

## CIVIL APPELLATE

*Before Kapur, J.*MESSRS. KASTOOR CHAND-PHOOL CHAND,—  
*Appellants.**versus*THE LIQUIDATOR OF THE CAPITAL TALKIES AND  
GENERAL INDUSTRIES, LTD. (IN LIQUIDATION),—  
*Respondents.*

First Appeal from Order No. 94-D of 1954

1955

*Indian Companies Act (VII of 1913) Section 186—Pay-  
ment order—Ex parte order—Whether should be made—  
January, 18th Notice to contributory, if necessary.*

Held, that it is a sound principle that notice should be given to the contributory before the making of any payment orders. This is supported by the wording of Section 186 of the Companies Act which gives power to the court to make the payment orders.

*First Appeal from the order of Shri S.B. Capur, District Judge, dated the 9th August, 1954, dismissing the petition with costs.*

SRI NARAIN ANDLEY,—for Appellants.

K. K. RAIZADA,— for Respondents.

### JUDGMENT

KAPUR, J.—This is an appeal by a contributory firm against an order of payment made by the learned District Judge on the 4th December, 1953.

Kapur, J.

The facts are that the Company, the Capital Talkies and General Industries, Limited, was by a resolution of the creditors sent into voluntary winding up on the 11th May, 1953. Liquidators were appointed and were gazetted on the 30th May, 1953. On the 15th June, 1953, the Liquidators sent a notice to the appellant firm to show cause why they should not be settled on the list of contributories. This was apparently under the power given to the Liquidators under Section 212(1) (c) of the Indian Companies Act. On the 17th of August, 1953, the appellants were settled on the list and on the same day a notice of demand for Rs. 2,500 was given to the appellants on account of the call money. As the money was not paid, a reminder was sent on the 16th September, 1953, but it appears that the appellants took no action in regard to this matter.

Sometime before the 4th December, 1953, an application was made for a payment order against the appellant firm and the Court made the order

Messrs. Kas-  
toor Chand  
Phool Chand  
v.  
The Liquidator  
of the  
Capital Talkies  
and General  
Industries  
Ltd. (In Liqui-  
dation)  
Kapur, J.

on the 4th December, 1953. It appears that no notice was given to the appellants to show cause why a payment order should not be made. A notice to pay the amount ordered by the Court under the payment order was sent by the Liquidators to the appellant firm on the 22nd December, 1953 and on the 22nd January, 1954, they made an application to the Court that the order made against them was *ex parte* and that it should be set aside on various grounds which are not really necessary for the purposes of this appeal. The District Judge acting in his company jurisdiction held that it was not necessary for the Court to issue a notice before a payment order was made, and it is against this order that the contributory has come up in appeal to this Court.

The power of a liquidator of a company in voluntary liquidation is given in section 212 of the Indian Companies Act, and the relevant provisions as far as the matters now before me are concerned are in subsection (1) (c) & (d) and are:—

- “212. (1)(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;  
(d) exercise the power of the Court of making calls;”.

Counsel for the appellants submits that it is a rule of natural justice that before a payment order was made they should have been given notice to show cause why the order should not be made. As far as I can see, there is no specific rule in regard to the giving of notice in the Company Rules. Rule 112 deals with the powers of

an official liquidator who can make an application to a Court in regard to the call on contributories and on the application being made the Court has to fix a date for the hearing of that application, and counsel contends that notice should have been given by the Court in the present case also. He also relies on a judgment of the Bombay High Court in *Sir Fazal Ibrahim Rahimtoola v. Appabhai G. Desai* (1), where Chagla, C.J., observed—

Messrs. Kas-  
toor Chand  
Phool Chand  
v.  
The Liquidator of the  
Capital Talkies  
and General  
Industries  
Ltd. (In Liquidation)

Kapur, J.

“The official liquidator took up the attitude that orders for public examination under section 196 can be made *ex parte*. We wish to make it clear that in our opinion that would not be a sound practice for the Court to adopt it.”

Although the matter there was under section 196 of the Companies Act, in my opinion it is a sound principle which should be followed in regard to the making of payment orders. This seems to be supported by the wording of section 186 of the Companies Act which gives power to the Court to make the payment orders.

I would therefore allow this appeal, set aside the order of the learned District Judge and remand the case to the learned District Judge for decision in accordance with law and the observations made above.

The parties have been directed to appear before the District Judge on the 11th February, 1955.

In the circumstances of the case there will be no order as to costs.