

APPELLATE CIVIL

Before R. S. Narula, J.

M/S. NORTHERN INDIA FINANCE CORPORATION—
*Appellant.**versus*DIAL SINGH AND OTHERS—*Respondents.*

F.A.O. No. 119 of 1969

March 11, 1974.

Arbitration Act (X of 1940)—Section 20—Companies Act (I of 1956)—Sections 446 and 457—Order passed by a Court on an application filed by a Company under section 20, Arbitration Act—Appeal against the order pending—Company going into liquidation—Such appeal—Whether becomes infructuous—Merits of the claim in the application—Whether affected by the Company being wound up.

Held, that section 457 of the Companies Act, 1956 authorises the liquidator in a winding up by the Court to institute or defend any suit, prosecution or other legal proceedings in the name and on behalf of the company with the sanction of the Court. An application under section 20 of the Arbitration Act, 1940 or an appeal against a decision given therein is a legal proceeding covered by section 457(1)(a) of the Companies Act. Under sub-section (2) of section 457 the liquidator in a winding up by the Court has the power to do all acts in the name and on behalf of the Company including the right to use company's seal. Sub-section (2) of section 446 of the Companies Act, which overrides any other law for the time being in force which may be inconsistent therewith, authorises the Court which is winding up the company to entertain or dispose of any suit or proceeding by or against the company. That provision expressly authorises the High Court to dispose of the appeal which had already been entertained before the company went into liquidation. The provisions of sub-section (3) of section 446 make it clear that the appeal cannot be said to have either abated or become infructuous. An application under section 20 of the Arbitration Act having been decided before the company goes into liquidation, the merits of the claim in that application which alone have to be adjudicated upon in the appeal are not affected at all by the company being ordered to be wound up in the meantime.

First appeal from the order of the Court of Shri Bakhshish Singh, Sub-Judge 2nd Class, Jullundur, dated the 21st March, 1969 dismissing the application of appellant-company under section 20 of Arbitration Act.

C. D. Dewan, Advocate, for the appellant.

K. L. Kapur, Advocate, for respondent No. 2 and Nemo, for respondents Nos. 1 and 3.

M/s. Northern India Finance Corporation v. Dial Singh
and others (Narula, J.)

JUDGMENT

NARULA, J.—This is an appeal against the judgment and order of the Court of Shri Bakhshish Singh, Subordinate Judge Second Class, Jullundur, dated March 21, 1969, dismissing the application of the appellant-company under section 20 of the Indian Arbitration Act (10 of 1940) (hereinafter called the Act). The case of the appellant-company was that respondents 1 and 2 had agreed to repay Rs. 28,400 in prescribed instalments in terms of the hire-purchase agreement Exhibit P. 1 in respect of vehicle No. PNJ-7545; that a sum of Rs. 16,623.18 P. plus interest with effect from February 1, 1965, was outstanding against the two respondents as well as their guarantor, the third respondent; that the respondents were disputing their liability to pay the amount; that the hire-purchase agreement contained a stipulation in writing to refer all questions and matters of difference between the parties in regard to their rights, duties and obligations and their enforcement by the parties (including the failure to pay the amount claimed under the various clauses of the agreement) to the sole arbitration of Shri G. L. Vohra, Advocate, Civil Lines, Jullundur City, or his nominees; that disputes having arisen between the parties the agreement be filed in Court under section 20 of the Act, and an order of reference to the named sole arbitrator may be made. Though the guarantor (respondent No. 3) did not contest the application, respondents 1 and 2 objected to the filing of the agreement and the making of the reference on *inter alia* the ground that the agreement between the parties had been terminated as the entire amount due from them had been paid by them by instalments and the receipts for those payments were in possession of the respondents and nothing more was due from them to the company. It was further alleged that the appellant-company had got the signatures of respondents 1 and 2 on a printed paper on which the company had forged a document showing the balance due from them. On the merits of the controversy they admitted that they had purchased the truck in question on hire-purchase basis, but claimed that the entire amount due under the hire-purchase agreement had been paid out and nothing remained due from them. The hire-purchase agreement including the arbitration clause therein having been admitted by respondents 1 and 2 and the claim for reference to arbitration not having been contested by respondent No. 3, the trial Court should, in my opinion, have straightaway allowed the application under section 20 of the Act. The learned Subordinate Judge did not adopt that straightforward course, but

framed the two issues about there being sufficient cause for not referring the matter to arbitration and about the document Exhibit P. 2 (an acknowledgment of the debt, dated January 31, 1965), being a forged document and about the effect thereof. The learned Judge recorded evidence on the two issues including that of an expert and held that the written acknowledgment Exhibit P. 2 was a forged document and respondents 1 and 2 had paid out the entire amount due under the hire-purchase agreement. On that short ground he dismissed the application of the appellant company.

(2) This appeal has been contested by respondent No. 2. Mr. Krishan Lal Kapur, the learned counsel appearing for him, has not seriously contested the proposition that the order of the trial Court cannot be upheld inasmuch as the Court below had no jurisdiction at all to enter into or decide the question relating to the merits of the claim of the company while dealing with an application under section 20 of the Act. He has, however, vehemently submitted that I should dismiss the appeal on the ground that the appeal under section 20 has become infructuous because of the company having gone into liquidation. The application under section 20 was presented to the trial Court on June 23, 1967, and was dismissed on March 21, 1969. This appeal was preferred on September 3, 1969, when a petition for winding up of the company (C.O. 26 of 1969) had already been filed in this Court on June 9, 1969. The appeal was admitted on October 27, 1969. During the pendency of the appeal, the company was ordered to be wound up on January 9, 1970. The Official Liquidator attached to this Court was appointed as the liquidator of the company by the same order.

(3) The solitary case on which Mr. Kapur has placed reliance in support of his contention about the proceedings under section 20 of the Act having become infructuous is the judgment of a learned Single Judge of the Allahabad High Court *in the matter of Dehra Dun Mussoorie Tramway Co., Ltd.*, (1). In that case a request of the Official Liquidator to refer the claim of the company which was in liquidation to private arbitration was declined by the Allahabad High Court on the ground that the powers which a living company may possess cannot be co-extensive with the powers to be exercised by the liquidator, and since the directors of the company are supposed to know their own business but an Official Liquidator is very often a new man unconnected with the business carried on by the company, his knowledge and information of things was not likely to be

(1) A.I.R. 1928 All. 553.

M/s. Northern India Finance Corporation v. Dial Singh
and others (Narula, J.)

co-extensive with the knowledge of the directors, and, therefore, the learned Judge did not consider it proper to permit the Official Liquidator to refer the dispute in question to private arbitration. In the course of the judgment it was observed that the Companies Act does not make any mention of a power to refer to "arbitration" even with the sanction of the Court. The matter with which the Allahabad High Court was dealing did not relate to a claim under section 20 of the Act for making reference to an arbitrator named in an agreement entered into by the company itself "when it was still living" with the opposite party, but to an attempt on the part of the liquidator to make a reference of a subsisting claim to an arbitrator outside the Court instead of having the claim tried by a Court. Nor were any proceedings pending before any Court before the company went into liquidation in the Allahabad case.

(4) The judgment of the Patna High Court *in the matter of Monghyr Electric Supply Co. Ltd. (in liquidation)* (2) on which reliance has been placed by Mr. C. D. Dewan, learned counsel for the appellants, appears to me to be more in point. That was a case in which an objection was raised to the maintainability of an application under section 20 of the Act on behalf of the company which had gone into liquidation. The Patna High Court held that the expression "notwithstanding anything contained in any other law for the time being in force" appearing in section 446(2) of the Companies Act gives jurisdiction to the Court winding up the company to entertain an application under section 20 of the Act made on behalf of the company in liquidation. The present case really stands on a still firmer footing. The application under section 20 having been made by the company before even an application for winding it up had been made and the said application having also been dismissed before that day, the merits of the claim in that application which alone have to be adjudicated upon in this appeal have not, in my opinion, been affected at all by the company being ordered to be wound up in the meantime. Section 457 of the Companies Act authorises the liquidator in a winding up by the Court to institute or defend any suit, prosecution or other legal proceeding in the name and on behalf of the company with the sanction of the Court. An application under section 20 of the Act or an appeal against a decision given therein is, in my opinion, a legal proceeding covered by section 457(1)(a) of the Companies Act. Under subsection (2) of section 457 the liquidator in a winding up by the

(2) A.I.R. 1968 Patna 166.

Court has the power to do all acts in the name and on behalf of the company including the right to use company's seal. Sub-section (2) of section 446 of the Companies Act, which overrides any other law for the time being in force which may be inconsistent therewith, authorises the Court which is winding up the company to entertain or dispose of any suit or proceeding by or against the company. That provision, in my opinion, expressly authorises this Court to dispose of this appeal by the company which had already been entertained by this Court before the company went into liquidation. The provisions of sub-section (3) of section 446 make it clear that this appeal cannot be said to have either abated or become infructuous. Sub-section (3) states:—

“Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.”

Under sub-section (1) of section 446, no suit or other legal proceedings can be commenced or proceeded with against the company when a winding up order has been made or when the Official Liquidator has been appointed as provisional liquidator of the company, except by leave of the Court and subject to such terms as the Court may impose. The application of sub-sections (1) and (3) of section 446 to the High Court (and also to the Supreme Court) is excluded by sub-section (4) of section 446. The resultant position is that this appeal cannot be held to have either abated or become infructuous under any provision of law, and has to be dealt with and disposed of on merits. As already stated, there is practically no defence in support of the order of the trial Court on its merits.

(5) Mr. C. D. Dewan, who had originally been engaged by the company, was subsequently retained and engaged by the Official Liquidator, and an objection to his right to continue the appeal was raised before me by the learned counsel for the contesting respondent on February 12, 1974. I directed him to secure authority of the Official Liquidator by obtaining and filing his *vakalatnama*. Mr. Dewan has since filed that *vakalatnama*, dated February 13, 1974, signed by the Official Liquidator. He is, therefore, entitled to appear for the company in liquidation, as authorised by the Official Liquidator attached to this Court to prosecute this appeal.

The State of Punjab v. Mohinder Singh, etc. (Pattar, J.)

(6) In these circumstances, I have no hesitation in allowing this appeal, in setting aside and reversing the order of the trial Court, and in allowing the application of the company to file the arbitration agreement contained in the hire-purchase agreement Exhibit P. 1 in Court. The said agreement has already been filed, admitted and proved. I, therefore, refer the claim of the appellant-company to the sole arbitration of Mr. C. L. Vohra, Advocate, Civil Lines, Jullundur, the arbitrator named in the agreement. The company may file its claim before the arbitrator who will give notices of the claim to all the respondents and thereafter proceed with the reference in accordance with law. He shall file his award within four months from today unless he applies for extension of time either before or after that date. The fee of the arbitrator which is tentatively fixed at Rs. 500 shall be paid by the official Liquidator after the Arbitrator files his award in this Court. The original documents on the record of this case, if any, which have not been admitted into evidence may be returned to the respective parties who produced them so that they may produce the same before the arbitrator if so advised. The documents which have already been admitted into evidence may be sent to the arbitrator with a covering letter and with a complete detailed list thereof by a special messenger (after receiving the consent to act from the arbitrator), and under clear acknowledgment of the arbitrator which may be obtained and placed on the record of this appeal.

(7) Since Mr. Krishan Lal Kapur has adopted a very fair attitude in this appeal, I do not think it proper to burden his client with the costs of this appeal. The parties are, therefore, left to bear their own costs.

N. K. S.

REVISIONAL CRIMINAL

Before Pritam Singh Pattar, J.

THE STATE OF PUNJAB—Petitioner

versus

MOHINDER SINGH, ETC.—Respondents.

Cr. R. 1159 of 1973

March 14, 1974.

Code of Criminal Procedure (Act V of 1898)—Sections 161(3), 162(1), 172, 173(4) and 207-A(3)—Investigation of a criminal case by