Satish Churan Law vs H. K. Ganguly on 5 December, 1961

Equivalent citations: 1962 AIR 806, 1962 SCR SUPL. (1) 943, AIR 1962 SUPREME COURT 806, 1962 32 COM CAS 97 1962 2 SCJ 200, 1962 2 SCJ 200

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, J.L. Kapur, M. Hidayatullah, J.R. Mudholkar

PETITIONER:
SATISH CHURAN LAW

Vs.

RESPONDENT:
H. K. GANGULY

DATE OF JUDGMENT:
05/12/1961

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
KAPUR, J.L.
HIDAYATULLAH, M.
MUDHOLKAR, J.R.

CITATION:
1962 AIR 806 1962 SCR Supl. (1) 943

ACT:
Company Law-Winding up-Examination of ex-Director-Application of Liquidator accompanied by signed statement-Ex parte order-Modification or vacating of-Right to inspect statement filed by Liquidator-Whether statement confidential-Companies Act, 1956 (1 of 1956), s. 477-Companies (Court) Rules, 1959, rr. 243, 244 and 249.

HEADNOTE:
A company was ordered by the High Court of Calcutta to be wound up. The Official Liquidator submitted an application accompanied by a signed statement for an order that the appellant, an ex-

director of the company, be examined concerning the affairs of the company under s. 477 Companies Act, 1956, and that he be ordered to produce certain records. The application was granted ex-parte. The appellant applied for an order vacating or modifying of the order and for supplying copies of or facility for inspection of all documents including the signed statement of the Liquidator. The Company Judge rejected the application holding that the ex-parte order was final and he had no power to review it and that the appellant was not entitled to a copy of or to inspect the signed statement of the liquidator. On appeal Court held that the application to modify or vacate the order was maintainable, but in the circumstances of the case the Court held that the order was "desirable and necessary" and that the appellant was not entitled to an inspection of the signed statement of the liquidator.

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Held, that the ex-parte order was not final and it was open to the Company Judge to modify or vacate it on the ground that it had been obtained without placing all the requisite materials before the court or by mis-statement of

944

facts or on other adequate grounds. The primary test for making the order was whether it was just and beneficial to the business of the company ; the power conferred on the court was very wide and the court had to guard itself against being made an instrument of vexation or oppression. In the present case none of the circumstances justifying interference with the ex-parte order were made out. The order was not sought for any collateral purpose, a purpose other than the effective progress of the winding up in the interest of the company. The appellant was prima facie a person who was likely to give information useful about the affairs of the company in winding up.

In re North Australian Territory Company, (1890) 45 Ch. D. In re. Metropolitan Bank, (1880) 15 Ch. D. 139, In re. Mavile House, Limited., (1939) 1 Ch. D. 32 and In re. Gold Company Ltd., (1879) 12 Ch. D. 77, referred to.

Held, further, that the appellant had no right to inspect the signed statement made by the liquidator on which the order of the court proceeded. The statement of the Liquidator did not form part of the file of the proceedings of liquidation. It merely enabled the court to be satisfied that the appellant should be examined in the interest of the company. The rules permitted

the making of such an order ex parte. The examination was confidential.

In re Gold Company Ltd., (1879) 12 Ch. D.77, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 521 of 1961.

Appeal by special leave from the judgment and order dated April 17, 1961 of the Calcutta High Court in Appeal from Original Order No. 132 of 1960.

M. C. Setalvad, Attorney-General of India, M. K. Banerji and S. N. Mukherji, for the appellant.

S. Mukherjee and P. K. Bose, for the respondent.

1961. December, 5. The Judgment of the Court was delivered by SHAH. J.-Ballygunge Real Property and Building Society Ltd.-hereinafter called the Company-was on January 8, 1958, ordered by the High Court of Judicature at Calcutta to be wound up. On January 18, 1960, the Official Liquidator submitted an application accompanied by a signed statement for an order that the appellant be examined under s. 477 of the Indian Companies Act, 1956. This application was granted ex-parte by Mr. Justice G.K. Mitter on January 18, 1960, and the appellant was served with the order to attend the Court on March 22, 1960, for the purpose of being examined concerning the affairs of the company, and to bring with him and produce at the said time and place the following books and papers, mentioned in Schedule B to the order, viz.,

(a) Ballygunge Estate (Private) Ltd.-Cash Books, General Ledger, Journal, Minutes Books from 1939 to 1948, Property Register.

(b) Ballygunge Building Society Private Ltd.- Cash Books, General Ledger, Journal, Minute Books, Property Register.

(c) Ballygunge Real Property & Building Society Ltd. (In liquidation)-General Ledger for 1949, and "all such other books, papers, deeds, writings and other documents in his custody or power in any way relating to the affairs of the Company". This order was published in public newspapers. The solicitors of the appellant by letters dated February 29, 1960, and March 10, 1960, called upon the Official Liquidator to furnish them with copies of the petition and the report on the basis of which the order was made. The Official Liquidator having informed the solicitors of the appellant that the latter were not entitled to a copy of the report of the official liquidator, the appellant applied by a judge's summons for an "order recalling vacating, setting aside or modifying" the order dated January 18, 1960, and for a direction to the official liquidator requiring him to supply copies of the report of the official liquidator and of the other documents relating to the application and alternatively for an order granting leave to inspect the court records and proceedings of the application and to take copies thereof. The appellant contended that the order made by Mr. Justice

Mitter on January 18, 1960, was obtained by suppression of material facts and that, in any event, the order made without notice to the appellant was vexatious and oppressive and amounted to an abuse of the process of Court. He submitted that he was a Director of the Company between the years 1939 to 1953 and had attended meetings of the Board of Directors of the Company and without reference to the records of the meetings of the Board and particularly without reference to the Minute Books, it was not possible for him to recollect any details as to transactions which might have taken place in the Board's meetings. He stated that he was not concerned with the administration, management or the day to day working of the Company, except to the extent of taking part in the Board's meetings, that he never had in his custody the books referred to in the order and that the official liquidator had never asked for or enquired of him about any documents, that he was not aware of the matters on which information was required by the official liquidator and unless those matters were made known to him, it was not possible for him, to answer questions or to give information required of him, that to enable him to answer questions or supply information, it was necessary for him to know the nature of the enquiry and the charges and to inspect the records and documents of the Company and without the assistance of such records and documents his proposed examination would be highly oppressive and harsh and was likely to prove futile.

The official liquidator submitted that all the available papers in the books with the liquidator will be made available at the time of the examination of the appellant but he-the official liquidator-was not bound to give information in advance about the nature of the enquiry; to do so, he contended, would defeat the purpose of the enquiry. He also submitted that the appellant had no right claim inspection or to obtain copies of the statement which accompanied the judge's summons dated January 18, 1960.

Mr. Justice Law rejected the application filed by the appellant, holding that the order dated January 18, 1960, was final and that he had no power to review, modify, alter or vary the same, that the order merely summoning for examination under s. 477 of the Companies Act did not affect a party's rights, there being no charge, no complaint and no allegation against him. The learned Judge observed that it was not necessary for the Court in the first instance to determine that the person called upon to furnish information actually possessed that information :

> if the Court has reasons to think, or if even an allegation is made that a certain person is in possession of information which would be of use in the course of winding up, the Court can call upon him to appear in Court and examine him, and that rr. 243 (1) and 243 (2) of Companies (Court) Rules laid down the same procedure as was laid down in In re Gold Company (1879 12 Ch. D. 77 at page 82) and different from the procedure which was laid by r. 195 of the Indian Companies Act, 1913. In the view of the learned Judge the statement of the official liquidator on which the order dated January 18, 1960, was made not being on oath or affirmation was not "legal evidence" and did not form part of the proceedings of the Court and the appellant could not demand facility for inspection of the statement or copy thereof.
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> Against the order of Mr. Justice Law an appeal was preferred to a Division Bench of the High Court. The High Court held that the order having been initially pass ex parte

an application for discharging or modifying the order was in law maintainable at the instance of the appellant but the order in so far as it directed the appellant who was a director of the Company to appear before the Court to be examined touching upon the affairs of the Company was, in the circumstances of the case, "desirable and necessary", and that the statement of the official liquidator on which the order dated January 18, 1960, was issued not being an affidavit was not required by the Companies (Court) Rules 1959 to be kept on the file of the liquidation proceedings : the statement was a confidential document and was-save by order of the Court-not open to inspection of any person other than the liquidator. The learned judges modified the order in so far as it directed production of the books of account relating to the Ballygunge Estate (Private) Ltd. and the Ballygunge Building Society Private Ltd., because those companies were not parties to the liquidation proceedings.

Against the order of the High Court this appeal with special leave has been preferred to this Court.

Three questions fall to be determined :

(1) Whether an ex parte order directing the examination of a person under s. 477 of the Indian Companies Act, 1956 is liable to be modified, or vacated on the application of the persons affected thereby ;

(2) Whether there is any ground for discharging or modifying the order dated January 18, 1960 ; and (3) Whether the appellant is entitled before his examination to inspect the statement submitted by the official liquidator in support of the application for the order dated January 18, 1960, or to be furnished with a copy thereof.

Section 477 of the Indian Companies Act, 1956, provides :

"477 (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers of the company, or known or suspected to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Court may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories; and may, in the former case, reduce his answers to writing and require him to sign them.

(3) The Court may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers, produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all

questions relating to that lien.

(4) If any officer or person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination. (5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as to the Court may seem just the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination. (6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for delivery of property under the Code of Civil Procedure, 1908 respectively.

(8) Any person making any payment or delivery in pursuance of an order made under subsection (5) or sub-section (6) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property."

Clauses (5), (6), (7) and (8) it may be noted, were inserted by Act 65 of 1960. Section 463 of the Companies Act authorises this Court to make rules for all matters relating to winding up of companies which by the Act are to be prescribed and for other matters. This court has framed Companies (Court) Rules, 1959, out of which rr. 243, 244 and 249, which are material, are as follows :-

"243. Application for examination under Section 477.-(1) An application for the examination of a person under Section 477 may be made ex parte provided that where the application is made by any person other than the Official Liquidator, notice of the application shall be given to the Official Liquidator.

(2) The summons shall be in Form 109 and, where the application is by the Official Liquidator, shall be accompanied by a statement signed by him setting forth the facts on which the application is based.

Where the application is made by a person other than the Official Liquidator, the summons shall be supported by an affidavit of the applicant setting forth the matters in respect of which the examination is sought and the grounds relied on in support of the summons."

"244. Directions at hearing of summons.-Upon the hearing of the summons the Judge may, if satisfied that there are grounds for making the orders, make an order directing the issue of summons against the person named in the order for his examination and/or for the production of documents. Unless the Judge otherwise directs, the examination of such person shall be held in Chambers. The order shall be in Form No. 110."

"249. Order for public examination under section 478.-(1) where an order is made for the examination of any person or persons under Section 478, the examination shall be held before the Judge; provided that in the case of High Court, the Judge may direct that the whole or any part of the examination of any such person or persons, be held before any of the officers mentioned in sub-section (10) of the said Section as may be mentioned in the order: Where the date of the examination has not been fixed by the order, the Official Liquidator shall take an appointment from the Judge or officer before whom the examination is to be held as to the date of the examination. The order directing a public examination shall be in Form No.

112. (2) The Judge may, if he things fit, either in the order for examination or by any subsequent order, give directions to the specific matters on which such person is to be examined."

By s. 477 the Court is authorised to summon before it (1) any officer of the Company, (2) any person known or suspected to have in his possession any property or books or papers of the Company, and (3) any person known or suspected to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers or affairs of the company. By r. 243 an application for an order for examination may be made ex parte, and the Company Judge may, if he is satisfied that the interest of the company will be served by the examination of a person-be he an officer of the company or other person make the order. The primary test for making the order is whether it is just and beneficial to the business of the company, But the power conferred by the section is very wide and the Court must guard itself against being made an instrument of vexation or oppression. The order which is made ex-parte is not final; it is always open to a person summoned to apply for vacating or modifying the order on the ground that it has been obtained without placing all the requisite materials before the Court or by mis-statement of facts or on other adequate grounds. Rule 9 of the Companies (Court) Rules preserves to the Court its inherent powers to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court, and a direction to vacate an order previously made, is in a proper case within the Court's inherent jurisdiction.

The relevant provisions of the English Companies Act, 1862 (25 & 26 Vict. c. 89), the English Companies Act, 1929 (19 & 20 Geo V c.3) and the English Companies Act, 1948 (11 & 12 Geo VI c,88) on the question relating to examination of officers of the company or other persons are substantially the same as s. 477 of the Indians Companies Act, 1956, and the principles laid down by the superior Courts in England, which have been assimilated in the practice of Company winding up by the

Courts in India are useful in determining the nature of the proceeding. In re North Australian Territory Company (1), Lord Justice Cotton vacated an order in appeal where the order for examination was not made in the interest of the Company in liquidation, but was made with a view to assist the interest of the company in prosecuting an action which has been brought up by the liquidator. In that case the liquidator filed with leave of the Court an action against another company for setting aside an agreement of purchase and obtained an order for affidavit of document, but the Court refused to order production of certain documents, or the examination of the defendant company's secretary on interrogatories, on the ground that discovery was premature. The liquidator then obtained an order under s. 115 of the Companies Act, 1862 for the examination of the secretary before an examiner. The Secretary refused to answer certain questions relating to the matters in issue in the action and the Court held that the liquidator had shown no reason for seeking discovery except to assist him in the action and so to evade the order of the Judge postponing discovery in the action and therefore the witness was justified in refusing to answer the question. Lord Justice Bowen in that case observed that the power conferred by s. 115 is an extra-ordinary power. "It is a power of an inquisitorial kind which enables the Court to direct to be examined-not merely before itself, but before the examiner appointed by the Court-some third person who is no party to a litigation. That is an inquisitorial power, which may work with great severity against third persons, and it seems to me to be obvious that such a section ought to be used with the greatest care, so as not unnecessarily put in motion the machinery of justice when it is not wanted or to put it in motion at a stage when it is not clear that it is wanted, and certainly not to put it is motion if unnecessary mischief is going to be done or hardship inflicted upon the third person who is called upon to appear and give information." In re Metropolitan Bank (Heiron's case)(1) a similar situation arose. The liquidator who had brought an action on behalf of the company against an officer exhibited interrogatories which had been fully answered by the defendant, and thereafter, the liquidator sought an order from the Court to examine the defendant under s. 115 of the Companies Act, 1862. It was held that the liquidator must satisfy the Court that it would be just and beneficial for the purposes of the winding up. The Court in that case held that the action of the liquidator was vexatious. In In re Mavile Hose, Limited, (2) an order which was regarded as premature and oppressive in the circumstances of the case was discharged by the Court. The Court has therefore jurisdiction in proper cases, i.e. where it is satisfied that the order is vexatious, or oppressive, or where other adequate grounds exist to discharge the same. In our view, the High Court was right in holding that in a proper case it would be open to the Company Judge to vacate an ex-parte order obtained under r. 243 of the Companies (Court) Rules.

The jurisdiction to vacate or modify an ex- parte order under r. 243 being granted, the question which falls to be determined is whether the order passed by Mr. Justice Mitter was oppressive or vexatious or otherwise liable to be vacated or modified for adequate grounds. In our view, there is no ground for holding that the order is liable to be vacated or modified. It was never even suggested in the High Court that the order for examination was per se oppressive or vexatious. This is not a case in which the order is sought to facilitate the progress of an action filed by the official liquidator against the appellant, nor is there reason to hold that the order is sought in aid of some collateral purpose-a purpose other than effective progress of the winding up in the interest of the company. The appellant was for many years a director of the company, and therefore concerned with guiding the affairs of the company. He was prima facie a person who would be able to give information likely

to promote the purpose of the winding up. It appears also that Mr. Justice Mitter was satisfied on the statement filed by the official liquidator that the appellant had the custody of certain important books of the company. The plea of the appellant that compelling him to submit to examination without permitting him to have access to the books before answering questions put to him is oppressive has no substance. The affidavit filed on behalf of the liquidator clearly states that the relevant records of the company will be made available to the appellant at the time of the examination.

The High Court, in appeal, expressed the view that on the merits there was no ground for interference and it was satisfied that it was "desirable and necessary" that the appellant as a director should be examined. The appellant having been a director of the company during the period when it is alleged the affairs were mismanaged, is likely to be aware of the management and in possession of information conducive to effective prosecution of the winding up and if the learned Judge thought it fit to order that the appellant be examined the order cannot be regarded as either vexatious or oppressive or otherwise liable to be set aside.

Counsel for the appellant submitted that the order for examination must be made after considering all the facts and circumstances of the case and that there was nothing on the record to show that the facts and circumstances were considered by Mr. Justice Mitter before he made the order for examination. The appellant has admitted in his affidavit that he was served with a copy of the order, but he has not chosen to produce it in the Court of First Instance, nor is the order printed in the record prepared for the use of the Court in this appeal. It was never suggested before the High Court that the order was made without considering the material facts and circumstances. The Court has made the order in exercise of the jurisdiction vested in it and in the absence of any material to show that the order was made for a collateral purpose or by the misleading the Court, the appellant is not entitled to have the order vacated. As pointed out by the Master of the Rolls in In re Gold Company Ltd., (1) "It must be remembered that both the Chief Clerk and the Judge know a great deal more of the proceedings in the winding-up than the Court of Appeal can know, and there may be various grounds for exercising the discretion, upon which the Court of Appeal cannot possibly form any opinion. We must recollect also that it is not necessary to make out a prima facie case-the probability of a case is enough. A fair suspicion may be well worthy of further investigation, and it may well be worth the expense and trouble of examining witnesses to see whether it is well founded. It is not necessary that the applicant should establish his case before he applies to the Judge: he may say to the Judge, "I have a strong ground for suspecting that a certain transaction was fraudulent; if it is proved to be so we shall get a large some of money; will you let me lay out a small sum of money in order to examine a witness or two, so as to ascertain the facts? In that case the Court will exercise a discretion." Mr. Justice Mitter was the company Judge in charge of the liquidation proceedings of the Company. Before him a statement of the official liquidator was produced: and in the light of the materials placed before him, he passed the order which is now sought to be modified. This Court cannot proceed upon an assumption that the order for examination of a person who has ceased to be a director prior to the date of the winding up must necessarily be regarded as oppressive or vexatious. A director of a company, past or present, is ordinarily in a position to give useful information about the affairs of the Company in winding up. In the circumstances, we think that the High Court was right in holding that no case was made out for modification of the ex parte order.

Two grounds were set up in support of the plea that the appellant before he is examined is entitled to inspect the statement of the official liquidator: (a) that it is contrary to rules of natural justice to disallow inspection of the statement on which a judicial order imposing an obligation upon a party is made, and (b) that the rules of procedure prescribed under the Companies (Court) Rules authorise the person summoned to inspect the statement of the official liquidator on which the order is made. Rule 243 expressly contemplates that an application for examination under s. 477 may be made ex parte. An application by an official liquidator is required to be supported by a statement signed by him, but the rule does not contemplate any notice to the parties likely to be affected by the issue of the summons. The proceedings are intended to be confidential. As observed in In re Gold Company (1) by Sir George Jessel M.R.... in these matters...the object being to keep the proceedings secret from the person sought to be affected, and the practice is, and as far as I know always has been, that the liquidator, instead of making an affidavit, simply makes a written statement which he leaves with the Chief Clerk, who thereupon issues an order, and the written statement cannot, be got at by anybody whereas an affidavit can." This practice in our judgement is consonant with right and justice. That proceedings for examination of officers and other persons are confidential is emphasised by rr. 247 and 248. By cl.(2) of r. 247 no person is entitled to take part in the examination under s. 477 except the official liquidator and his advocate but the court may, if it thinks fit, permit any creditor or contributory to attend the examination subject to such conditions as it may impose. Clause (3) provides that notes of the examination may be permitted to be taken by a witness or any person on his behalf on his giving an undertaking that such notes shall be used only for the purposes of re-examination of the witness. It is also provided that on the conclusion of the examination, the notes shall, unless otherwise directed, be handed over to the Court for destruction. Rule 248 provides inter alia, that the notes shall not be open to the inspection of any creditor, contributory or other person, except the official liquidator, nor shall a copy thereof or extract there from be supplied to any person other than the official liquidator, save upon orders of the Court. The proceedings for examination under s. 477 being intended to be commenced only in the interest of the Company and for the purpose of collecting evidence for the effective prosecution of the liquidation are by rules expressly to be commenced by order which may on the application of the official liquidator be made ex parte. The order does not purport to decide any question in dispute between the Company and the persons sought to be examined. It only proceeds upon the satisfaction of the Court that the person should be examined in the interest of the Company, it appearing to the Court just proper that he should be so examined. There is nothing in the scheme of the Act which indicates that an order passed for the examination of a person under. s. 477 may be made only after serving a notice upon such person: the Rules expressly contemplate that the order may be made ex parte. Rules of natural justice are therefore not violated merely by the issue of an order requiring a person or persons to appear before a Court for his examination under s. 477.

Nor do the rules of procedure framed by this Court for examination under s. 477 contemplate and right of inspection of the statement of the official liquidator. As we have already pointed out, r. 243 contemplates an order ex parte and the scheme of the Rule further emphasises the fact that all these enquiries are intended as already discussed to be confidential proceedings. The person whose examination is sought to be held, has therefore no right to inspect the statement made by the liquidator on which the order of the Court proceeds. Rule 360 of the Companies (Court) Rules provides that every duly authorised officer of a the Central Government, and, save as otherwise

provided by these Rules, every persons who has been a director or officer of a company which is being wound up, shall be entitled, free of charge, at all reasonable times to inspect the file of proceedings of the liquidation and to take copies or extracts from any document therein, and, on payment of the prescribed charges to be furnished with such copies or extracts. The right to inspection is given in respect of the file of the proceedings of the liquidation. But the statement made by the official liquidator under Rule 243 does not form part of the file of the proceedings of the liquidation. The statement is not to be made on oath: it has to be shown to the Company Judge and the Judge has to apply his mind to the contents thereof, but it does not, as pointed out by Mr. Justice Law, form part of the liquidation proceedings. In the Company (Court) Rules, there is no rule specifying the documents which are to be included in the file of the liquidation proceedings. The order passed by the Court and the summons issued thereon may be regarded as forming part of the file of the proceeding of liquidation, but having regard to the nature of the statement made by the official liquidator on which this Judge's order is passed, it is not part of the file of the proceedings of liquidation. The person summoned even if he is an officer or director of the company, is therefore not entitled to inspection thereof relying upon Rule 360.

It was urged by counsel for the appellant that the petition for an order under s.477 was inexorably connected with the statement of the official liquidator, and if the party affected by the order was entitled to inspect the petition, he was entitled to inspect the statement which formed part of the petition. There is however, no warrant for the view that the petition and the statement form part of the same document. The petition has, it is true, to be supported by a statement, but the statement is independent of the petition.

It appears that the practice of the Calcutta High Court, prior to the promulgation of the Companies (Court) Rules, was different. Under r. 195 an application for examination of a person under s 195 of the Indian Companies Act 1913, could be made ex parte to the Judge but it had to be by petition verified by the official liquidator stating the facts upon which the application was based. It was also provided that at the hearing, the Judge may, if satisfied that a prima facie case for examination had been made out, direct the issue of a summons or summonses against the person or persons named in the order for examination and/or for the production of the documents. Manifestly, the order could be obtained on a petition which was required to be verified by the official liquidator and there had to be a formal hearing and only if a prima facie case for hearing had been made out the order could be made. Under the Companies (Court) Rules a different practice, which approaches the practice prevailing in the English Courts has been set up. The mere fact that under r. 195 of the Calcutta High Court Rules under Act of 1913 the appellant might have had a right of access to the statement on which the order was founded will not be an adequate ground for holding that the earlier practice must continue to prevail. If the appellant is not entitled to inspection of the statement he would certainly, for the same reason, not be entitled to a copy of that statement.

On the view taken, this appeal must fail and is dismissed with costs.

Appeal dismissed.