

## **Vikram Cotton Mills Ltd. And Anr. vs Jwala Pd. Radha Krishna And Ors. on 4 May, 1955**

**Equivalent citations: AIR1956ALL14, AIR 1956 ALLAHABAD 14, (1956) 26 COM CAS 99 ILR (1956) 1 ALL 568, ILR (1956) 1 ALL 568**

### **JUDGMENT**

Brij Mohan Lall, J.

1. This is an application by Shri Vikram Cotton Mills Ltd. (hereinafter described, for brevity's sake, as the company) under Section 153 of the Indian Companies Act (VII of 1913) praying that this Court may sanction a scheme put forward by it for payment of its debts.

2. This company was registered in 1910. One of its principal objects was the manufacture of cloth. For the last six or seven years it has been in financial difficulties. It approached the Industrial Financial Corporation (hereinafter described as corporation) for help and succeeded, by executing a deed of an English mortgage, in obtaining from it a loan of rupees ten and a half lakhs, repayable in certain instalments. Under this deed the corporation had a right to enter into possession of the mortgaged property and to sell it in the event of non-fulfilment of the conditions mentioned in the deed. Repayment could not be made as agreed.

3. On 12-2-1954 Messrs. Jwala Prasad Radha Krishna, who claim to be the company's creditors but whose claim is denied by the company made an application for its compulsory winding up. In June 1954 the corporation exercised its right of taking possession of the company's property and entered into possession thereof.

4. On 16-7-1954 the present application was presented by the company. It may be pointed out at this stage that the paid-up capital of the company is about rupees eleven lakhs and its indebtedness exceeds rupees thirty-seven lakhs. From amongst the creditors the corporation is a secured creditor. The Punjab National Bank is also a secured creditor in the sense that goods of an approximate value of rupees five lakhs have been pledged with the said bank.

The Municipal Board of Lucknow is a secured creditor to the extent of rupees sixteen thousand and odd which amount it claims as taxes and which, according to its contention, is a charge on the property of the company under Section 177 of the U. P. Municipalities Act. The other creditors are all unsecured, but among them are included the Income-tax and Sales Tax Department of the Govt. and also the Railway.

5. The salient features of the scheme that was put forward with the petition were as follows :

(1) The corporation shall not exercise its right of selling the assets of the company but shall lease out the same on an annual rent of Rs. 2,00,000/-.

(2) The Punjab National Bank will similarly sell the goods pledged to it and pay itself off.

(3) The usable stores and goods in process were estimated at about five lakhs. These were to be sold and from the sale proceeds thereof 25 per cent, of the debts due to unsecured creditors were to be paid off.

(4) No debt was to carry interest, (5) No dividend was to be paid so long as the debts were not paid off.

(6) The Court may, in the exercise of its powers', vary, alter or amend any of the provisions of the scheme as passed by the creditors and shareholders and it shall have also power to alter, vary or amend the provisions of the scheme at any subsequent time on application being moved or on. its own initiative without reference to creditors.

6. Messrs. Jwala Prasad Radha Krishna objected to the scheme and went to the length of alleging that the scheme, as put forward by the company, did not represent the wishes of the majority of the share-holders. A meeting of the share-holders was, therefore, convened under the order of this Court, and it was held on 6-11-1954. An over-whelming majority of the creditors passed two resolutions at that meeting. By the first resolution it commended the action of the company in resisting the winding up application presented by Messrs. Jwala Prasad Radha Krishna and in filing an application under Section 153 of the Act. The resolution went on to say that the share-holders approved of the scheme presented to the Court.

7. By the second resolution the share-holders resolved that out of three prospective lessees the lease should be given to the Swadeshi Cotton Mills. It may be pointed out at this stage that this prospective lessee had meanwhile agreed to raise the rent from Rs. 2,00,000/- to Rs. 2,10,000/- per annum. The meeting of the share-holders had been empowered by the Court to consider not only the offer as it originally stood but also any amended offer that might be received by the time the meeting was held.

8. After the report of this meeting was received in Court, the Company made an application for convening a meeting of the creditors so that the proposed scheme might be considered by them also. Then appeared on the scene a shareholder, Purshottam Das Maheshwari, who for the first time, came forward to object to the scheme. An order was, however, passed on 23-12-1934 directing the holding of the meetings of the creditors. The creditors were divided in four groups, viz.

(i) secured creditors, i.e., the corporation, the Punjab National Bank and the Municipal Board of Lucknow;

(ii) employees of the bank as owners o'f the provident fund;

(iii) labour in respect of their wages; and (iv) other unsecured creditors,

9. It may be stated at this s'tage that the Swadeshi Cotton Mills had by this time agreed to further raise the rent from Rs. 2,10,000/- to Rs. 2,50,000/-.

10. The meeting of the secured creditors was held on 13-3-1955, that of the employees on 14-3-1955 and that of the labour on 20-3-1935. All of them passed resolutions approving of the salient features of the scheme but they made their consent conditional on the observance of certain conditions imposed by them. Each group wanted to add certain conditions favourable to itself. None of them, however, interfered with para. 17 of the scheme which empowered the Court to alter or amend it.

11. Thereafter came the meetings of the unsecured creditors which took plaee on three dates, viz., 21-3-1955, 5-4-1955 and 9-4-1955. They passed a resolution which runs as follows:

"Resolved that the scheme of arrangement between the creditors and share-holders of the Shri Vikram Cotton Mills Ltd., as per details given hereunder together with the conditions of the Income Tax Department (hereunder stated) as also that of the Sales Tax Department (hereunder stated) are hereby approved.

Provided always that notwithstanding anything contained in the scheme of composition pro-pased by the Managing Agents, the terms and conditions imposed by the Sales Tax Department and the Income Tax Department, both having been adopted by the Northern Railway, shall prevail in case of any conflict or inconsistency. It is further resolved that the Hon'ble High Court be requested to pass immediate orders so that the mills may start functioning again at the earliest opportunity."

They overhauled the scheme and the scheme as finally passed by them contains a note of the conditions imposed by the Income-tax and Sales Tax Department. It is noteworthy that the resolution passed by them makes it clear that in case of conflict or inconsistency between the scheme and the conditions laid down by the aforesaid two departments, the latter would prevail. An important feature of the scheme as passed by them is that they have completely deleted para. 17 of the scheme whereby power was conferred on the Court to modify or vary the scheme. Their resolution, as it stands, takes away the power from Court to alter the scheme to the slightest extent.

12. The company now prays that the scheme may be passed. This prayer has been opposed by Messrs. Jwala Prasad Radha Krishna on the one hand, and Purshottam Das Maheshwari, on the other, on a variety of grounds. It is not necessary for me to enter into all these grounds because, in the view that I take, the scheme must fail on two grounds, firstly, that it is ultra vires the Finance Corporation to lease out the assets of the company and, secondly, that, as a result of the conditions imposed by different groups, it has become impossible to evolve any workable scheme. These two grounds only I propose to discuss.

13. The Industrial Financial Corporation was brought into existence by an Act of Legislature, viz. The Industrial Financial Corporation Act (15 of 1948), which was subsequently amended by Act No. 78 of 1952. As the preamble of the Act indicates, the corporation has been created "for the purpose of making medium and long-term credits more readily available to industrial concerns in India, particularly in circumstances where normal banking accommodation is inappropriate or to recourse to capital issue methods is impracticable".

With this object in view the Indian Finance Corporation advanced the loan to the company.

Since the company failed to perform its obligations in respect of repayment of loan, the corporation had power to take certain action against the company. This power is conferred by Section 28 of the Act, and it consists in either taking over the management of the concern or of selling and realising the property pledged, mortgaged, hypothecated or assigned to the corporation. It may be pointed out at this stage that it is nobody's case that the corporation has taken over the management of the company. The power of granting a lease of the property of its debtor is not contained in Section 28 of the Act. When a body has been created by statute and its powers and duties are defined by it, the said body cannot function beyond the powers conferred and the limits imposed by the Act. If the Act does not confer on the corporation the power of granting a lease of its debtor's property to any one else, the former cannot assume that power and thereby exceed the authority given by the Act.

14. Mr Brij Lal Gupta has contended before me that the power given to the corporation is one to sell and realise the property pledged or mortgaged. He maintains that the use of the word "realise" confers the power of granting a lease. This contention is untenable. The word "realise" has been used to enable the corporation to recover possession of any portion of its debtor's property which may be in the custody of a third person. If, for instance, the usable stores and goods in process had been in the custody of some third person, the corporation would have had power to realise those goods, i.e., to recover possession thereof. The word "realise" was used to I confer this power on the corporation and was not intended to grant the right of making a lease.

15. Mr. Gupta referred to some of the provisions of this Act as supporting the power to grant lease. Reference was made to Section 30C by which certain directors have been given general power of management. But this section is to be read with Section 30A which applies to those cases only where the management of an industrial concern is taken over by the corporation. In such cases the corporation has power to appoint the directors of the concern of which the management has been taken over by it and the directors so appointed can exercise certain general powers. Neither Section 30A nor Section 30C applies to the present case for the obvious reason that the corporation has not taken over the management of the company nor has it appointed any directors thereof.

16. The next provision of law relied on by Mr. Gupta is Section 23(1), Section 23 lays down what kinds of business of the corporation can carry on. After enumerating these different kinds, Sub-clause (1) says that the corporation can generally do all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act. The powers, as already indicated, do not include the power of granting a lease. But Mr. Gupta contends that the corporation has been given the power of granting loans and the power of

granting a lease of the debtor's property is incidental to or consequential upon the exercise of the power of granting loans. With this contention also I am unable to agree.

The power of making a lease of the debtor's property is neither incidental to nor consequential upon the power of granting a loan. On the contrary, it is a method of recovery of loan. In my opinion, Clause (f) cannot be so construed as to include the power of granting a lease of the debtor's property. That it is a special power which cannot be exercised unless it is specially conferred.

17. It was next argued that the terms of the mortgage deed confer such power on the corporation. The relevant portion of the deed conferring powers on the corporation is as follows:

"It shall be lawful for the Corporation to enter into and upon and take possession of the mortgaged premises and thenceforth quietly to possess use and enjoy the same and receive the rents, income, profits and benefits thereof without interruption or hindrance by the Company, the Managing Agents or by any person or persons whomsoever.....".

It will be noticed that these terms of the mortgage deed also do not contain a power of granting a lease of the debtor's property. It is true that they contain a power to receive rent. But that only means that if any portion of the property of the debtor was previously in the occupation of a lessee and the company was realising rent from him the corporation also can realise the rent from the lessee. The omission to include the power to grant lease is very significant. The only conclusion that can be drawn from this omission is that the Legislature did not intend to confer this power on the corporation.

18. Last of all, it was contended that a mortgagee in possession can give a lease of the mortgaged property and the corporation can, as a mortgagee, exercise that power. This contention is not sound. A special Act has been passed defining the powers of the corporation and since that Act does not contain the power of granting a lease, the latter power cannot be exercised by the corporation.

19. I have, therefore, come to the conclusion that it will be beyond the competence of the corporation to grant a lease of its debtor's property.

20. I do not consider it advisable to sanction a scheme which will be ultra vires the corporation. If sanctioned, the scheme can be defeated by any one interested in the corporation. He can seek appropriate relief from Court and render the scheme nugatory. It was held in the case of --'In re, Oceanic Steam Navigation Co'. Ltd.', (1939) 1 Ch 41 (A) that a company has no power to enter into nor can the Court sanction, any arrangement or compromise with its creditors under Sections 153 and 154 of the Companies Act, 1913, which necessarily involves the doing of any act which is ultra vires the company, being in excess of its corporate powers as defined in its memorandum of association. It is true that in the present case it is not the company which is doing a thing which is ultra vires but it is the corporation. But the principle is the same. The Court cannot accord its sanction to the doing of an act which is beyond the competence of the corporation. The scheme must consequently fail on that ground.

21. The second ground also leads to the same conclusion. There will be, as will be presently pointed out, several difficulties in evolving a workable scheme. Although prima facie all bodies of creditors have agreed to the scheme and although they have passed resolutions requesting the Court to enforce the scheme at an early date, their resolutions, if analysed, lead to conflicting results. It is not possible to chalk out a scheme to which all of them agree. I will take only some of the points in order to show that the creditors have really not agreed upon any single workable scheme. (His Lordship then discussed a few of the difficulties and proceeded:)

22. It was next contended by Mr. Gupta that I can modify the scheme as presented by the unsecured creditors and other bodies so as to evolve a workable scheme reconciling the conflicting claims of the different bodies. It is to be seen whether I can do that. As I read Section of the Indian Companies Act, I interpret it to mean that it is open to the Court, notwithstanding the fact that a scheme might have been unanimously agreed to by the creditors and the share-holders, to reject it if the requirements of the statute have not been complied with or the scheme is for any other reason unacceptable or unreasonable or the voting has not been proper or bona fide. If the Court, however, finds that no such objection exists, it can sanction the scheme as passed by the creditors and the share-holders.

I do not find any word in the language of Sub-section (2) of Section 153 which empowers the Court to modify the scheme. The words "subject to such terms as the Court may deem fit" or other words to that effect are not to be found in the language of the Statute. The Court cannot read the subsection inserting these words therein.

If the unsecured creditors gave their consent to a certain scheme making it a condition of their consent that the Court should not alter the scheme as passed by them, it is not open to me to make any alterations therein. It is quite possible that if they had visualised the possibility of any modification by Court, they might not have passed the scheme or at least the requisite majority might not have passed it. When consent has been given on the express understanding that the Court will not alter the scheme, it will not be proper for the Court, on the one hand, to modify it and, on the other, to say that that scheme should be taken as having been approved of by the creditors notwithstanding the fact that they have made it an express condition that the scheme passed by them should not be modified.

23. If a power has been given by the shareholders or the creditors to the Court to modify the scheme passed by them, the Court can certainly exercise that power. In the present case, the share-holders, the secured creditors, the employees and the labour have given such a power to the Court. The Court can exercise this power to modify the scheme as passed by them. But that power is also to be exercised judiciously and not arbitrarily. It is true that in exercise of that power the Court can modify the terms agreed to by the corporation.

But the Court will not exercise its power if it finds that by modifying the scheme the Court will be permitting something which is not warranted by the Industrial Finance Corporation Act or which is something against the interest of the corporation.

The corporation had in very strong terms indicated at the time of giving its consent that it would continue to appropriate the entire lease: money until the recovery of Rs. 10,00,000/- was made. Since this condition was the very basis of the consent, I will not be justified in exercise of my discretion in modifying this condition to the detriment of the corporation. I do feel that but for this reservation the corporation would not have agreed to give its consent. In such a matter, therefore, I will not exercise my discretion so as to overrule the wishes of "the corporation."

24. In this connection reference may be made to the Privy Council case of -- "Kamlapat-Moti Lal v. Union Indian Sugar Mills Co. Ltd.", AIR 1929 PC 256 (B). In that case a body of shareholders had passed a certain resolution. Later on it was altered, and the loan the borrowing of which had been sanctioned by the share-holders was raised by a further sum of Rs. 62,000/-. The Privy Council held that such a scheme could not be sanctioned by the Court. Their Lordships pointed out that possibly the share-holders, if told that the loan would be increased by Rs. 62,000/-, would not have agreed to the scheme.

25. The view taken by the Calcutta High Court in the case of -- 'Mihirendra Kishore v. Brahmanbaria Loan Co. Ltd.', ATR 1934 Cal 816 (C) is also to the same effect. There it was held that if a power has not been reserved in favour of the Court to modify a scheme, the Court cannot alter it. It must accept the scheme as passed. This case was followed in the cases of 'In re, Jalpaiguri Banking & Trading Corporation', AIR 1937 Cal 401 (D) and 'In re, Mvmensingh Loan Office Ltd.', AIR 1937 Cal 667 (E). In this connection it is also useful to refer to a passage in Palmer's Company Precedents, Part I, 1951 Edition at p. 1092. It runs as follows:

"The scheme of arrangement usually contains a clause empowering the company or its 'liquidator' to assent to any modifications or conditions approved or imposed by the court, and the clause is sometimes qualified, e.g., by adding the words 'and by the trustees for the debenture-holders'. In the absence of any such clause, it is more than doubtful whether the court can sanction a modified scheme or impose conditions which must operate by way of modification."

All these authorities go to support the conclusion arrived at by me, viz., that this Court cannot modify the scheme as passed by the body of unsecured creditors who have expressly stated that the scheme passed by them is not to be modified by the Court.

26. Mr. Brij Lal Gupta has, however, drawn my attention to some cases and it is necessary to discuss them also. The first case is that of -- 'Lawrence Dawson v. Honnasji', AIR 1932 Rung 154 (F). In that case a scheme was slightly altered by the Court. But the Court made the following observations:

"It is not the function of the Court to substitute its own scheme for the scheme presented to it for sanction and if the Court is of opinion that unless some radical amendment is effected, or the scheme is fundamentally altered, it ought not to be sanctioned, it is the duty of the Court to reject the scheme."

The ruling is silent as to whether or not there was any condition empowering the Court to alter the scheme. Equally it does not indicate whether or not there was any clause in the scheme forbidding the Court to exercise that power. In the absence of these considerations, this authority loses all force. If there was a power to modify or if there was no prohibition, this ruling becomes inapplicable to the facts of the present case.

27. The next case relied upon by Mr. Gupta is that of -- 'Rajshahi Banking Corporation v. Surabala Debi', 40 Cal WN 1104 (G). This case is also open to the same criticism, viz., that it does not record the fact whether a power of modification was given and whether or not there was a prohibition against modification. What was held in that case was that a certain class of creditors to whom notice had not been sent was not bound by the scheme. This was the only alteration made by the Court.

It had so happened that through misunderstanding or otherwise certain notices had not been sent to a certain class of creditors and yet this class of creditors was sought to be kept bound by the scheme as sanctioned. The Court held that the scheme should be altered to this extent that that class of creditors would not be bound by it. This did not mean altering the scheme.

28. Another case relied upon by Mr. Gupta is that of --Peoples Bank of Northern India, Ltd. Lahore, In the matter of, AIR 1933 Lah 51 (H). The remarks made by me in respect of the foregoing case apply to this ruling also, viz., that there is nothing to indicate whether or not power had been given to Court to modify the scheme or whether there was any prohibition against modification.

29. Lastly, reliance was placed on a sentence in Halsbury's Laws of England (Volume VI) in paragraph 1557 at page 772. It runs as follows :

"The court may and often does impose conditions on its sanction to a scheme." This sentence may be an authority enabling a court to modify a scheme in the absence of a prohibition. But when an express prohibition has been made, the case is different. As remarked earlier, the consent of the unsecured creditors was given on the understanding that the scheme, as passed by them, was not to be modified by the Court. Had they known that the scheme would be modified, they might have withheld their consent.

30. Moreover, the points on which I am asked to modify the scheme are not minor matters but are fundamental questions which materially affect the parties. I am, therefore, of the opinion that there is no one scheme on which all parties are agreed and the points of difference are such as cannot be reconciled.

31. There is thus no workable scheme to which sanction can be accorded. The application, therefore, fails and is hereby dismissed with costs.