

Official Liquidator Of High Court Of ... vs Smt. V. Lakshmikutty on 12 December, 1980

Equivalent citations: 1981 AIR 1483, 1981 SCR (2) 349, AIR 1981 SUPREME COURT 1483, (1982) 95 MAD LW 5, (1981) 2 SCR 349 (SC), 1981 51 COM CAS 566, (1981) 51 COMCAS 586, 1981 UJ (SC) 495, 1981 (3) SCC 32, (1981) 2 KANT LJ 289

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, A.P. Sen

PETITIONER:

OFFICIAL LIQUIDATOR OF HIGH COURT OF KARNATAKA

Vs.

RESPONDENT:

SMT. V. LAKSHMIKUTTY

DATE OF JUDGMENT 12/12/1980

BENCH:

BHAGWATI, P.N.

BENCH:

BHAGWATI, P.N.

SEN, A.P. (J)

CITATION:

1981 AIR 1483 1981 SCR (2) 349

1981 SCC (3) 32

CITATOR INFO :

RF 1991 SC1806 (10)

ACT:

Companies Act, 1956-Sections 529 and 530-Scope of -
Party having mutual dealings with a Company in liquidation-
If entitled to set off debts against credits.

HEADNOTE:

The respondent claimed that since there were mutual dealings between her and the company in liquidation an account should be taken in respect of such mutual dealings and only that amount should be payable or receivable by her which is due at the foot of such account. She claimed that she was entitled to the benefit of the rule enacted in

section 46 of the Provincial Insolvency Act.

The High Court upheld her contention.

Dismissing the special leave petition by the Official Liquidator

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HELD: (1) In view of the provisions of section 529 of the Companies Act, 1956 the rule enacted in section 46 of the Provincial Insolvency Act with regard to debts provable by a creditor against the insolvent must equally apply in regard to debts provable against a company in winding up. [350 F]

(2) Although section 530 provides for preferential payments, that provision cannot in any way detract from full effect being given to section 529 which enacts that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to provable debts as are in force for the time being under the law of insolvency with respect to the estate of persons adjudged insolvent. The only way in which sections 529 and 530 can be reconciled is by reading them together so as to provide that whenever any creditor seeks to prove his debt against the company in liquidation, the rule enacted in section 46 of the Provincial Insolvency Act should apply and only that amount which is ultimately found due from him at the foot of the account in respect of mutual dealings should be recoverable from him and not that the amount due from him should be recovered fully while the amount due to him from the company in liquidation should rank in payment after the preferential claims provided under section 530. [350H]

Gore Brown on Companies, 43rd Ed. at page 34-14.

National Westminster Bank Ltd v. Halesowen Presswork and Assemblies Ltd. [1972] 1 All E. R. 641 at 659 and Re City Life Assurance Co. Ltd. [1925] All E. R. 453 at 457 referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Petition for Special Leave to Appeal No. 5844 of 1980.

From the Judgment and Order dated 1-2-1979 of the Karnataka High Court in O.S.A. No. 5 of 1975.

Y. S. Chitale and P. R. Ramases for the Petitioner. NEMO for the Respondent.

The Order of the Court was delivered by BHAGWATI, J.- We think that the view taken by the High Court is the correct view on the interpretation of sections 529 and 530 of the Companies Act, 1956. Section 529 provides that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to the provable debts as are in force to the time being under the law of insolvency with respect to the estate of persons adjudged insolvent. This provision brings in the

applicability of section 46 of the Provincial Insolvency Act which reads:

"Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively."

This rule enacted in section 46 of the Provincial Insolvency Act with regard to the debts provable by a creditor against the insolvent must, therefore, likewise apply in regard to debts provable against a company in winding up. Consequently, when the respondent in the present case claimed to prove her debt against the company in liquidation, she was entitled to the benefit of the rule enacted in Section 46 of the Provincial Insolvency Act and she could legitimately claim that since there were admittedly mutual dealings between her and the company in liquidation, an account should be taken in respect of such mutual dealings and only that amount should be payable or receivable by her which is due at the foot of such account.

It is true that section 530 provides for preferential payments, but that provision cannot in any way detract from full effect being given to section 529 and in fact the only way in which these two sections can be reconciled is by reading them together so as to provide that whenever any creditor seeks to prove his debt against the company in liquidation, the rule enacted in Section 46 of the Provincial Insolvency Act should apply and only that amount which is ultimately found due from him at the foot of the account in respect of mutual dealings should be recoverable from him and not that the amount due from him should be recovered fully while the amount due to him from the company in liquidation should rank in payment after the preferential claims provided under S. 530. We find that the same view has been taken by the English Courts on the interpretation of the corresponding provisions of the English Companies Act, 1948 and since our Companies Act is modelled largely on the English Companies Act 1948, we do not see any reason why we should take a different view, particularly when that view appears to be fair and just. We may, point out that Gore Browne in his book on Company Law, 43rd Ed at page 34-14 also confirms this view:

"Indeed, all claims provable in the winding up may be the subject of set-off, provided that there is mutuality."

Moreover, we find that the observations of the House of Lords in *National Westminster Bank Ltd. v. Halesowen Presswork & Assemblies Ltd.* are also to the same effect. We may also usefully refer to the observations of Sir Ernest Pollock, M. R. in *re. City Life Assurance Co. Ltd.* where the learned Master of the Rolls after referring to section 207 of the Companies Act, 1908 (s. 317 of the Companies Act, 1948) which corresponds to section 529 of Companies Act, 1956 and section 31 of the Bankruptcy Act, 1914 which corresponds to section 46 of the Provincial Insolvency Act, says:

"It is to be observed that s. 31 of Bankruptcy Act, 1914, is definite in its terms that where there is a mutual credit, mutual debt or other mutual dealings, the sums are to

be set off and the balance of the account and no more shall be claimed or paid on either side respectively. It is not merely permissive, it is a direct statutory enactment that the balance only is to be claimed in bankruptcy."

We are in agreement with these observations and affirm the view taken by the Karnataka High Court in the judgment sought to be appealed against. We accordingly dismiss the special leave petition on merits after condoning the delay in filing it.

P.B.R.

Petition dismissed.