

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL ORIGINAL

Before Tek Chand, J.

THE PEOPLE'S INSURANCE COMPANY, LIMITED
(IN LIQUIDATION),—Petitioner

versus

SARDUL SINGH CAVEESHAR AND OTHERS,—Respondents

Civil Original Case No. 97 of 1957

*Code of Civil Procedure (Act V of 1908)—Section 24—
Letters Patent—Clause IX—Power of High Court to trans-
fer cases pending in subordinate courts to itself—Suit—
Meaning of—Indian Companies Act (VII of 1913)—Sec-
tions 184, 185, 195 and 196—Proceedings under—Whether
fresh proceedings or part of the winding up proceedings—
Jurisdiction of Court—Consent or acquiescence of the
parties—Whether can confer jurisdiction on a Court.*

1958

May, 31st

On the coming into force of the Companies Act, 1956, the District Judge, Delhi, being of the opinion that he had no longer the jurisdiction in respect of the winding up cases pending in his court, asked the High Court whether he should send the files of the cases to it at Chandigarh or to the Circuit Court at Delhi. The Hon'ble Chief Justice passed an order that all such cases be sent to Chandigarh without notice to the parties concerned. In pursuance of that order the District Judge sent all such cases to the High Court for further trial and proceedings. The question arose whether the cases had been validly transferred and the High Court had the jurisdiction to try them .

Held, that in the exercise of its extraordinary original civil jurisdiction the High Court is competent to transfer

proceedings pending in the court of the District Judge to itself. Neither section 24 of the Code of Civil Procedure nor clause 9 of the Letters Patent is any bar to the High Court's power to withdraw, of its own motion, and without notice to the parties, any proceedings pending in any court subordinate to it and to try and dispose of the same. Such proceedings stood validly withdrawn from the Court of the District Judge, when on the representation made by the District Judge to the High Court, the Hon'ble the Chief Justice ordered that all such files should be sent to Chandigarh. This order was competent and within the scope of section 24, Civil Procedure Code, and clause 9 of the Letters Patent. Since the cases were validly transferred to the High Court, and in the exercise of its extraordinary original Civil jurisdiction, the High Court is rightly seized of the proceedings and has jurisdiction to itself try and dispose of the same.

Held, that no doubt the proceedings in the High Court under the Indian Companies Act are not in the nature of "suit" as narrowly construed, but the word "suit" in clause 9 of the Letters Patent has been given a wider significance and includes proceedings of a civil nature whether commencing with plaint or not.

Held, that all proceedings consequent upon winding up order are the off-shoots of that order. Proceedings under sections 184, 185, 195 and 196 of the Indian Companies Act are begun after the winding up order is passed. As they stem from the winding up order passed under section 162, they cannot have a separate and an independent existence. These proceedings became necessary during the progress of winding up and in fact they themselves are in the nature of winding up.

Held, that it is no doubt, true that where a Court has no inherent jurisdiction to entertain a case, the acquiescence of a party cannot confer jurisdiction upon the court but this rule has its limitations and cannot extend to cases where the court has extraordinary original civil jurisdiction.

(Note).—L.P.A. No. 280 of 1958 against this judgment was dismissed in limine on 31st July, 1958, by Hon'ble A. N. Bhandari and G. L. Chopra, J.—Editor).

Petition under Section 436 read with Section 438, of the Companies Act, 1956 and Section 151 of the Civil Procedure Code, praying that all the five cases, viz., C. O. Nos. 38, 39 and 57 of 1956 and C. O. Nos. 7 and 81 of 1957, pending in this Court, be continued to be heard by this Court.

D. D. KHANNA, for Petitioner.

B. R. TULL, for Respondents.

ORDER

TEK CHAND, J.—The Official Liquidator of the People's Insurance Company, Limited (in liquidation) presented a petition purporting to be under section 436 read with section 438 of the Companies Act, 1956, and section 151 of the Code of Civil Procedure, praying that certain cases may continue to be heard by this Court and not transferred to the Court of the District Judge, Delhi. A reference was made in the petition to the recent Full Bench decision of this Court in *National Planners, Limited v. Contributories* (1), where it was held that winding up proceedings pending before the District Judge must continue in that Court and it was not necessary under the Companies Act of 1956 to transfer such proceedings to the High Court. The petition mentioned that there were the following cases pending in this Court and in some of which evidence has already been recorded while in others processes have been issued for recording of evidence :—

1. C.O. 38 of 1956 ... Under section 185 of the Indian Companies Act;
2. C.O. 39 of 1956 ... Under section 185 of the Indian Companies Act;

(1) 1958 P.L.R. 187

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<hr/> Tek Chand, J. | 3. C.O. 57 of 1956, ...
4. C.O. 7 of 1957 ...
5. C.O. 81 of 1957 ... | Under section 185 of
the Indian Com-
panies Act ; and

Under section 184 of
the Indian Com-
panies Act;

Under sections 195/
196 of the Indian
Companies Act. |
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It was stated that if these cases were at this stage referred to the Court of the District Judge, the liquidation of the People's Insurance Company would be delayed besides causing monetary loss to the policy-holders of this Company.

The respondents filed written statements opposing the petition. It was stated on their behalf that the petition was not maintainable under sections 436 and 438 of the Companies Act and in view of the provisions of section 647 of the Companies Act, 1956, and of the decision of the Full Bench referred to above, sections 436 and 438 did not apply to the companies which were being wound up when the Companies Act of 1956 came into force. The second objection was that under section 2(6) and section 53 of the Insurance Act of 1938 the jurisdiction to wind up an insurance company vested only in the Court of the District Judge of the District, in which the registered office of the Company was situate, and for this reason the proceedings for the winding up of the petitioner Company could be taken only in the Court of the District Judge, Delhi. It was also contended that this Court had no jurisdiction to try the cases of the People's Insurance Company, Limited (in liquidation). On merits it was said *inter alia* that the respondents who were residents of Delhi, were greatly inconvenienced in attending to these cases in the High Court.

In his replication the Official Liquidator maintained that even if sections 436 and 438 were held inapplicable, the petition was maintainable under clause 9 of the Letters Patent and also under section 24 of the Code of Civil Procedure. It was also reiterated that the interests of justice and convenience of the parties required, that further proceedings should continue in this Court, otherwise there was danger of several complications arising in case the proceedings were now to be held in the Court of the District Judge.

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By my order dated 26th of September, 1957, in Civil Original No. 7 of 1957, I had referred the following question to a larger Bench :—

“Whether, in a case in which, the winding up of an Insurance Company had commenced in the District Court, before the coming into force of the Companies Act, 1956, the High Court has jurisdiction to continue further winding up proceedings.”

The Division Bench consisting of my Lord the Chief Justice and Chopra, J., answered the question in the negative and held that in a case as that of this Company, in which the District Judge, Delhi had ordered the compulsory winding up of the Company in May, 1955, the High Court had no jurisdiction to continue further winding up proceedings.

The winding up proceedings in this case after the passing of the winding up order by the District Judge on 20th of May, 1955, were sent to this Court under the following circumstances :—

The District Judge, Delhi, sent a communication dated 9th of March, 1956, to the

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High Court stating that in view of the provisions of section 10 of the Companies Act, 1956, if it was desired that the District Judge, Delhi, should have jurisdiction, the Central Government might be moved to issue the appropriate notification under sub-section (2) of section 10. Another communication was sent by the District Judge, Delhi, dated 11th of April, 1956, enclosing a copy of his order in a liquidation case in which he had expressed the view that the District Court, Delhi, had ceased to have jurisdiction for winding up companies under the Companies Act, 1956. He also stated, that besides that case, there were a number of other liquidation cases also the list of which he had enclosed which were covered by his aforesaid order. He solicited the orders of the High Court as to whether the files of such cases were to be forwarded to Chandigarh or were to be sent to the Assistant Registrar, Circuit Bench, at Delhi. The Hon'ble the Chief Justice ordered that "all such files should be sent to Chandigarh". The files of the Company in Liquidation before me were received in this Court and the various proceedings in pursuance of the winding up order have been going on in this Court ever since.

The winding up order was passed by the District Judge, Delhi, on 20th of May, 1955, and the People's Insurance Company, Limited, was ordered to be compulsorily wound up and the Provisional Liquidator was appointed as the Official Liquidator of the Company.

This petition relates to three cases under section 185, one under section 184, and one under sections 195 and 196 of the Indian Companies Act, 1913. All these matters arise under the provisions of winding up under Part V of the Act. The learned counsel for the Official Liquidator has frankly conceded that in view of the decision of the Full Bench, his petition is not maintainable under sections 436 and 438 read with section 647 of the Companies Act of 1956.

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The main controversy which emerges from the arguments of the learned counsel for the parties centres on the question, whether this Court is rightly seized of the cases, and if not, whether in the exercise of its powers under clause 9 of the Letters Patent and under section 24 of the Code of Civil Procedure, these cases should be or deemed to have been, transferred to this Court and, therefore, the proceedings should go on here and not in the Court of the District Judge. The stand of the learned counsel for the respondents is, that this Court has no jurisdiction whatever, and the cases in question should neither be transferred, nor be treated to have been transferred under the orders of the Hon'ble the Chief Justice under section 24 of the Code of Civil Procedure or of clause 9 of the Letters Patent. Clause 9 of the Letters Patent runs as under :—

- “9. *Extraordinary original civil jurisdiction.* And we do further ordain that the High Court of Judicature at Lahore shall have power to remove, and to try and determine, as Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence; when the said High Court may think

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proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing "being recorded on the proceedings of the said High Court."

No doubt the proceedings in this Court under the Indian Companies Act are not in the nature of "suit" as narrowly construed, but the word "suit" in clause 9 of the Letters Patent has been given a wider significance and includes proceedings of a civil nature whether commencing with plaint or not. In *Harikishan Lal v. Peoples Bank of Northern India, Limited* (1), it was held by a Division Bench that the word "suit" in clause 9 should be interpreted widely and it includes proceedings in the insolvency Court, and the High Court under its extraordinary powers has jurisdiction to transfer a proceeding in insolvency from the lower Court to itself for disposal. Young, C.J., observed at page 609—

"In our opinion, section 3(1) (Provincial Insolvency Act, 1920) merely enacts that the ordinary jurisdiction in insolvency shall be in the District Courts. It does not exclude the extraordinary civil jurisdiction of the High Court."

In the matter of the West Hopetown Tea Company, Limited (2), it was held by a Full Bench of three Judges that there was nothing in the Indian Companies Act (VI of 1882) or the High Court Act or the Letters Patent, which prevents the High Court from calling for the record of the proceedings in the winding up of a company under the Companies Act, and transferring those proceedings

(1) A.I.R. 1936 Lah. 608
(2) I.L.R. 9 All. 180

to its own file. The objection that the High Court had no power to call up the record and transfer the winding up proceedings to its own file was rejected.

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The next case reported is *In the matter of General Assurance Society, Limited, Ajmer, and others* (1). It was held that the words of the proviso to section 3 of the Indian Companies Act, 1913, do not exclude the jurisdiction of the High Court in Company matters and hence the High Court does not lose its jurisdiction in Company matters. This was a case of an Assurance Company. It was also held that as the High Court did not suffer from inherent want of jurisdiction, even when a District Court is authorised to exercise jurisdiction under the Act, the High Court could proceed with the application before it by virtue of section 3(3) of the Act. It was further held, that even if it be assumed that the High Court had no jurisdiction, section 17 of the Rajasthan High Court Ordinance—which is equivalent to clause 9 of our Letters Patent—authorises transfer of any case to itself falling within the jurisdiction of any subordinate Court. Bapna; J. observed—

“The word ‘suit’ in section 17 has a wide meaning and would include all civil proceedings pending in the subordinate Courts. It would be a mere formality to transfer the cases to a District Court and, thereafter to retransfer them to the High Court should the High Court think it proper to try the cases itself.”

The authorities cited above make clause 9 of the Letters Patent applicable to this case. It is argued by the learned counsel for the respondents

(1) A.I.R. 1956 Raj. 61

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that the order of the Hon'ble the Chief Justice, dated 7th of May, 1956, was an administrative order and further as it did not contain any reason for transferring the files to the High Court it was not covered by clause 9. But for purposes of transferring a case from the file of one Court to that of the other, the passing of judicial orders after hearing the parties are not within the contemplation of either clause 9 of the Letters Patent or of section 24 of the Code of Civil Procedure. It cannot be stressed that the order is bad because no reasons in support of it have been recorded by the High Court. The reasons have been given by the District Judge which were accepted by the Hon'ble the Chief Justice.

Under section 24, Civil Procedure Code, the High Court may either on the application of any of the parties and after notice to the parties or after hearing such of them as desire to be heard, or of its own motion without such notice, may at any stage withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and try or dispose of the same.

In *Babubhai Vamalchand Kachra v. Hiralal Vamalchand Kachra and others* (1), a suit had been properly instituted in the Court of First Class Sub-Judge and later on it was transferred to the Second Class, Sub-Judge by an administrative order. It was held by the High Court, that it may properly take action of its own motion under section 24, and in order to save difficulty and delay, transfer the suit to the First Class Sub-Judge for disposal.

In a Full Bench decision of the Madras High Court, *Rajah Sir Annamalai Chettiar v. S. Ram Ar. Ramanathan Chettair and others* (2), it was held,

(1) A.I.R. 1941 Bom. 69

(2) A.I.R. 1936 Mad. 55

that both under clause 13 of the Letters Patent of that Court—which is equivalent to clause 9 of the Letters Patent of this Court—and section 24 of the Code of Civil Procedure, the High Court had power to withdraw a suit from a subordinate Court and try and dispose of the action itself, and this may be done of its own motion, without notice to the parties and, at any stage of the suit.

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In *C. L. Gulati v. G. Reeves-Brown and others* (1), it was held that under section 24, a Judge in Chambers has got jurisdiction to transfer a case under sections 302 and 303, Succession Act, to his own Court at any stage and he can *suo motu* examine the accounts filed under section 317 of the Indian Succession Act (1925) so as to pass an order under clause 4 of that section. Reference may also be made to *Kayasji Pestonji Dalal v. Rustomji Sorabji Jamadar and another* (2), and *Allahabad Bank, Limited, Lahore v. Raja Ram and others* (3), which are to the same effect.

The learned counsel for the respondents has placed reliance upon a Division Bench decision of this Court in *Satbir Singh and others v. Rajbir Singh* (4). In that case it was held that there was nothing in the Guardians and Wards Act which gave ordinary original jurisdiction to the High Court to deal with the petition filed under the Act. The petition for the appointments of a guardian could only be entertained in the High Court in the exercise of its extraordinary civil jurisdiction. In that case a petition was instituted in the first instance to the High Court under what was alleged to be the "inherent powers of the High Court". It was held that the petition must first be instituted in

(1) A.I.R. 1939 Lah. 463

(2) A.I.R. 1949 Bom. 42

(3) A.I.R. 1933 Lah. 671

(4) A.I.R. 1954 Punj.

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the District Court where it lay and then if that Court be subordinate to the High Court it could, if that Court so thought fit, be withdrawn from that Court and decided in the High Court. That decision is distinguishable on the facts of this case. The District Judge, as noticed above, had passed the winding up order in 1955 and it was in 1956 that the file was sent to this Court, but in the ruling referred to above, the proceedings were initiated in the High Court which obviously could not be done.

It was then argued on behalf of the respondents that five cases, the transfer of which was sought, were never filed in the Court of the District Judge, but were originally filed in this Court and, therefore the respective petitions should be returned to the Official Liquidator for presentation to the Court of the District Judge. All proceedings consequent upon winding up order are the offshoots of that order. Proceedings under sections 184, 185, 195 and 196 of the Indian Companies Act are begun after the winding up order is passed. As they stem from the winding up order passed under section 162, they cannot have a separate and an independent existence. These proceedings became necessary during the progress of winding up and in fact they themselves are in the nature of winding up.

It was also argued, that although proceedings have been pending in this Court since 1956, in some cases a number of witnesses have been examined and in others, important decisions have been made, no respondent in any one of these cases questioned the jurisdiction of this Court. It is true that where a Court has no inherent jurisdiction to entertain a case, the acquiescence of a party cannot confer jurisdiction upon the Court,—*vide Sevak*

Jeranchod Bhogilal v. Dakore Temple Committee (1). But this rule has its limitation and cannot extend to cases where the Court has extraordinary original civil jurisdiction. In *Ex-Parte* (1884) 12 Q.B.D., 334, Bowen, Lord Justice, observed—

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“There is a good old-fashioned rule that no one has a right so to conduct himself before a tribunal as if he accepted its jurisdiction, and then afterwards, when he finds that it has decided against him, to turn round and say, “You have no jurisdiction”; You ought not to lead a tribunal to exercise jurisdiction wrongfully.”

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In *Ex-Parte* May, (1884) 12 Q.B.D., 497, Bown, L.J., said—

“If the point had been taken the Court could have clothed itself with jurisdiction to make the adjudication under subsection (12) of section 125 (of the Bankruptcy Act). I think the true ground of our present decision is this, that the debtor had no right to allow the Court which could have exercised jurisdiction rightly, to exercise jurisdiction on a wrong ground, and then to come to the Court of Appeal and say—The Court below had no jurisdiction to make the adjudication against me. The answer before me is—the Court has jurisdiction to make the adjudication if it had exercised it in the right form.”

Both the above decisions were considered in a Division Bench decision in *Posan Singh and others*

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v. Inderdeo Singh and others (1), and it was held that where there was no inherent want of jurisdiction the doctrine of waiver applied. In that case the record of a civil suit was sent from the Second Additional Munsif to that of the Third Additional Munsif who had jurisdiction to entertain the suit, but there was no order of the District Judge sanctioning the transfer of the suit. It was held that the failure to obtain the order from the District Judge was a defect of procedure which had been cured by waiver. The principle of the above decision applies to this case.

Bank of Chettinad v. S. P. K. V. R. Firm and another (2), cited on behalf of the respondents is not applicable as this is not a case of assumption of jurisdiction by a Court where it has none.

On a consideration of the facts of this case and after examining the arguments of the learned counsel, I am of the view that in the exercise of its extraordinary original civil jurisdiction this Court is competent to transfer proceedings pending in the Court of the District Judge, to itself. Neither section 24 of the Code of Civil Procedure nor clause 9 of the Letters Patent is any bar to this Court's power to withdraw, of its own motion, and without notice to the parties, any proceedings pending in any Court subordinate to it and to try and dispose of the same. I am also of the view that such proceedings stood validly withdrawn from the Court of the District Judge, when on the representation made by the District Judge to the High Court, the Hon'ble the Chief Justice ordered that all such files should be sent to Chandigarh. This order was competent and within the scope of section 24. Civil Procedure Code, and

(1) A.I.R. 1952 Pat. 328

(2) A.I.R. 1935 Rang. 517

clause 9 of the Letters Patent. In any case even if the winding up proceedings were now pending in the Court of the District Judge, I would have ordered their withdrawal from that Court and would have directed that the liquidation proceedings and other ancillary matters be tried and disposed of by this Court. It will be a futile formality, now that all the files have been in this Court since 1956, to transfer the cases to the District Court, Delhi, and thereafter to retransfer them to this Court. This was also the view expressed by Bapna, J., in *In the matter of General Assurance Society, Limited, Ajmer, and others* (1).

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In my view, the cases referred to in this petition were validly transferred to this Court, and in the exercise of its extraordinary original civil jurisdiction, this Court is rightly seized of the proceedings and has jurisdiction to itself try and dispose of the same.

The only question that remains to be disposed of is the desirability of taking such steps. On behalf of the respondents it has been urged, that hearing of cases at Chandigarh is inconvenient to the parties and burdens them with unnecessary expense. This objection does not seem to have been present to the respondents prior to this petition. Large sums are involved and there are serious allegations made against the ex-Directors and other contributories not only as to gross mis-management but also as to defalcation and misappropriation etc. Various steps under Part V of the Indian Companies Act of 1913 have been taken by this Court and various proceedings are going on. It will not be in the interests of justice and convenience that the proceedings which have been pending in this Court for the last two years should

(1) A.I.R. 1956 Raj. 61

The People's Insurance Company, Limited (in liquidation) now be transferred to the Court of the District Judge, Delhi.

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Tek Chand, J. I, therefore, allow the petition and direct that all proceedings connected with the winding up of the People's Insurance Company (in liquidation) shall remain and be continued in this Court in the exercise of its extraordinary original civil jurisdiction. I will leave the parties to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before I. D. Dua, J.

THE UNION OF INDIA AND OTHERS,—*Petitioners*

versus

TRILOKI NATH BHASIN,—*Respondent*

Civil Revision No. 409 of 1958

1959
March, 31st

Payment of Wages Act (IV of 1936)—Object and construction of—Sections 1(6), 2(vi) and 4—Employee with basic salary of more than Rs. 200 per mensem drawing less than Rs. 200 at the time deduction is made from his wages due to being on leave—Whether can apply under the Act—Section 7—deduction on account of costs awarded in some other proceedings—Whether permissible—Section 15—Authority appointed under—Whether a court—Revision against his order—Whether competent under section 115 of the Code of Civil Procedure (V of 1908) or Section 44 of the Punjab Courts Act (VI of 1918)—Constitution of India (1950)—Article 227—Powers of the High Court under.

Held. that the Payment of wages Act has been enacted by the legislature for the purpose of ensuring regular payment of wages to small salary-holders so that they may be able to make their both ends meet. It ensures that such employees are paid the wages in a specified or particular form at regular, determined intervals without unauthorised deductions; it prohibits the employers to delay or withhold payment of the amount earned by workmen beyond