

73Jyoti Bhushan Gupta vs The Banaras Bank Ltd on 12 October, 1961

Equivalent citations: 1962 AIR 403, 1962 SCR SUPL. (1) 73, AIR 1962 SUPREME COURT 403, 1961 31 COM CAS 727, 1962 2 SCJ 535, ILR 1962 1 ALL 627

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, J.R. Mudholkar

PETITIONER:

73JYOTI BHUSHAN GUPTA

Vs.

RESPONDENT:

THE BANARAS BANK LTD

DATE OF JUDGMENT:

12/10/1961

BENCH:

SHAH, J.C.

BENCH:

SHAH, J.C.

SINHA, BHUVNESHWAR P.(CJ)

SUBBARAO, K.

MUDHOLKAR, J.R.

CITATION:

1962 AIR 403 1962 SCR Supl. (1) 73

CITATOR INFO :

F 1971 SC 218 (5)

ACT:

Limitation-Order of high Court directing contributors to pay money to liquidator-Order if passed in exercise of ordinary original Civil jurisdiction-Execution application filed beyond three years-If barred-Indian Limitation Act 1908 (IX of 1908), Art. 183-Indian Companies Act, 1913 (VII of 1913), ss and 199-Letters Patent of the Allahabad High Court.

HEADNOTE:

The Banaras Bank Ltd. was ordered by the Allahabad High Court to be compulsorily wound up. The High Court passed an order under s. 187 of the Indian Companies Act, 1913, directing the appellants, whose names had been placed on the list of contributors, to pay a certain sum of money to the official Liquidator. The official Liquidator applied for execution of the order more than three years after the making thereof. The appellants contended that the execution application, not having been preferred within three years as prescribed by Art. 182 of the Limitation Act was barred. The official Liquidator contended that the order was made in the exercise of ordinary original civil jurisdiction by the High Court and the application was governed by Art. 183 which prescribed a period of limitation of twelve years.

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Held, that Art. 183 was applicable to the case and the application for execution was within time. The order was made by the High Court in the exercise of its ordinary original civil jurisdiction as contemplated in Art. 183. Though the Letters Patent did not invest the High Court with any original jurisdiction it could be conferred by legislation. The Indian Companies Act, 1913, invested the High Court with the jurisdiction to order payment of amounts due by debtors of companies ordered to be wound up. The jurisdiction was ordinary, it did not depend on and extraordinary action on the part of the High Court. It was original as a petition for the exercise of it was entertained by the High Court as a court of first instance and not as an appellate court, and since the High Court adjudicated upon the liability of the debtor to pay debts due by him to the company the jurisdiction was civil.

In the matter of Candas Narondas, Navivahu and C. A; Turner, I. L. R. (1889) 13 Bom. 520 and P. T. Munia Cervai

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v. The Hunuman Bank Ltd., I.L.R (1958) Mad. 658, referred to

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil APPEAL No. 198 of 1956.

Appeal from the judgment and decree dated August 24, 1950, of the Allahabad High Court in Execution First Appeal No. 399 of 1947.

Gopi Nath Kunzru and Ganpat Rai, for the appellants G. S. Pathak and G. C. Mathur, for the respondent.

1961. October 12. The Judgment of the Court was delivered by SHAH, J.-The Banaras Bank Ltd.-a public limited company having its registered office at Banaras-(hereinafter referred to as the Bank) was ordered on March 1, 1940 to be compulsorily wound up by the High Court of Judicature at Allahabad, and the Official Liquidator was appointed to conduct the proceedings in winding up. On September 12, 1942, an order was made by the High Court under s. 187 of the Indian Companies Act, 1913 (VII of 1913) for payment of unpaid calls and the appellants Jyoti Bhushan Gupta. and Gokul Chand, whose names had been placed on the list of contributors, were directed to pay with interest Rs. 95,178/5/9 to the official Liquidator of the Bank. This order was, by virtue of s. 199 of the Act, enforceable in the manner in which the decree of the High Court made in any suit pending therein may be enforced. On September 12, 1946, the order was transferred to the District Judge, Allahabad for execution. On September 23, 1946, the official Liquidator applied to the District Court, Allahabad for execution of the order dated September 12, 1942, and prayed that certain amounts due to the appellants be attached in satisfaction of the claim. The execution proceedings were transferred by the District Judge to the Civil Judge, Allahabad. The appellants contended Inter alia that as the application for execution was not preferred within 3 years of the order for payment as prescribed by Art. 182 of the First Schedule of the Limitation Act it was barred by the law of limitation. The official Liquidator contended that the application was governed by Art. 183 of the Act and that, in any event, certain part payments having been made towards the claim by the appellants, the period of limitation was extended thereby. At the hearing, the alternative plea of part payment was abandoned by the Official Liquidator.

The Civil Judge held that the application for execution was barred limitation as it was not preferred within 3 years from the order of the High Court. In appeal to the High Court of Allahabad, the order passed by the Civil Judge was reversed and the proceedings were remitted to the Civil Judge with a direction to restore the execution application to its original number and to proceed with it according to law. Against that order with certificate of fitness granted by the High Court under Art. 133 of the Constitution, this appeal is preferred.

Counsel for the Company contended that the order passed by the High Court not being a final order the appeal on certificate granted by this High Court is not maintainable. We have not thought it necessary, having regard to the importance of the question raised by the appellants and the fact that this Court may in a proper case regularise the proceeding in this Court by granting special leave, even if certificate under Art. 133 of the Constitution could not be issued by the High Court, to hear the parties on the question as to the maintainability of the appeal on the certificate and have heard the appeal on the merits.

We are of the view that the appeal must fail on the merits.

Art. 182 of the Indian Limitation Act provides a period of 3 years for an application for execution of a decree or order of any Civil Court not provided by Art. 183 or s. 48 of the Code of Civil Procedure, 1908 (V of 1908). By Art. 183 a period of 12 years for enforcing a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction is prescribed and the period commences to run from the date on which a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right. The order sought to be executed was not passed by the High Court in the trial of a suit:

it was passed in exercise of the jurisdiction conferred upon the High Court by s. 187 of the Indian Companies Act, 1913. Section 3 of the Indian Companies Act by sub-s.(1) enacts that the Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate. By the proviso, the Central Government may by notification in the official Gazette empower any District Court to exercise all or any of the jurisdiction conferred upon the High Court. But it is common ground that no notification conferring jurisdiction and empowering the District Court at Banaras-where the registered office of the company is situate-to pass orders under B. 187 has been issued. The High Court was therefore the only Court competent to direct under B. 187 of the Indian Companies Act payment of the amount due from the appellants.

Counsel for the appellants contends that the authority exercised by the High Court in directing payment under s. 187 of the Indian Companies Act, 1913, is neither ordinary, nor original civil. He submits that by s. 187 a special power is vested in the High Court by the Indian Companies Act, 1913, which is exercisable in its extraordinary jurisdiction. To appreciate this argument it is necessary to refer to the statute authorising the establish-

ment of the High Court, and the Letters Patent constituting the same.

The High Court for the North Western Province, of which the Allahabad High Court is the successor, was constituted by the Letters Patent issued on March 17, 1866, in exercise of the powers conferred by cl. 16 of the Charter Act of 1861 (24.25 Vict. C. 104). By that clause, Her Majesty the Queen was authorised to establish a High Court and to invest the High Court with such jurisdiction, powers and authority as under the Charter Act may by cl. 9 be conferred upon the High Court to be established in any of the presidencies, i. e., Calcutta, Bombay and Madras. The High Courts of Calcutta, Bombay and Madras, which were popularly known as the Presidency High Courts were by cl. 12 of their respective Letters Patent invested with ordinary original civil jurisdiction to entertain and try suits of every description subject to the restriction as to territorial limitations contained in cl. 11 thereof. But by its Letters Patent, the High Court for the North Western Province was not invested with jurisdiction to entertain civil suits in exercise of its ordinary original civil jurisdiction.

Counsel for the appellants submits that Art.183 applies only to decrees and orders passed by the High Courts established by the Royal Charter, which by their constitution are authorised to entertain, hear and try civil suits in exercise of their ordinary civil jurisdiction, and as no such power was conferred upon the Allahabad High Court, the order sought to be executed was not passed in exercise of the ordinary original civil jurisdiction. It is true that when the Letters Patent were issued the High Court had no jurisdiction under a law relating to companies of the nature exercised by the High Court, the character whereof falls to be determined in this appeal. But by cl. 16 of the Charter Act and cl. 35 of the Letters Patent of the Allahabad High Court jurisdiction which Was not initially conferred upon the High Court could the conferred by legislation within the competence of the Governor-General in Council and the Governor in Council. By the Companies Act of 1913, the High Court was invested with jurisdiction to order payment of the amounts due by debtors of companies ordered to be wound up. This jurisdiction may be invoked as of right against all persons whose names are placed on the list of contributors. The jurisdiction is ordinary: it does not depend on any extraordinary action on the part of the High Court. The jurisdiction is also original in character because the petition for exercise of the jurisdiction is entertainable by the High Court as a court of first instance and not in exercise of its appellate jurisdiction. Again by s. 187 no special jurisdiction is conferred. The High Court adjudicates upon the liability of the debtor to pay debts due by him to the Company: the jurisdiction is therefore civil. Normally, a creditor has to file a suit to enforce liability for payment of a debt due to him from him debtor. The Legislature has by s. 187 of the Companies Act empowered the High Court in a summary proceeding to determine the liability and to pass an order for payment, but on that account the real character of the jurisdiction exercised by the High Court is not altered. Nor is there any substance in the contention that the authority to order payment of a debt under s. 187 is merely a power of the High Court and not its jurisdiction. By s. 3 read with s. 187 of the Companies Act the High Court has jurisdiction to direct payment of the amount due by a contributory: and an order passed for payment manifestly is an order passed in exercise of the jurisdiction vested in the High Court by s. 3 read with 8. 187 of the Companies Act.

The Judicial Committee of the Privy Council was called upon In the matter of Candas Narondas Navivahu and C. A. Turner⁽¹⁾ to determine the true (1) I. L. R. (1889) 13, Eom. 520.

nature of the jurisdiction exercised by the High Court of judicature at Bombay in respect of insolvent debtors. The Privy Council held that article 180 of Schedule II of the Indian Limitation Act XV of 1877 (which was similar to article 183 of the Indian Limitation Act, 1908) applies to a judgment of a Court for the relief of insolvent debtors entered up in the High Court, in accordance with section 86 of the Statute 11 and 12 Vic., c. 21. It was held in that case that although a Court exercising insolvency jurisdiction determines the substance of the question relating to an insolvent's estate, the, proceedings in execution and the judgment are the High Court's. The judgment is entered up in the

ordinary course of the duty cast upon the High Court by the law, not by way of special or extraordinary action, but in the exercise of its ordinary original civil jurisdiction. Lord Hobhouse delivering the judgment of the judicial committee observed:

"But it was strongly contended at the bar that this jurisdiction though civil and original, was not ordinary: and Mr. Rugby argued that the passages of the Charter which have just been epitomised divide the jurisdiction into four classes-ordinary original, extraordinary original, appellate, and those special matters which are the subject of special and separate provisions. But their Lordships are of the opinion that the expression "ordinary jurisdiction"

embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it and that it is opposed to extraordinary jurisdiction, which the Court may assume at its discretion upon special occasions and by special orders. They are confirmed in this view by observing that, in the next group of clauses which indicated the law to be applied by the Court to the various clauses of cases, there is not a four-fold division of jurisdiction, but a three-fold one, into ordinary, extraordinary, and appellate. The judgment of 1868 was entered up by the High Court, not by way of special or discretionary action, but in the ordinary course of the duty cast upon it by law, according to which every other case of the same kind would be dealt with. It was, therefore, entered up in exercise of the ordinary original civil jurisdiction of the High Court."

Council for the appellants contended that by cl. 18 of the Letters Patent the High Court of Bombay was invested with insolvency jurisdiction whereas the High Court of Allahabad is not invested by the Letters Patent with any jurisdiction in the matter of companies and therefore the principle of "In re-Candas Narondas" does not apply. But under cl. 18 of the Letters Patent a Judge or Judges of the High Court are to sit as a Court for relief of insolvent debtors and powers and authorities with respect to original and appellate jurisdiction are to be determined by reference to the law relating to insolvent debtors. The jurisdiction to deal with the claims of companies ordered to be wound up is conferred by the Indian Companies Act and to that extent the Letters Patent are modified. There is, however, no difference in the character of the original civil jurisdiction which is conferred upon the High Court by Letters Patent and the jurisdiction conferred by special Acts. When in exercise of its authority conferred by a special statute the High court in an application presented to it as a court of first instance declares liability to pay a debt, the jurisdiction exercised is original and civil and if the exercise of that jurisdiction does not depend upon any preliminary step invoking exercise of discretion of the High Court, the jurisdiction is ordinary.

In *P. T. Munia Servai v The Hanuman Bank Ltd, Tanjore* (1), a Division Bench of the Madras (I) 1. L. R. (1958) Mad. 685 High Court by the Banking Companies Act, 1949 (X of 1949) is part of its ordinary civil jurisdiction within the meaning of Art. 183 of the Limitation Act and an order passed in exercise of its ordinary original Civil Jurisdiction is governed by Art. 183 and not by Art. 182 of the Limitation Act. In that case on an application preferred by the Official Liquidator of the Hanuman Bank Ltd., a direction for payment by the High Court of certain sums of money by the appellant Munia on or before a certain date was made. To an application for enforcement of that liability Art. 183 of the Limitation Act was held applicable.

In our view, the High Court was right in holding that the application for execution filed by the official Liquidator was within limitation. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.