authority on the Court to make calls or to enforce calls made by the Liquidators and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court."

According to this section an order for winding up subject to the supervision of the Court is deemed for all purposes to be an order of the Court for winding up of the company. The plaintiff submits that this section makes the order for winding up subject to the supervision of the Court an order of the Court for winding up of the company for all purposes which must include section 45F of the Banking Companies Act.

I may now refer to certain provisions of the Banking Companies Act which are relevant for the purposes of decision of the case. Section 2 of that Act provides that the provisions of the Banking Companies Act are in addition to and not, except where expressly provided, in derogation of the provisions of the Indian Companies Act and any other law for the time being in force. But it is submitted on behalf of the respondent that sections 38, 40 and 44 of the Banking Companies Act being inconsistent with the corresponding provisions of the Indian Companies Act make the latter inapplicable to Banking Companies. A fortiori Section 225 will not apply to a Banking Company so as to make a supervision order as if it was an order for winding up by Court. In the first place this argument ignores the effect of section 2 of the Banking Companies Act. Besides these sections do not expressly provide that they are in derogation of the corresponding provisions of the Indian Companies Act and secondly they are not even by implication to be taken to be repealing, as far as Banking Companies are concerned, the

provisions of that Act. All that section 38 does is that it makes the order of winding up mandatory if a banking company is unable to pay its debts or if the Reserve Bank applies to the Court for that purpose. Therefore it may be said that it amends section 162 of the Indian Companies Act to this extent that where a banking company is unable to pay its debts the company shall be wound up by the Court, and adds a seventh clause that if the Reserve Bank applies a similar result shall follow. Section 40 again only provides that notwithstanding anything to the contrary contained in section 173 of the Indian Companies Act, the Court shall not make any order staying the proceedings in relation to the winding up of a company, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue. This section does not in any manner affect the question which is now in dispute. Again section 44 is a restriction on a bank holding a licence from the Reserve Bank going into voluntary liquidation, but it does not in any way affect the banking companies which are already being wound up voluntarily. But whatever be its effect it has no connection with the case now before us where a banking company has gone into voluntary liquidation and an order making it subject to the supervision of the Court has been passed.

In my opinion the words of section 225 do make the order of supervision under section 221 to be an order for winding up of the company. In a recent case *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1), Lord Asquith while dealing with the provisions of the Town and County Planning Act, 1947, made reference to the effect of the words 'deemed to be' and observed:—

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of

The Federal  
Bank of India  
(Pb.), Ltd.,  
(In liquidation)  
v.  
Shree Durga  
Das Kapur  
—  
Kapur, J.

(1) (1952) A.C. 109

The Federal  
Bank of India  
(Pb.) Ltd. (In  
Liquidation)

v.

Shree Durga  
Dass Kapur

Kapur, J.

affairs had in fact existed, must inevitably have flowed from or accompanied it . . . . The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

This view was accepted by their Lordships of the Supreme Court in *The State of Bombay v. Pandurang Vinayak and others* (1), where reference was also made to the observations of Lord Justice James in *Ex parte Walton* (2).

Reference was then made by Mr. Tuli to *Pioneer Bank Ltd. (in Liquidation) v. Bamandev Banerjee* (3), where a distinction was drawn between suspension of limitation and its interruption, and it was held that in computing the period of limitation if time expired within or after this period of one year provided by section 45F of the Indian Banking Companies Act that year should be excluded but where time has already run out before this period of one year there was no revival of the cause of action. This case has no application to the facts of the present case because the period of limitation had not expired within one year immediately preceding the date of the order of the winding up.

I am of the opinion, therefore, that an order under section 221 for winding up under the supervision of the Court is an order for winding up under section 45F of the Banking Companies Act and that being so the plaintiff bank is entitled to deduct one year in computing the period of limitation. The suit filed on 4th August 1950, would not, therefore, be barred by time.

As I have held that because of the provisions of section 45F of the Banking Companies Act the suit brought by the Bank is within limitation, it is not necessary to discuss whether the suit falls under Article 85 of the Indian Limitation Act.

(1) A.I.R. 1953 S.C. 244

(2) (1881) 17 Ch. D. 746 at p. 756

(3) 54 C.W.N. 710

In the result I would hold that the suit when filed was within time and it is not necessary to discuss the other question raised, as to whether section 45A of the Banking Companies Act prohibits the institution of a suit in a Court other than the High Court. As the point is rather a novel one, I would leave the parties to bear their own costs of these proceedings.

The Federal  
Bank of India,  
(Pb.) Ltd. (In  
Liquidation)  
*v.*  
Shree Durga  
Das Kapur  

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Kapur, J.

## CIVIL REFERENCE

*Before Falshaw and Kapur, JJ.*

M/S DAYA CHAND HARDIAL,—Petitioner

*versus*

THE COMMISSIONER OF INCOME-TAX PUNJAB,—  
Respondent

Civil Reference 17 of 1952

*Indian Income-tax Act, (XI of 1922), Section 66(2)—  
The Excess Profits Tax Act (XV of 1940), Section 2(5) and  
21—Finding that assessee carrying on “business”—Whether  
based on sufficient material—“Dalali”, and “Shagirdi”  
whether chargeable to Excess Profits Tax.*

1953

July 30th

The assessees were acting as selling agents of D.C.M., and its subsidiary company. They were remunerated by commission on total sales and were responsible to their principals for bad debts. They were found by the Tribunal to have been importing and selling cloth on their own account also. This income from the selling agency was held by the Excess Profits Tax authorities liable to be assessed to excess profits tax as business receipts. It was contended by the assessees that there was no material for the finding that the selling agency was a business. It was further contended that the income was of the nature of salary and claimed by a servant.

*Held*, that the facts (i) that the commission agency which they were carrying on was not a whole-time engagement (ii) that they guaranteed the payment of bad debts, the assessee being more in the position of *del credere* agents, (iii) that though they were required to sell at prices fixed to the customers there was no limitation placed on them as to how they were to dispose of the goods and (iv) that the organisation and establishment to be maintained by them was not subject to the contract of the principals constituted