

and sections 188 and 190 are wide enough to give to the petitioner all the relief that he may be entitled to.

The learned Advocate-General has under instructions of his client intimated to this Court that the appellate authority will be prepared to hear the appeal without in this particular case insisting on the deposit of Rs. 50,000 which has been imposed as penalty provided a proper application is made by the petitioner to the authority.

I would, therefore, allow the appeal of the Collector, set aside the judgment of the learned Single Judge and dismiss the petition of Amarjit Singh. The parties will bear their own costs. The appeal of Amarjit Singh was not pressed before us and is, therefore, dismissed, but no order as to costs.

FALSHAW, J. I agree.

Falshaw, J.

APPELLATE CIVIL

Before Bhandari, C. J., and Dulat, J.

SHRI LADLI PARSHAD AND ANOTHER,—Appellants  
versus

THE KARNAL DISTILLERY COMPANY, LTD.  
KARNAL—Respondent

Letters Patent Appeal No. 29 of 1952

*Indian Companies Act (VII of 1913)—Section 162—Two or more winding up petitions on identical grounds—Maintainability of—High Courts (Punjab) Order, 1947—Article 13—Effect of—Winding up petition pending in the Lahore High Court on the appointed day—Another winding up petition filed in the Punjab High Court on identical grounds—Maintainability of—Practice—Jurisdiction—Amplification of, by Courts in granting remedies.*

Held, that the effect of Article 13 of High Courts (Punjab) Order, 1947, is that while jurisdiction in general in respect of matters connected with the territories included in East Punjab was vested in the High Court of East Punjab, the proceedings on the original side actually pending in the Lahore High Court at the time of the partition were left to be determined by that High Court and thus limited jurisdiction *qua* such proceedings alone remained with that High Court.

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tral Excise,  
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*Held*, that a fresh petition for winding up on similar or identical grounds is maintainable in the Punjab High Court notwithstanding the pendency of a previous similar petition in the Lahore High Court.

*Held*, that the old maxim of law is that a Judge must extend his jurisdiction, which, of course, does not mean that he should usurp jurisdiction where none exists but does mean that he ought to amplify as far as possible the remedies he can grant.

*In re European Banking Company, Ex parte Baylis* (1), relied on; *In re Joint Stock Coal Company* (2), *Re The Norton Iron Company* (3), and *In re Building Societies Trust Limited* (4), distinguished.

*Letters Patent Appeal under Clause 10 of the Letters Patent and Section 202 of the Indian Companies Act, against the order of Hon'ble Mr. Justice D. Falshaw passed on 21st August 1952, in Civil Original No. 176 of 1951, dismissing the petition with costs.*

B. R. TULI, for Appellants.

H. L. SARIN and A. N. KHANNA, for Respondent.

#### JUDGMENT

Dulat, J.

DULAT, J. This is a Letters Patent Appeal from an order by Falshaw, J., dismissing the appellants' application for the compulsory winding up of a company called the Karnal Distillery Company, Limited.

The relevant facts are these. The Company in question is a private limited concern incorporated in the year 1941 with its registered office at Karnal. The shareholders were Mr. Ladli Parshad Jaiswal, appellant, and his brothers and the control of the business was for some time with him. Later on, however, disputes arose among the members of the family ranging over a number of subjects and a long period of time and culminating in the removal of the appellant from the office of Chairman of the Company some time in March,

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(1) L.R. (1866) 2 Equity 521

(2) L.R. (1869) 8 Eq. 146

(3) 47 L.J. (Ch.) 9

(4) L.R. (1890) 44 Ch. D. 140

1946. On 1st May 1946, therefore, Mr. Ladli Parshad Jaiswal filed an application in the High Court at Lahore for the winding up of this Company. That petition, we understand, is still pending in that Court and although, we are told by Mr. Tuli appearing for the appellant, that he had made a prayer to withdraw that petition at one time the prayer was not allowed.

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In December 1951, the present petition for the winding up of the Company was made in this Court on behalf of Mr. Ladli Parshad Jaiswal and one Mr. Jai Chand, the latter claiming to be a creditor of the Company to the extent of over Rs. 7,000 and alleging that the Company was commercially insolvent and unable to pay its debts. One of the objections taken to this petition was that it was not maintainable at all in view of the previously filed petition in the Lahore High Court which had not been decided. This objection has been allowed to prevail by the learned Liquidation Judge and the petition, therefore, dismissed, and the only question for our consideration is whether the view of the learned Single Judge that the present petition does not lie in view of the pending petition in the Lahore High Court, is or is not correct. The learned Judge has held—

- (1) that the present petition so far as it concerns Mr. Ladli Parshad Jaiswal, is substantially though not wholly identical with the petition pending in the Lahore High Court and, therefore, not maintainable;
- (2) that the second petitioner, namely Mr. Jai Chand, has been joined in the present petition as a device to lend some semblance of maintainability to the new petition;
- (3) that Mr. Jai Chand's claim as a creditor is somewhat suspect; and

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(4) that even if the claim were assumed to be genuine it would not by itself be a ground for winding up the company as an offer had been made on behalf of the Company to deposit in Court the amount claimed by him subject to his establishing his right in that respect in an ordinary civil court.

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Mr. Tuli contends that the learned Judge was in error in thinking that the present petition is identical with the petition pending in the Lahore High Court as he has in the present petition made allegations of fact concerning events which occurred subsequent to the petition at Lahore and he is entitled to satisfy the Liquidation Judge that on those facts considered in the context of what had happened already it is just and equitable that the Company be wound up. Mr. Tuli is right to this extent that some new allegations are contained in the present petition, but whether they by themselves or along with some other relevant facts would or would not justify a winding up order is not for our consideration at present. Mr. Tuli's petition has been dismissed not only because it was a repetition of a petition already pending in the Lahore High Court but also because the learned Judge held that as long as an application for the winding up of this Company at the instance of the present petitioner, Mr. Ladli Parshad Jaiswal, was pending a fresh petition for the winding up of the same Company on similar grounds did not lie in this Court and this because the learned Judge found that Article 13 of the High Courts (Punjab) Order, 1947, had the effect of vesting jurisdiction in the Lahore High Court in respect of the petition pending there and the decision of that High Court in respect of that petition as binding as a decision of this Court. Mr. Tuli does not seriously dispute the view taken by the learned Judge as to the meaning and effect of the provisions of the High Courts (Punjab) Order, 1947, but he does contend seriously that the further inference that because of the pendency of the winding up petition in the Lahore High Court a

fresh petition for the winding up of the same Company does not lie in this Court is not correct. It is necessary in this connection to refer to Article 13 of the High Courts (Punjab) Order, 1947. It says:—

- “13. (1) Subject as hereinafter provided, the High Court at Lahore shall have no jurisdiction in respect of the territories for the time being included in the Province of East Punjab or in the Province of Delhi.”

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If the matter had stood thus it would have been quite clear that after the partition, that is, as from 15th August 1947, the High Court at Lahore had no jurisdiction in respect of this Company with its registered office at Karnal. Paragraph (2) of Article 13, however, goes on to say:—

“(2) Notwithstanding anything contained in this Order:—

- (a) any proceedings which immediately before the appointed day, are pending in the High Court at Lahore on its original side, including any proceedings then pending in the said High Court as a court of reference, shall be heard and determined by that court”,

and paragraph (4) then provides—

“(4) Subject to the following provisions of this Article with respect to appeals, any order made by the High Court at Lahore either—

(a) before the appointed day; or

(b) in any proceedings with respect to which the said High Court retains jurisdiction by virtue of paragraphs (2) and (3) of this Article;

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shall for all purposes have effect not only as an order of the High Court at Lahore but also as an order made by the High Court of East Punjab.”

The meaning I take it is that while jurisdiction in general in respect of matters connected with the territories included in East Punjab was vested in the High Court of East Punjab, that is, this Court, the proceedings on the original side actually pending in the Lahore High Court at the time of the partition were left to be determined by that High Court and thus limited jurisdiction *qua* such proceedings alone remained with that High Court. The question which Mr. Tuli, therefore, poses is this, assuming that the Lahore High Court was *fully* competent to decide the application which was actually pending in that Court, does it follow that a fresh application on the same or similar facts did not after the partition lie in the East Punjab High Court? His argument is that a person is entitled to institute two identical proceedings in the same Court or two different Courts of concurrent jurisdiction and that there is no rule that the second or the later proceeding is liable to be dismissed merely because of the existence of the prior or the first proceeding, much less that the second proceeding should be dismissed although instituted in a Court of competent jurisdiction merely because a Court of limited jurisdiction is already seized of a similar matter. There is in my opinion force in this argument. There is, as far as I am aware, no rule debarring a person from instituting two or more identical suits in the same Court or different Courts of concurrent jurisdiction, and there seems, therefore, no reason why two winding up applications more or less identical cannot be maintained at the same time. The only rule regulating such matters is contained in section 10 of the Civil Procedure Code but that rule, it is admitted, would not apply to the present case, and what is more the rule does not contemplate the dismissal of either suit or proceeding but merely the stay of the one or the other. Mr. Khanna appearing for the respondent

while admitting that two or more identical suits by the same person were maintainable even in the same Court contended that the case of winding up applications is peculiar, and that once a winding up application has been filed and it is a *bona fide* application a second application of the same kind for the winding up of the same company does not lie. He was unable, however, to support this argument either on the basis of any principle of law or any authority. Mr. Khanna did refer to three English decisions *In re Joint Stock Coal Company* (1), *Re The Norton Iron Company* (2), and *In re Building Societies' Trust, Limited* (3), but none of these afford any assistance to his argument. In these cases the question mainly was of costs. *In re Joint Stock Coal Company* (1), there were two petitions for the winding up of the same company and both failed because neither disclosed any good ground for a winding up order. The learned Vice-Chancellor disposes of the merits of the two petitions at page 153 of the report and then after considering another question proceeds to consider the matter of costs at page 154 and decides:—

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“As to the second petition, by the shareholders of Norwich, I am not sure if theirs had been the original petition for winding up, that I should have dismissed it with costs, because they have a fair ground of complaint in the discontinuance of the Norwich depot. But when it is considered that Green’s petition had already been presented, and that the Norwich shareholders well knew all that was being done, there was no excuse under the circumstances for presenting a second petition, and it must consequently be dismissed with costs.”

It will be noticed that the second petition was not dismissed because of the existence of the first petition. In the next case *Re The Norton Iron*

(1) L.R. (1869) 8 Eq. 146  
(2) 47 L.J. (Ch.) 9  
(3) L.R. (1890) 44 Ch. D. 140

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*Company* (1) the second petition was dismissed because the first was allowed and winding up order was made on that first petition. In the last case *In re Building Societies' Trust, Limited* (2) again one of the petitions was allowed and the other thereupon dismissed. It is clear, therefore, that in none of these cases was a winding up petition dismissed merely because another winding up petition of the same kind was awaiting decision. This matter concerning the position of several petitions for the winding up of the same company was considered *In re European Banking Company, Ex parte Baylis* (3) and Sir R. T. Kindersley, V. C., observed:—

“However desirable it is to avoid a number of petitions being presented for the winding up of a company, I am not aware of any rule having been established with a view to limit the number of them. But still every one of these petitions ought to be looked at separately upon its own merits, as if it were the only petition presented.”

It is not shown that this view has been departed from in the English Courts. There is thus no authority for concluding that the appellant's petition for the winding up of this Company is not maintainable because a previous petition by him of a similar kind is pending and has not yet been decided. On general grounds too there appear several considerations why the appellant should not be debarred from seeking his remedy in this Court merely because another Court of competent jurisdiction is yet considering a similar prayer by him. The Company in question is admittedly an Indian company and as from the date of the partition the responsibility for deciding disputes connected with its affairs rests on this Court. If, therefore, a party seeks relief from this Court in connection with such a dispute feeling that he can

(1) 47 L.J. (Ch.) 9

(2) L.R. (1890) 44 Ch. 140

(3) L.R. (1866) 2 Eq. 521



obtain effective relief from this Court alone, such relief ought not to be refused on any but substantial ground. The old maxim of law is that a Judge must extend his jurisdiction, which of course does not mean that he should usurp jurisdiction where none exists but does mean that he ought to amplify, as far as possible, the remedies he can grant. Mr. Tuli feels and not without justification that he cannot now obtain that measure of relief from the Lahore High Court which he is actually seeking, and if, therefore, there be no legal bar to his applying to this Court for appropriate relief it is in my opinion only proper that relief should be afforded to him. As I have already said, I cannot see any legal bar to his maintaining the present petition in this Court in spite of the previous application which is still pending in the Lahore High Court. It may be quite true that if that application is decided by the Lahore High Court the decision may in certain circumstances have the same effect as a decision of this Court, but that cannot at present affect the maintainability of the new petition. My conclusion, therefore, is that the appellant's petition is maintainable notwithstanding the previous petition pending in the Lahore High Court and that the learned Single Judge was not right in holding to the contrary. I would, therefore, allow this appeal and set aside the order of the learned Single Judge dismissing the application. In the circumstances of the case, however, I would leave the parties to bear their own costs in this appeal.

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BHANDARI, C. J. I agree.

Bhandari, C.J.

REVISIONAL CRIMINAL

Before Bhandari, C.J.

THE STATE,—Petitioner

versus

LEKH RAJ,—Respondent

Criminal Revision No. 11-D/53

*Code of Criminal Procedure (Act V of 1898)—Chapter XXII—Summary trial—Procedure to be followed—Warrant case—Whether framing of formal charge necessary—Section 256—Whether accused person entitled to recall and re-cross-examine the prosecution witnesses.*

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