

mere power of superintendence conferred upon the High Court does not disentitle a petitioner seeking a writ of *certiorari* from coming to this Court and asking for that writ. It cannot be said under the circumstances of the case that he had an alternative specific legal remedy open to him which he should have availed of before he asked for a prerogative writ.

The result, therefore, is that in our opinion the order passed by the Authority was an order without jurisdiction. Therefore, that order must be corrected by a writ of *certiorari*. We, therefore, direct the issue of a writ of *certiorari*.

Mr. Seervai very fairly stated to the Court that as this was a test case and respondent No. 1 wanted a decision on the point raised which was of considerable importance, he himself should bear the costs of this petition. We, therefore, order that respondent No. 1 should pay the costs of the petition.

Attorneys for petitioner: *Crawford, Bailey & Co.*

Attorneys for respondents: *Little & Co.; D. G. Desai.*

Writ issued.

A. J. P.

1951

A. R. SARIN
v.
B. C. PATIL
Chagla
C. J.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Bhagwati.

THE ASSOCIATED BANKING CORPORATION OF INDIA, LTD.
(IN LIQUIDATION) APPELLANTS (ORIGINAL PLAINTIFFS) v. MESSRS.
NAZARALLI KASSAMBHAI AND CO., RESPONDENTS (ORIGINAL
DEFENDANTS).*

1951
August 9

Banking Companies Act, (X of 1949) as amended by Act (XX of 1950), ss. 45A and 45B—Indian Companies Act (VII of 1913), s. 179—Jurisdiction of the High Court on winding up of a banking company—Suit by the Official Liquidator of a bank for recovery of a money-claim—Any matter relating to or arising out of the winding up of a banking company—Whether the suit is a matter or a claim relating to or arising out of the winding up of a bank—The suit being for less than Rs. 25,000 in value, whether exclusively triable by the Bombay City Civil Court.

Section 45A of the Banking Companies Act, as amended, ousts the jurisdiction of all Courts other than the High Court in all matters relating to or arising out of the winding up of a banking company.

* O. C. J. App. No. 36 of 1951; Suit No. 1127 of 1950.

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.

v.

MESSRS.
NAZARALLI
KASSAM-
BHAI
AND CO.

Section 45B of the Act confers a special jurisdiction upon the High Court exercising jurisdiction in the place where the registered office of the banking company is situate, to decide all claims made by or against any banking company, which may relate to or arise in the course of the winding up of that company. Sections 45A and 45B are co-related.

By reason of these two sections extra-territorial jurisdiction has been conferred upon the High Court which it did not possess before. Wherever the party may be resident, wherever the cause of action may have arisen, if the matter relates to or arises in the course of the winding up of a banking company, it is the High Court having cognizance, which is invested with the jurisdiction to decide that matter.

The expression "relating to the winding up" is much wider and much more extensive than the expression "arising out of the winding up". If the matter merely "relates to the winding up", it is sufficient to give jurisdiction to the High Court to decide it and it is not necessary that there must be a direct connection between the winding up and the matter to be decided.

A suit filed after the banking company has gone into liquidation by the Official Liquidator under s. 179 of the Indian Companies Act is a suit which relates to the winding up of the bank and the High Court has jurisdiction under s. 45B of the Act to try and determine such suit to the exclusion of all other Courts.

Held, therefore, that the suit filed by the appellants through the Official Liquidator to recover sums aggregating to Rs. 17,500 was exclusively triable by the High Court and the jurisdiction of the City Civil Court to try such a suit had been ousted by s. 45A of the Act XX of 1950.

On October 1, 1947, the appellant bank was ordered to be wound up by the High Court and the Court Liquidator was appointed as official liquidator of the bank.

On August 11, 1950 the bank through its official liquidator filed the present suit to recover sums aggregating to Rs. 17,500 which were borrowed by the defendants under four hundis.

The claim in the suit being admittedly less than Rs. 25,000 it was urged that the High Court had no jurisdiction to try the suit but that it was triable by the City Civil Court, Bombay.

SHAH J. Before whom the suit came up for hearing dismissed it on the ground that as the value of the suit was less than Rs. 25,000 the High Court had no jurisdiction to try it.

In His Lordship's judgment the suit being a suit filed by the bank for enforcement of its claim against a debtor could not be said to be one relating to the winding up of the banking company or arising out of the winding up of the banking company. The provisions of the Banking Companies Act were intended to confer exclusive jurisdiction upon the High Court only to try proceedings which had a direct relation with the

winding up of a banking company or which arose out of the winding up of a banking company. The fact that by reason of the order of winding up the Official Liquidator became the *dominus litis* for prosecuting the claim was not sufficient to make the proceedings one either relating to or arising out of the winding up.

His Lordship, therefore, dismissed the suit.

The bank appealed.

H. M. Seervai, for the appellants.

C. N. Daji with Jal Vakil, for respondent No. 3; respondents Nos. 1 and 2 absent.

CHAGLA C. J. This appeal arises out of a decision of Mr. Justice Shah holding that the suit of the Associated Banking Corporation of India, Ltd., which is in liquidation, by its Official Liquidator, should be dismissed on the ground that this Court had no jurisdiction to try this suit. The suit was to recover a sum of Rs. 20,000 and odd, and it is not disputed that but for certain special legislation to which I shall presently refer the suit would have been triable by the City Civil Court in Bombay as the subject-matter of the suit is below Rs. 25,000.

The question that we have to consider is whether the jurisdiction of the City Civil Court has been ousted and whether special jurisdiction has been conferred upon the High Court by reason of the suit having been filed by the Official Liquidator in the course of the winding up of the Associated Banking Corporation of India, Ltd. An Act was passed by the Dominion Legislature, being the Banking Companies Act, 1949, (Act X of 1949), to amend the law relating to Banking Companies, and Part III of that Act deals with suspension of business and winding up of banking companies. When one turns to some of the provisions in that part it is clear that the object of the Legislature was as far as possible to expedite the disposal of winding up of banking companies. For instance, s. 41 provides that the liquidator must make his report within two months to the Court from the date of the order giving the information required by s. 177B of the Indian Companies Act, 1913. Section 42 provides that meetings of creditors may be dispensed with. Section 43 provides for a special mode of proof of amounts deposited by depositors with banks. This Act was amended by the Banking Companies (Amendment) Act, 1950 (Act XX of

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.

v.

MESSRS.
NAZARALLI
KASSAM-
BHAI
AND CO.Chagla
C. J.

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.

v.

MESSRS.
NAZARALLI
KASSAM-
BHAI
AND CO.

Chagla
C. J.

1950), and s. 45A, which falls in part IIIA, the heading of which is "Special provisions for speedy disposal of winding up of proceedings" defined the "Court" in Part IIIA and in part III of the earlier Act as the High Court exercising jurisdiction in the place where the registered office of the banking company which is being wound up is situated or, in the case of a banking company incorporated outside India which is being wound up, where its principal place of business is situated, and s. 45A further provided that notwithstanding anything to the contrary contained in the Indian Companies Act or in any notification, order or direction issued thereunder or in any other law for the time being in force, no other court shall have jurisdiction to entertain any matter relating to or arising out of the winding up of a banking company. Therefore, jurisdiction of all Courts other than the High Court as defined in s. 45A was clearly ousted with regard to all matters which relate to or arise out of the winding up of a banking company. Then s. 45B conferred power upon the High Court to decide all claims made by or against any banking company, including claims by or against any of its branches in India, and all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the banking company, coming within the cognizance of the Court.

Now, the narrow question that we have to consider is whether a suit filed by the Official Liquidator to recover a claim due to a banking company from its debtor is a matter relating to or arising out of the winding up of a banking company. It may be pointed out that the Legislature has used a slightly different expression in s. 45B. The expression used in s. 45B is "which may relate to or arise in the course of the winding up." It is difficult to hold that the Legislature intended to convey something different by the use of the expression in s. 45A "arising out of the winding up" from the use of the expression in s. 45B "arise in the course of the winding up." Sections 45A and 45B are co-related. Section 45A ousts the jurisdiction of Courts other than the High Court, and s. 45B confers a special jurisdiction upon the High Court. There can be no doubt that by reason of these two sections extra-territorial jurisdiction has been conferred upon the High Court which it did not possess or enjoy before. Wherever the party may be resident, wherever the cause of action may have arisen, if the matter satisfies the test laid down, viz. that it relates to or arises out of

the winding up of a banking company, then the High Court is invested with the jurisdiction to decide that matter. The view taken by the learned Judge below was that there must be a direct connection or a nexus between the winding up and the matter which comes for the decision of the Court before s. 45A or s. 45B would be applicable, and the view taken by the learned Judge was that the present suit arises out of contractual relations between the bank and the debtor, that the suit does not arise out of the winding up, that it is not by reason of the supervision of the winding up that the Official Liquidator became entitled to recover this amount, that the cause of action was already there, and the cause of action did not arise by reason of the banking company being wound up. According to the learned Judge these provisions only apply when a right is conferred upon the banking company by reason of the winding up. The claim must arise directly by reason of the supervision of the winding up. But if the claim does not so directly arise and the claim already existed, the mere winding up does not make that claim a matter relating to or arising out of the winding up of a banking company. The learned Judge has further taken the view that the mere fact that the Official Liquidator is *dominus lite* by reason of the winding up does not in any way affect the question to be decided. I must frankly confess that there is considerable force in the view taken by the learned Judge below and the matter we have to consider is by no means entirely free from doubt or difficulty.

Now, it is necessary to consider in the first place s. 179 of the Companies Act. That section deals with the powers of the Official Liquidator and it provides that "The official liquidator shall have power, with the sanction of the Court, to do the following things:" and among those things one is to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company. Clause (i) of s. 179 provides: "to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets." It may be contended, as has been contended by Mr. Daji, that the Court sanctions the filing of the suit in the course of the winding up and the sanction to file the suit does arise out of the winding up. But the actual filing of the suit has nothing whatever to do with the winding up. Mr. Daji says that once the sanction of the Court is given, the official liquidator must resort to the ordinary Courts of the land in order to enforce the claim of the banking company

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.

v.

MESSRS.
NAZARALLI
KASSAM-
BHAI
AND Co.Chagla
C. J.

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.

v.

MESSRS.
NAZARALLI
KASSAM-
BHAI
AND Co.

Chagla
C. J.

against its debtors. But this argument overlooks one or two important considerations. It is one thing to say that the company before it is wound up is enforcing its contractual right and the contractual obligation of the debtor in filing a suit to recover the debt due to the banking company. It is entirely a different thing to say that the official liquidator with the sanction of the Court is recovering the debt due by the debtor to the company under s. 179 because the official liquidator is not concerned with the contractual rights or obligations. He is primarily concerned to wind up the affairs of the company and to distribute its assets. Therefore, in filing the suit what he is doing is helping to wind up the affairs of the company and also assisting the ultimate distribution of the assets of the company. Even the Court when it gives sanction approaches the matter from the same point of view. It has got to consider what are the possibilities of recovering the debt, what costs are likely to be incurred, whether from every point of view it is advisable to prosecute the claim, and so on and so forth; whereas the company before it is wound up would not be in any way fettered by the considerations which would weigh with the liquidator or with the Court under s. 179. Therefore, a suit filed after the company goes into liquidation by the official liquidator under s. 179 must have a relationship with the winding up of the company. It is also to be borne in mind that the Legislature has not merely used the expression "arising out of the winding up", but it also used the expression "relating to the winding up", and in my opinion the expression "relating to the winding up" is much wider and much more extensive than the expression "arising out of the winding up." If the Legislature had restricted itself to the use of the expression "arising out of", then it may possibly have been argued that there must be a direct connection between the winding up and the matter which is to be determined under s. 45A or s. 45B. But if the matter is merely related to the winding up, no such direct connection is necessary. One must also look to the object with which these provisions were incorporated into the law. If the official liquidator is compelled to file suits to recover debts in different places in India against the debtors where they might be residing or where the cause of action might have arisen, then a speedy disposal of winding up proceedings would be impossible. The liquidator and the Court would have to wait till all these suits are disposed of before the Court would be in a position to wind up the affairs of the

company and distribute its assets. Therefore, if the sole purpose and the whole object of this legislation is to wind up the affairs of banking companies as expeditiously as possible, then it stands to reason that the Legislature must have intended that the assets should be realised as quickly as possible, and when the official liquidator files a suit against a debtor of the banking company, all he is doing is to attempt to realise part of the assets of the company.

Our attention has been drawn to analogous law to be found both in the Insolvency law here and the Bankruptcy law in England. Section 105 of the Bankruptcy Act, 1914, provides:

“Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities and all other questions whatever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court.”

And our own s. 7 of the Presidency-towns Insolvency Act is in identical terms. And there is a similar provision in s. 4 of the Provincial Insolvency Act. It has been held both in England and here that under this section the Insolvency Court has jurisdiction to try questions of title against strangers to the insolvency and also questions arising out of the contract which a stranger entered into with the insolvent before his insolvency. In other words, the view taken both by the English and Indian Courts is that this section does not restrict the jurisdiction of the Court to trying only those matters which arise by reason of the supervention of the insolvency. Even if the right existed in the insolvent and it was that right which was being enforced against a stranger, if by reason of the adjudication the Official Assignee can prosecute that right and that claim, that matter can be considered by the Insolvency Court under s. 7 of the Presidency-towns Insolvency Act and under s. 105 of the Bankruptcy Act, 1914.

Now, it will be noticed that the language used by the Legislature in our s. 7 and s. 105 of the English Act is merely a question which may arise in any case of insolvency. The language used in the Banking Companies Act is much wider. It is not merely a matter arising out of the winding up or a matter arising in the course of the winding up, but also a matter relating to the winding up of a banking company. Mr. Daji has appealed to us not to give a construction to s. 45B and s. 45A which may result in debtors of the company in any part of India having to answer a summons issued by this Court or

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.
v.
MESSRS.
NAZARALLI
KASSAM-
BHAI
AND Co.

Chagla
C. J.

1951

ASSOCIATED
BANKING
CORPORATION OF
INDIA LTD.
v.
MESSRS.
NAZARALLI
KASSAM-
BHAI
AND CO.

Chagla
C. J.

creditors of a banking company being compelled to file suits in this Court. An argument of convenience is never a safe argument in construing a section of a statute. Of course, in cases of doubt or ambiguity one must lean against causing inconvenience to litigants which inconvenience could be avoided by putting a different interpretation upon the statute. But when one realises once again the object with which this law was passed, it is clear that all powers were intended to be concentrated in one Court for the purposes of winding up, and irrespective of the territorial aspect of the matter, irrespective of the fact that creditors or contributories might be outside the jurisdiction of the High Court, the Legislature was emphasising more the necessity of expeditiously carrying out the winding up of a banking company than any inconvenience that might be caused to creditors or debtors or contributories. If we are right in understanding and appreciating the object with which the legislation was passed, then any inconvenience caused to litigants, however much it might be regretted, must be looked upon as unavoidable in the larger interest of society which requires that the affairs of banking companies should not be unduly delayed and the winding up should be completed as soon as possible. I am, therefore, of the opinion that with great respect the learned Judge was in error in the conclusion he came to and this Court has jurisdiction under s. 45B to decide this matter and the jurisdiction of the City Civil Court has been ousted under s. 45A of Act XX of 1950.

Therefore, the order of dismissal passed by the learned Judge will be set aside and the appeal will be allowed. The liquidator's costs as between attorney and client will come out of the assets of the banking company. There will be no order as to costs of respondent No. 3. The suit was filed as a summary suit and therefore, it will go back to the learned Judge in Chambers for disposal according to law.

BHAGWATI J. I agree.

Attorneys for appellants: *Kanga & Co.*

Attorneys for respondents: *Godambe & Joglekar.*

Appeal allowed.

A. J. P.