

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

SIRDAR NOWROJI PUDUMJI (ORIGINAL OPPONENT No. 1), APPELLANT IN APPEAL No. 42 OF 1919; SADASHIV RAMCHANDRA NATU (ORIGINAL OPPONENT No. 2), APPELLANT IN APPEAL No. 48 OF 1919; HARI WAMAN BHAT (ORIGINAL OPPONENT No. 3), APPELLANT IN APPEAL No. 49 OF 1919 *v.* LAXMAN MORESHWAR DESHPANDE AND ANOTHER, BOTH HONORARY LIQUIDATORS OF THE DECCAN BANK, LIMITED, POONA (IN LIQUIDATION) (ORIGINAL APPLICANTS), RESPONDENTS*.

1919.

November 12.

Indian Companies Act (VII of 1913), Section 215—Winding up—Voluntary liquidation—Examination of Directors and Managers—Discretion of Court.

Under Section 215 of the Indian Companies Act, 1913, a voluntary liquidator can apply to the Court for examination of persons connected with the management of the Company.

FIRST appeals against the decision of P. E. Perceival, District Judge of Poona, in miscellaneous application No. 24 of 1919.

The facts are stated in the judgment.

Campbell with Messrs. *Kanga, Sayani & Co.*, for appellants (in Appeal No. 42 of 1919).

Bahadurji, acting Advocate General, with *S. R. Bakhle*, for appellants in appeals Nos. 48 and 49 of 1919.

Desai with *G. R. Gharpure*, for respondent in appeals Nos. 42, 48 and 49 of 1919.

MACLEOD, C. J.:—The applicants in this case presented a petition to the District Judge of Poona, stating that they were Honorary Liquidators of the Deccan Bank Limited, Poona, under voluntary liquidation, and asking for the examination of certain persons who were Directors, Managers and other Officers of the company with respect to their conduct of the business of the company and as to their conduct and dealing as Directors, Managers and other Officers.

* First Appeals Nos. 42, 48 and 49 of 1919.

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thereof during the years in which they acted as such Directors, Managers, &c. There were originally nine respondents. The learned District Judge made an order for the examination of respondents Nos. 1 to 4. Against that order respondents Nos. 1, 2 and 3 have appealed.

The first question is whether a voluntary Liquidator can apply to the Court for an order for the examination of persons connected with the management of the Company. Section 215 of the Indian Companies Act says: "where a Company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls, or any other matters, all or any of the powers which the Court might exercise if the Company were being wound up by the Court." Sub-section (2) says: "The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just."

It has been argued by the appellants that that section does not give the Court power to make an order on the application of a voluntary Liquidator, for the examination of persons, who were connected with the Company, with regard to its management or formation. It is difficult to see where the basis of that argument lies. Section 215 is framed in the very widest terms. It enables the Court to make any order, which it might have made in a compulsory winding up, in favour of a voluntary Liquidator, if it thinks that the exercise of that power is just or beneficial. It seems to me it is quite useless to refer to any other sections of the Act in order that we may give its proper meaning to section 215. There is no ambiguity whatever in that

section. Therefore I am very clearly of opinion that a voluntary Liquidator is entitled to come to the Court and ask the Court to make an order for the examination of witnesses, which the Court may make on the application of an Official Liquidator under section 196 of the Act.

The second question is whether the Court ought to have made the order in this particular case. Now the liquidation began in 1916, and apparently has proceeded in very unfortunate circumstances for the Company, for instance, as the learned Judge in the Court below has stated, the Liquidators have been trying to bring on this application for the examination of Directors and other persons for a considerable time, but owing to the deaths of two successive Liquidators and other reasons this matter has remained unsettled. In January of this year a suit had to be filed by the Liquidators against certain persons including the present appellants for misfeasance, and it has been argued that this order ought not to have been made for the examination of the appellants because that suit had been filed. But it is quite clear that if the Judge had power to make the order at any time after the liquidation commenced, if the Liquidator had been able to bring the application before him, there is no reason why the Judge should not have granted the order when he made it in February, merely because the suit had been filed against these opponents, which no doubt was filed to save the bar of limitation. It is quite true that in some cases the Court will not exercise its discretion in favour of the Liquidator, if it thinks he is asking the Court to exercise its power without sufficient reason. But that is a pure question of discretion, and it is impossible to lay down any definite rules as regards the exercise of that discretion more than this, that the Court must exercise its discretion. The learned District Judge has

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considered this question in his judgment, and I agree that he was right in considering that the objection of the opponents, the present appellants, that the order ought not to have been made for their examination, ought not to succeed. It is really difficult to see why the Court should not make the order on the application of the voluntary Liquidators, or why the appellants should shirk giving such information as they may have regarding their management of the affairs of this Company. In my opinion, therefore, the order of the learned District Judge was perfectly correct and the appeal must be dismissed with costs.

HEATON, J.:—I agree. I feel quite clear in my own mind that section 215 of the Indian Companies Act gives the power, and I really am not at present able to conceive any reason of importance why the Court should not have the power. Seeing that the Court has the power, then undoubtedly the District Court would be in a better position to make up its mind whether the examination of the Directors ought to proceed than are we sitting here. The liquidation has come before the District Court in Poona. I suppose it is very likely to come before it again. That Court would be a good deal more conversant with the facts than we are.

The principal reason urged against allowing the examination of the Directors seems to me to be a reason for allowing that examination. If there is a suit filed, then the sooner the Directors are examined the better, and the fact that there is a suit makes it more urgent, not less urgent, that the examination should take place speedily; provided of course, as I assume it will be, the examination is made for the purposes of the liquidation.

Order confirmed.

J. G. R.