

Privy Council Appeal No. 61 of 1942

Oudh Appeal No. 8 of 1940

Lyallpur Bank Limited - - - - - Appellant

v.

Ramji Das (deceased) through his Sons, and others - Respondents

FROM

THE CHIEF COURT OF OUDH

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH JANUARY, 1945**

Present at the Hearing :

LORD RUSSELL OF KILLOWEN

LORD MACMILLAN

LORD SIMONDS

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[Delivered by LORD RUSSELL OF KILLOWEN]

The points involved in this appeal turn upon the true construction of Section 73 (1) of the Code of Civil Procedure (v. of 1908) which is in the following terms:—

Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets after deducting the costs of realisation, shall be rateably distributed among all such persons.

It is common ground that at all material times there was held by the District Court, Unao, assets of one Shanti Lal amounting to a sum of Rs. 49,166 or thereabouts, and that before the receipt of those assets various decree-holders had made application to the Court for the execution of decrees for the payment of money passed against the said Shanti Lal and had not obtained satisfaction thereof. They accordingly claimed to be entitled to a rateable distribution of the said sum under the said section. Their claims were allowed by the District Judge, Unao, who by an order dated the 6th August, 1936, ordered that the balance of the amount in deposit (after satisfying in full a claim of the Secretary of State for India) should be rateably distributed among the holders of 17 decrees.

The appellant here had made an application for the execution of the order hereinafter mentioned, and had not obtained satisfaction thereof. It accordingly claimed a share in the rateable distribution, its claim being based upon an order which had been made in its favour under Section 186 (1) of the Indian Companies Act (vii. of 1913) which runs thus:

The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

The appellant's claim was disallowed by the District Judge on the ground that its application for the execution of the said order was not an application for the execution of a decree for the payment of money, and that therefore the appellant could not share in the rateable distribution. An appeal to the Chief Court of Oudh was dismissed on the same ground. It is from this dismissal that the present appeal is brought.

The order in favour of the appellant, dated the 27th March, 1935, was made by the District Judge, Lahore, in the following terms:—

Upon the application of the Official Liquidators of the above-named Company and upon reading orders passed thereon to-day, it is ordered under Section 186 read with Section 160 of the Act that Shanti Lal son of Lala Jairam Das, c/o Lala Kundan Lal, Eastern Electric Works, Cawnpore, do pay to the Official Liquidators of the said Company the sum of Rs. 1,37,557/10/3 (one lac, thirty-seven thousand, five hundred and fifty-seven, annas ten and pies three) only with costs due from his late father Lala Jairam Das, the original contributory in respect of a promote dated 1st of July, 1928, for Rs. 1,11,500/8/-, in favour of the above said Bank, which still remains unpaid.

This order of payment may be enforced as a decree under the provisions of Sections 199, 200 and 201 of the Act against the estate, if any, of the deceased contributory in the hands of the above said Shanti Lal.

This order was sent for execution to the Chief Court of Oudh and was by that Court forwarded to the District Judge, Unao, in a letter addressed by the Deputy Registrar of the Court to the said District Judge in the following terms:—" I am directed to forward to your Court for execution and necessary action, the order of the District Judge In Charge Liquidation Work at Lahore, which has been certified by this Honourable Court on 27th January, 1936, in the case noted on the margin." The case was described in the margin as " No. 91 of 1936. Civil Miscellaneous Application Register. In the matter of the Indian Companies Act 7 of 1913 and of *The Lyallpur Bank Ltd. (in Liquidation) Decree-holder v. Lala Shanti Lal Judgment debtor.*" Among the documents which accompanied the letter was a " certificate of non-satisfaction of decree."

The ground upon which the judgments of the Courts in India were based was the same in each Court, viz., that an order made under Section 186 of the Companies Act, did not come within the definition of the word " decree " contained in Section 2 (2) of the Code of Civil Procedure, and therefore that a holder of such an order could not fulfil the requirement of Section 73 of being within the class of persons who had " made application to the Court for the execution of decrees." The Courts in coming to their conclusions were following the decision which had been reached in the case of *Mohan Lal Lal Chand v. Bhivraj Devi Chand* (A.I.R. 1934. Nagpur. 243).

From any point of view this result, if right in law, would appear strange. It would mean that a company resorting to the short and simple procedure against a contributory which Section 186 invites it to adopt, would be depriving itself of an effective method of enforcing its claim which would have been available had it resorted to the longer and more elaborate procedure of a suit.

In their Lordships' opinion however the Courts in India have, in the present case, taken too narrow a view. The strange result indicated above is avoided if and when Section 36 of the Code and Section 199 of the Companies Act, or either of them, are, or is, taken into consideration.

Section 199 of the Companies Act provides:

" Section 199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced."

The effect of this section is, in their Lordships' opinion, that a Company which holds an order made under Section 186 (1), may resort to any procedure for its enforcement which would be open to it if the order had been a decree made in a suit; with the result that the method of enforcement provided by Section 73 of the Code is open to the Company, and an application by the Company for its execution must rank as an application for the execution of a decree for the purposes of that section.

Section 36 of the Code operates in the same way. By that section it is enacted:—" The provisions of this Code relating to the execution of decrees shall, so far as applicable, be deemed to apply to the execution of orders." This section appears to their Lordships to enact that Section 73 is to be deemed to apply to the execution of an order made under Section 186 of the Companies Act; and if this be so, an application

made to a Court for its execution must, their Lordships think, be treated as, or deemed to be, an application for the execution of a decree, notwithstanding the somewhat curious fact that, although the Company is a "decree-holder" as defined by the Code, it would appear not to hold a "decree" as so defined.

While there appears to have been a divergence of view in India upon this question, their Lordships find themselves in agreement with the views expressed by Young C.J. and Blacker J. in the case of the *Radheshan Beopar Coy. Ltd.* (A.I.R. 1941. Lahore. 273).

In the course of the argument before the Board, it was suggested that even if an application for the execution of the order under the Companies' Act must be treated as, or deemed to be, an application for the execution of a decree under section 73 (1) of the Code, nevertheless Shanti Lal could not be said to be "the same judgment debtor" as the judgment debtors against whom the said 17 decrees had been passed. But an examination of the record before their Lordships showed that the 17 decrees must have been, and were in fact, treated by the District Judge as decrees passed against Shanti Lal, who was the person against whom the order under the Companies Act was made. In these circumstances no question relating to the "sameness" of the appellant's judgment debtor can arise on this appeal. Their Lordships accordingly refrain from expressing any opinion on a question as to which, apparently, different views have prevailed in India.

In the result their Lordships are of opinion that the claim of the appellant to share in the rateable distribution of the fund ought to have been admitted. The appeal must therefore be allowed, the orders of the Chief Court and the District Judge discharged, and the matter remitted to the District Judge to adjust the rights of the parties in accordance with this judgment. The costs ordered by the Chief Court to be paid by the present appellant must (if already paid) be repaid to the appellant by the opposite parties in that Court Nos. 1 (i to v) 11 and 12 and No. 13, and those opposite parties must pay the costs of the appellant of its application to the Chief Court. Their Lordships will humbly advise His Majesty accordingly. The appellant's costs of this appeal must be paid by the respondent The Punjab National Bank Ltd.

In the Privy Council

LYALLPUR BANK LIMITED

v.

RAMJI DAS (DECEASED) THROUGH HIS
SONS, AND OTHERS

DELIVERED BY LORD RUSSELL OF KILLOWEN

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