

Messrs Delhi
Tourist Travel
Services
Co-operative
Transport
Society, Ltd.
v.
Delhi State
Transport
Authority,
Delhi.

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permit is not being set down for hearing along with the application for renewal filed by the Delhi Bus Service.

The petition, consequently, fails and is dismissed, but, in the circumstances of the case, I make no order as to costs.

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APPELLATE CIVIL

Before S. K. Kapur, J.

KUNDAN LAL AND ANOTHER,—Appellants

versus

HANUMAN CHAMBER OF COMMERCE LIMITED,—Respondent.

F.A.O. No. 23-D of 1957

1965
August, 19th.

Companies Act (I of 1956)—Ss. 560(5) and 647—Winding up order against a company dissolved under S. 247 of the Companies Act (VII of 1913)—Whether can be passed without first getting the order of dissolution set aside—Petition for winding up dismissed before Companies Act (I of 1956) came into force—Appeal filed—Proviso to S. 560(5)—Whether can be applied in appeal.

Held, that in view of proviso (b) to sub-section (5) of section 560 of the Companies Act, 1956, a winding up order can be passed against a company without first getting the dissolution order set aside. The appeal is a continuation of the original proceedings and the change of law effected during the pendency of the appeal can be taken into consideration by the appellate Court while hearing and deciding the appeal. Section 647 of the Companies Act, 1956, is applicable only in a case where the winding up order or the resolution for voluntary winding up had been passed before the commencement of the Act and this section creates no bar to a winding up order being passed in appeal in view of proviso (b) to sub-section (5) of section 560.

First Appeal (under Section 202 of the Indian Companies Act 1913) from the order of Shri S. B. Kapoor, I.C.S., District Judge, Delhi, dated the 23rd February, 1956, dismissing the petition and leaving the parties to bear their own costs.

H. R. SAWHNEY AND Y. K. SABHARWAL, ADVOCATES, for the Appellant.

B. C. MISRA, ADVOCATE, for the Respondent.

JUDGMENT

KAPUR, J.—This appeal is directed against the judgment of the District Judge, Delhi, dated 23rd February, 1956. The appellants Kundan Lal and firm Jessa Ram-Hira Nand filed a petition for winding up of Hanuman Chamber of Commerce Limited (hereafter referred to as the company) on 18th July, 1954, under section 162 of the Indian Companies Act, 1913. The appellants claimed to be the creditors of the company and the winding up was sought on four grounds:—

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- (1) The company was unable to pay its debts;
- (2) It had suspended business for more than a year;
- (3) The name of the company had been struck off the register by the Registrar of Companies on 23rd July, 1952, and the company had been dissolved under section 247 of the Indian Companies Act, 1913; and
- (4) It was just and equitable to wind up the company.

The company having been dissolved the petition was resisted by one Sat Narain Goenka. He took a preliminary objection that since the company had been dissolved in 1952, no order could be passed for the winding up of the company. The learned District Judge framed two issues which were as under:—

- (1) Is the petition maintainable in view of the dissolution of the Hanuman Chamber of Commerce Limited by the Registrar, Joint Stock Companies, Delhi, under section 247 of the Indian Companies Act on 23rd July, 1952 ?
- (2) Is it competent to Sat Narain Goenka to make the above objection ?

He decided issue No. (2) in favour of the respondent but following a decision of the High Court reported in *Parduman Singh v. Pioneer Jewellery Company, Limited, and others* (1), held that before a petition for winding up could be entertained, proper steps had to be taken under subsection (6) of section 247 for setting aside the order of dissolution and that not having been done in this case

(1) A.I.R. 1921 Lah. 78.

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the winding up petition was not maintainable. Mr. Sawhney, the learned counsel for the appellants, has submitted that the impugned order was passed on 23rd February, 1956, the Companies Act, 1956, received the assent of the President on 18th January, 1956, and came into force from 1st April, 1956. He submits that whatever be the position under the 1913 Act, it is clear that such an order can be made under the 1956 Act without first getting the dissolution of the company set aside under sub-section (6) of section 247. He has invited my attention to proviso (b) to sub-section (5) of section 560 which provides that notwithstanding the fact that a company has been struck off the register by the Registrar and dissolved, the powers of the Court to wind up the company will not be affected. He says that an appeal is a continuation of the original proceedings and taking account of the change in law it should be held that the jurisdiction of the Court to wind up the company in such circumstances is unaffected. He has further invited my attention to section 645 of the Companies Act, 1956, and says that the order of the Registrar striking off the company passed in July, 1952, should be deemed to have been passed under the new Act. Lastly, Mr. Sawhney submits that even under the 1913 Act the position was the same and proviso (b) to sub-section (5) of section 560 merely clarifies the position that obtained under the 1913 Act.

In reply to the first submission of Mr. Sawhney, Mr. Misra, the learned counsel for the respondents, says that reference to sections 647 and 658 shows that the winding up petition had to be disposed of on the assumption that the new Act had not been passed. According to Mr. Misra, the same result would follow by application of section 6 of the General Clauses Act.

I am in agreement with the submission of Mr. Sawhney to the effect that in view of proviso (b) to sub-section (5) of section 560 a winding up order can be passed against a company without first getting the dissolution order set aside. There can be no doubt nor has it been disputed by the respondent that the present appeal is a continuation of the original proceedings. It has also not been disputed that change of law can be taken into consideration. The contention of the respondent merely is that by applying the said proviso (b) to sub-section (5) of section 560, I will

be nullifying the effect of the express provisions contained in sections 647 and 658. So far as section 647 is concerned, the same is not, in my opinion, applicable. The said provision postulates a winding up order having been passed before the commencement of the 1956 Act and deals with the actual winding up of the affairs of the company. No doubt, the winding up of a company by Court commences from the date of the petition but it is only when an order for the winding up is made that it relates back to the date of the petition. The reference to clauses (i) and (ii) also leads to the suggestion that the view taken by me is in conformity with the intention of the legislature. Mr. Misra says that the proviso to section 647 is destructive of the argument, that applicability of section 647 is confined only to the winding up of the affairs of a company which has already been ordered to be wound up or where in case of voluntary winding up a resolution for the purpose has already been passed. I find no such justification from the language of the proviso. As a matter of fact, reference to the four sections mentioned in the proviso would further support rather than destroy the arguments of Mr. Sawhney. Sections 463, 515 and 524 undoubtedly relate to the actual winding up of the affairs of the company and not passing of the winding up order or the resolution therefor. Some doubt may, however, arise as to why section 502 was made applicable by the proviso when the said section deals with the appointment of liquidator. But a little closer scrutiny of the said section would show that it deals not only with the nomination of a liquidator by the creditors but also a stage posterior thereto. Reference may be made in this connection to proviso to sub-section (2) of section 502. It is significant that the provisions of section 502 are applicable "as far as may be". In cases of voluntary winding up it commences from the date of passing of the resolution. That is patent from the mere reading of section 441. It follows that in so far as the voluntary winding up is concerned, section 647 would come into play only where the resolution had been passed before the commencement of the 1956 Act, and, therefore, section 647 at least so far as voluntary winding up is concerned, deals with a stage after the commencement of the winding up. To my mind it appears that even in case of winding up through Court the section applies only where an order for winding up has been passed before the coming into force of 1956. Act and does not mean that the Court

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has to abide by the provisions of 1913 Act in considering whether or not to pass a winding up order. Of course, where rights are concerned, the Court may have to look to 1913 Act, because of the provisions of General Clauses Act and section 658. The matter can be looked at from another point of view. As I have said earlier in case of winding up by Court it is only when a winding up order is passed that it dates back to the date of the petition. When section 647 says "where the winding up of a company has commenced before the commencement of this Act", it must mean that both the order and the petition for winding up are of a date prior to the commencement of the 1956 Act. My conclusion, therefore, is that the section will apply only to the winding up of the affairs of the company. So far as section 6 of the General Clauses Act is concerned, no doubt the repeal cannot affect, unless a different intention appears, any investigation, legal proceedings or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment, but in a case like the present no right of any party is being affected or taken away. It is only procedural impediment, if at all it existed, under the 1913 Act to first get the dissolution order discharged, that is removed by proviso (b) to section 560(5). It is not the case of Mr. Misra that no company, which has been struck off the register and dissolved, can at all be wound up. All that he contends is that it cannot be wound up till the dissolution order has been got vacated. That being the position, I am inclined to the view that in an appeal it is open to apply the change in law and direct winding up of a company.

Coming now to the position that obtained under the 1913 Act, I am of the opinion, that possibly such an order could be made even under that Act without first getting the dissolution set aside. In *Re Cambridge Coffee Room Association, Ltd.* (2), Wynn-Parry, J., said—

"In all the circumstances it appears desirable that the petition in such cases should follow the form of this amended petition which asks that the name of the company be restored to the register and then that the company be wound up."

At the same time it is clear from the judgment that in a number of cases compulsory winding up order had been

made without the name of the company having been restored to the register. Wynn-Parry, J., expressed the view that he did not intend to cast doubt on past cases where such an order had been made. It is suggested that Wynn-Parry, J., only thought that procedure to be more convenient, but in India even the question of advisability of such a course does not arise because in the Indian Act there are no provisions corresponding to section 354 expressly declaring the property of a dissolved company to be *bona vacantia*. That, to my mind, does not make any difference. Although such a provision does not exist in the Companies Act, 1956, but the principle of *bona vacantia* would be as much applicable in India as in England. Since I have held in favour of the appellants on the first point, it is not necessary to carry the matter further. May be that the effect of a winding up order itself is to vest the custody of the company's property in Court and divest the State of the same. I must also refer to the judgment of the Lahore High Court reported in *Parduman Singh v. Pioneer Jewellery Company, Limited, and others* (1), on which a strong reliance has been placed by the learned counsel for the respondent. There it was held that a person to whom the liquidator had transferred a payment order made by the Court under section 150 against a contributory, was entitled to invoke the summary jurisdiction of the Court for the purpose of recovering the money due from the latter, and the circumstance that the company has been finally dissolved did not prevent the assignee from seeking relief from the liquidation Court. It was observed by Shadi Lal, C.J.—

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“It is true that section 159 requires the Court to pass an order of dissolution when the affairs of the company have been completely wound up, and there is authority for the view that unless and until the order of dissolution has been set aside, it prevents any proceedings being taken against the promoters, directors or officers of the company in respect of any misfeasance or breach of trust, or a creditor proving a debt against the company,—*vide*, Halsbury's Laws of England, Volume V, page 567.”

I do not see how that case is relevant for determining the issue now before me. Here there is no dispute that

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company can be wound up. The dispute is within a narrow compass, namely, whether it can be wound up without first getting the dissolution vacated? In this view, the appeal must succeed and is allowed. There will, however, be no order as to costs. The matter will now be taken up by the appropriate Court for disposal on merits.

B.R.T.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

MELA SINGH,—Appellant.

versus

HIRA LAL KAPUR AND OTHERS,—Respondents

S.A.O. 10-D of 1965.

1965
September, 3rd

Delhi Rent Control Act (LIX of 1958)—S. 2(i)—Premises—Part of the compound of residential building let out for selling wares on a rehri—Whether amounts to premises—Suit for ejectment of the tenant—Whether maintainable in a civil Court.

Held, that the proper construction to be placed on clause (i) read with sub-clause (i) of section 2 of the Delhi Rent Control Act, 1958, is that a garden, ground or an out-house, if it appertains to the building which has been let, would be included in 'premises' and not if such a garden or ground or a portion of garden or ground is let out independently. Consequently a small portion of the compound of a house or bungalow let out for carrying on the business of selling wares on a *rehri* is not 'premises' and the suit for the ejectment of the lessee from that portion of the compound is cognisable by a civil Court as the Delhi Rent Control Act is not applicable thereto.

Second Appeal (under Order 43, Rule 1, C.P.C.) from the Order of Shri G. R. Luthra, Additional S.S.J. (with enhanced Appellate Powers), Delhi, dated the 6th October, 1964, reversing that of Shri B. M. Aggarwal, Sub-Judge, 3rd Class, Delhi, dated the 30th May, 1963, accepting the appeal with costs and remanding the case for disposal on merits.

CHET RAM MITTAL, ADVOCATE, for the Appellant.

JUGAL KISHORE SETH, ADVOCATE, for the Respondents.